



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



In the matter of:)
)
) ISCR Case No. 15-03085
)
Applicant for Security Clearance)

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: *Pro se*

05/05/2017

Decision

KILMARTIN, Robert J., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for access to classified information is denied.

Statement of the Case

On October 30, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 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 effective within the DOD for SORs issued after September 1, 2006.

Applicant timely answered the SOR and elected to have his case decided on the written record. Department Counsel submitted the Government's file of relevant material (FORM) on April 4, 2016. Applicant received the FORM on April 13, 2016, and had 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the Government's evidence and provided a four-page response to the FORM on June 17, 2016, with 12 pages of documentation attached.

These were collectively marked as Applicant's Exhibit A (AE A) and admitted into evidence.¹ The Government's evidence, identified as items 1 through 9, is admitted into evidence without objection. The case was assigned to me on May 1, 2017.

Findings of Fact

Applicant is 61 years old. He obtained his bachelor's degree in 1981. He has been married since October 1997, and he has been employed by a federal contractor since November 1984. Applicant reports he was first granted a security clearance in 1990.² Applicant disclosed some of his delinquencies involving routine accounts in section 26 of his November 15, 2012 Questionnaire for National Security Positions or security clearance application (SCA).³ Applicant's only explanation in the SCA is that he had a reduction in work and lost earnings. He also claims that payments have been set up with many of the creditors.⁴ Applicant admits to receiving a clean slate when his Chapter 7 bankruptcy was discharged in 2003.⁵

Applicant admitted SOR ¶1.a, alleging that he owed delinquent federal taxes for tax years 2009 and 2010. In his Response to the FORM, Applicant claims to have paid off the \$8,740 in back taxes for 2009 and 2010, but his tax problems persist. He claims to have set up an installment plan in 2012 for the 2011 and 2014 delinquent tax debts that were not alleged in the SOR. Applicant claims to continue to pay \$145 monthly on this installment plan. Applicant attached a June 8, 2016 installment agreement with the IRS which reflects balances owed of \$1,880 for tax year 2011 and \$4,330 for 2014, respectively. An inference can be drawn that he has paid off the tax delinquencies for 2009 and 2010 alleged in the SOR, since those debts are not addressed in the installment plan. However, Applicant failed to establish a regular payment history for this installment plan and document that he brought his delinquent tax debts current. No explanation has been offered as to how he became delinquent on the 2009 and 2010 taxes in the first place.

Applicant also admitted to six of the remaining seven delinquent debts or judgment alleged in the SOR in his December 2015 Answer to the SOR. Applicant repeatedly responded "I admit I owe, in process of contacting creditor." But Applicant has not followed through on any of this. He provided few documents and virtually no evidence to show progress on payments, or mitigation regarding the delinquent debts

¹ AE A attachments include: emails; letters from the IRS; letters from a law firm; and a notice of satisfaction of judgment; handwritten notes in red ink; letters from creditors; and letters from a debt verification firm.

² Item 5, p. 27.

³ Item 2, section 26.

⁴ Item 5, p. 30 and 31.

⁵ Answer to SOR ¶ 1.j.

alleged in the SOR. SOR ¶¶ 1.g and 1.i are duplicate debts. Applicant reached out to the successor creditor and attached a May 4, 2016 letter from this creditor reflecting that the debt was cancelled, no monies owed.⁶ However, it is evident that it was earlier charged off by the original creditor. Applicant did not pay it off or resolve it. The only debt that Applicant denied is alleged at SOR ¶ 1.e, but that debt is substantiated in his credit reports.⁷ Although Applicant provided some notes scribbled in red ink purporting to show that this was paid off by credit card,⁸ he did not provide the credit card statement or receipt from the creditor.

Applicant avers that the \$5,175 judgment alleged in SOR ¶ 1.b has been removed from his credit bureau report but is still in the process of being challenged, stating “I have to get back to you on this account.”⁹ He made similar assertions with respect to the debts alleged in SOR ¶¶ 1.d and 1.f, but provided no documents to verify these disputes or explain why these debts were either charged off or fell off his credit reports. Applicant also states that his mortgage loan at SOR ¶ 1.c is current. Yet, he provides no documents to substantiate this assertion. Applicant contends that the delinquent debt owed to a utility provider, alleged at SOR ¶ 1.e, was paid off. Yet, he provides only handwritten notes scribbled in red ink that purport to show this.¹⁰ SOR ¶¶ 1.g and 1.i are duplicates of the same debt.¹¹ That account was opened in September 2007 and charged off in April 2011 in the amount of \$1,584. No evidence has been provided to show that it has been resolved.

In his February 2013 personal subject interview (PSI), Applicant stated that he has continued to pay \$145 a month on the installment plan with the IRS. Yet, no documentation has been offered to confirm this. His financial problems resulted from his wife having cancer and being unable to work, and his own loss of income.¹² His employer under withheld taxes when Applicant increased the number of dependents he was claiming on his W-4 form around 2009 and 2010. Moreover, in that same PSI given four years ago, Applicant expressed his intentions to consult with a financial advisor, and to pay every delinquent account in full.¹³ He is working with a debt verification firm to challenge certain items on his credit reports.¹⁴ Scant work product has been provided

⁶ AE A, attachment G.

⁷ Items 7 and 8.

⁸ AE A, attachment E.

⁹ AE A.

¹⁰ AE A, at attachment E.

¹¹ AE A, at attachment G, letter dated May 4, 2016.

¹² Item 6, at p. 6.

¹³ Item 6, at p. 7.

¹⁴ AE A.

except for emails from the firm showing challenged item, and removal of a few items from his Transunion credit report.¹⁵

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied 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 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

¹⁵ AE A, attached emails from Lexington Law.

Section 7 of EO 10865 provides that 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for financial considerations is set out in AG ¶18:

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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

AG ¶ 19 provides conditions that could raise security concerns. The following apply here:

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

Applicant admitted to the delinquent taxes owed for 2009 and 2010, and claimed that the 2009 back taxes were paid. He also admitted to most of the other delinquent debts alleged in the SOR. He claimed to be in the process of contacting creditors in each instance. Applicant has had a history of recurring delinquent debts going back to 2002 when he filed for bankruptcy protection. This was part of a pattern. He didn’t pay his taxes for 2009 and 2010 for several years, and he continued to accrue delinquent debts. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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 problems were largely beyond the person's control, 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 provide evidence of actions to resolve the issue.

Applicant disclosed many of his delinquent debts in his SCA. He repeatedly stated that particular delinquent debts were either charged off or no longer appear on his credit reports. Allowing delinquent debts to be charged off due to passage of time or the absence of unsatisfied debts from credit reports does not necessarily mitigate such debts. These debts remain unresolved. The mitigating conditions enumerated above do not apply.

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 the 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 the 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. Applicant has attempted to mitigate his financial problems by hiring a debt verification firm in 2016. However, those efforts have been inadequate.

Applicant's finances remain a security concern. There are ample indications that Applicant's financial problems, especially his taxes, are not under control. He has not met his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising under Guideline F, financial considerations.

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.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h – 1.j:	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 a security clearance. Eligibility for access to classified information is denied.

Robert J. Kilmartin
Administrative Judge