



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
) ISCR Case No. 15-02883
)
Applicant for Security Clearance)

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

11/17/2016

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On November 2, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. DOD acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

Applicant answered (Ans.) the SOR on December 2, 2015, and requested a hearing before an administrative judge. The case was assigned to me on March 16, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 11, 2016, and the hearing was convened as scheduled on June 13, 2016. The Government offered exhibits (GE) 1 through 5, which were admitted into evidence

without objection. The Government's discovery letter was marked as hearing exhibit (HE) I. Applicant testified, but did not offer any exhibits at the hearing. The record was held open for Applicant to submit additional information. Applicant submitted exhibits (AE) A-B, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on June 27, 2016.

Findings of Fact

Applicant admitted SOR allegations ¶¶ 1.a, 1.c - 1.h, and 1.j – 1.w. He denied ¶¶ 1.b and 1.i. These admissions are incorporated as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 40-year-old employee of a defense contractor. He has worked for this employer since 2011. He has an associate's degree. He spent some time in the National Guard trying to receive a commission through ROTC, but when that did not work out, he was administratively separated. He is divorced and has two children for whom he pays about \$700-\$800 in monthly child support. He maintains that he is current on that support.¹

The SOR alleges 23 delinquent debts in the approximate amount of \$69,952. The debts were listed in credit reports from January 2013, March 2015, and October 2015, as well as his admissions in his personal subject interview (PSI) to an investigator in February 2013.²

During his PSI, Applicant attributed his financial difficulties to making poor financial decisions when he was younger by accumulating credit card debt. During his testimony, he expounded on the cause of his financial problems by explaining how he incurred federal and state tax debt by delaying filing his tax returns because he earned self-employment income, and he did not know how to deal with the related tax issues. He has not received financial counseling. No budget information was provided. The status of the SOR-related debts is as follows:³

SOR ¶ 1.a (student loan debt \$7,090):

Applicant became delinquent on this student loan debt in November 2012. His date of last payment was March 2015. He applied for a hardship deferment on this account, but no further information was offered as to that status. Applicant testified that all his student loan accounts were consolidated, but he had not yet set up a payment plan for the consolidated account. This debt is unresolved.⁴

¹ Tr. at 5, 23-27; GE 1.

² GE 2-5.

³ GE 3.

⁴ Tr. at 41; Ans.; GE 3.

SOR ¶ 1.b (consumer debt \$2,848):

In his PSI, Applicant acknowledged this debt was for the purchase of two computers. He denied knowledge of this debt in his SOR answer. The date of last action on this debt was December 2012. Applicant produced no evidence of payment, establishment of a payment plan or documented correspondence with the creditor. This debt is unresolved.⁵

SOR ¶ 1.c (credit card account \$445):

Applicant stated that he “lost tracking” on this account. He did not provide documentation showing that he paid this account, set up a payment plan, or contacted the creditor. The date of last payment was June 2010. This debt is unresolved.⁶

SOR ¶ 1.d (consumer account \$181):

Applicant thought he closed this account in good standing. He did not present any documentation to support that position. He has not contacted the creditor about this debt. The date of his first delinquency was September 2011. This debt is unresolved.⁷

SOR ¶ 1.e (utility account \$169):

Applicant indicated he would contact this creditor. He also stated he left forwarding information at a previous address, but did not receive any correspondence from this creditor. He did not produce any documentation supporting his position. The unpaid status date for this account was September 2014. This debt is unresolved.⁸

SOR ¶ 1.f (utility account \$166):

Applicant indicated he would contact this creditor. He also stated he left forwarding information at a previous address, but did not receive any correspondence from this creditor. He did not produce any documentation supporting his position. The unpaid status date for this account was May 2014. This debt is unresolved.⁹

⁵ Ans.; GE 2-5.

⁶ Ans.; GE 3.

⁷ Tr. at 49; Ans.; GE 3.

⁸ Ans.; GE 3.

⁹ Ans.; GE 3.

SOR ¶ 1.g (medical account \$138):

Applicant claims this account was paid by his medical insurance. He failed to provide documentation to support his position. The unpaid status date for this account was August 2014. This debt is unresolved.¹⁰

SOR ¶ 1.h (utility account \$79):

Applicant claims this account was closed with no remaining balance. He failed to provide documentation to support his position. The unpaid status date for this account was September 2015. This debt is unresolved.¹¹

SOR ¶ 1.i (medical account \$46):

Applicant claims no knowledge of this account. The unpaid status date for this account was September 2015. This debt is unresolved.¹²

SOR ¶¶ 1.j – 1.p, 1.r- 1.s (state tax liens \$4,153; \$527; \$2,999; \$139; \$7,352; \$4,462; \$3,123; \$782; \$3,709):

These state tax liens resulted from Applicant failing to pay state income taxes for years 2008, 2009, 2012, 2013, and 2014. He documented that he received a one-year hardship deferment which began July 1, 2015. As of the hearing date, he failed to supply documentation of a follow-on agreement with the state or proof of payment. These debts are unresolved.¹³

SOR ¶ 1.q (federal tax lien \$24,565):

Applicant owed federal income tax debt for 2008, which resulted in the filing of a tax lien. He claims the tax balance is down to \$7,000 owed and that he makes monthly payments toward this debt. Applicant documented that he made a \$250 payment in October 2015, but failed to produce evidence of additional payments even when given the opportunity to do so post-hearing. This debt is unresolved.¹⁴

¹⁰ Ans.; GE 3.

¹¹ Ans.; GE 3.

¹² Ans.; GE 3.

¹³ Tr. at 34-36; Ans. (Tax Express letter dated July 1, 2015); GE 3.

¹⁴ Tr. at 32, 34; Ans. (IRS notice dated November 18, 2015); GE 3; AE A.

SOR ¶ 1.t (credit card account \$1,259):

Applicant stated that he “lost tracking” on this account. He did not provide documentation showing that he paid this account, set up a payment plan, or contacted the creditor. The date of last action was April 2011. This debt is unresolved.¹⁵

SOR ¶ 1.u (telecommunications account \$374):

Applicant presented documentation showing he paid this account in June 2016. This debt is resolved.¹⁶

SOR ¶ 1.v (student loan debt \$3,930):

Applicant became delinquent on this student loan debt in November 2012. His date of last payment was March 2015. He applied for a hardship deferment on this account, but no further information was offered as to that status. Applicant testified that all his student loan accounts were consolidated, but he had not yet set up a payment plan for the consolidated account. This debt is unresolved.¹⁷

SOR ¶ 1.w (student loan debt \$1,416):

Applicant became delinquent on this student loan debt in June 2015. His date of last payment was March 2015. He applied for hardship deferment on this account, but no further information was offered as to that status. Applicant testified that all his student loan accounts were consolidated, but he had not yet set up a payment plan for the consolidated account. This debt is unresolved.¹⁸

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions that are to be used in evaluating an applicant’s eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables

¹⁵ Tr. at 52; Ans.; GE 5.

¹⁶ AE B.

¹⁷ Tr. at 41; Ans.; GE 3.

¹⁸ Tr. at 41; Ans.; GE 3.

known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18 as follows:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant had 23 delinquent debts. The evidence is sufficient to raise the above disqualifying conditions.

Several financial considerations mitigating conditions under AG ¶ 20 are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's debts are recent and multiple, and his inaction on the debts shows a lack of reliability, trustworthiness, and good judgment. Although he paid one debt, he waited until after his hearing to take this action. AG ¶ 20(a) is not applicable.

Applicant's failed to present evidence that his financial difficulties were beyond his control. Even if he was able to do so, he has done little to address the debt. He paid one debt and received a one-year deferment on paying his state tax obligations. With the deferment soon ending, he produced no evidence showing how he intended to pay his state tax liability. He produced documentary evidence of only one monthly payment toward his federal tax debt. Overall, the record evidence does not support that Applicant's actions were responsible under the circumstances. AG ¶ 20(b) is not applicable.

Applicant has not sought financial counseling. Given the unpaid status of all but one debt, Applicant's financial problems are not under control. Although he paid one debt, the remainder are unpaid with no established repayment plan. Evidence of good-faith efforts to pay or resolve the remaining debts is lacking. AG ¶ 20(c) and ¶ 20(d) partially apply.

Applicant supplied documentary evidence to support his payment of the telecommunications debt, but he failed to document payment for his other disputed debts. AG ¶ 20(e) applies only to SOR ¶ 1.u.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's federal contractor service and the circumstances by which he became indebted. However, I also considered that he has made little effort to resolve his financial situation. He has not established a meaningful track record of debt management, which causes me to question his ability to resolve his debts.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the financial considerations security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs: 1.a – 1.t:	Against Applicant
Subparagraph: 1.u:	For Applicant
Subparagraphs: 1.v – 1.w:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge