



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



In the matter of:)
)
) ISCR Case No. 15-03168
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

04/13/2017

Decision

MURPHY, Braden M., 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 February 2, 2016, the Department of Defense (DOD) issued to 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 answered the SOR on March 7, 2016, and elected to have his case decided on the written record in lieu of a hearing. On May 30, 2016, Department Counsel submitted the Government's file of relevant material (FORM). The Government submitted documents identified as Items 1 through 6. The FORM was mailed to Applicant, and he

received it on June 6, 2016. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant's undated response to the FORM was received by DOHA on or about July 11, 2016. He did not object to the Government's evidence. The SOR and the Answer (Item 1) are the pleadings in the case.¹ Items 2 through 6 are admitted into evidence without objection. Applicant's FORM Response is marked Applicant's Exhibit (AE) A and is admitted into evidence without objection.² The case was assigned to me on March 13, 2017.

Findings of Fact

Applicant admitted SOR ¶ 1.a and denied ¶¶ 1.b, 1.c and 1.d, with explanations and documents. I have incorporated his answers and relevant comments into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 39 years old. He served honorably in the U.S. Air Force from 1995 to 2004. Since 2004, he has been employed in the defense industry, for the same employer. He currently works as a network engineer. He has held a security clearance for over 20 years. He has never married. He has three sons, ages 12, 13, and 16. Applicant has lived in the same home since 2004.³

Applicant completed a security clearance application (SCA) in July 2014. He disclosed a past due mortgage (SOR ¶ 1.b), a charged-off credit card account (SOR ¶ 1.c) and a delinquent debt to his homeowners association (HOA) (SOR ¶ 1.d). He also disclosed that he had failed to file his 2010 state and federal income tax returns as required (SOR ¶ 1.a).⁴

Between August 2008 and May 2010, Applicant was involved in a custody dispute with the mother of his eldest son. The resulting legal fees, which totaled about \$15,000, depleted his savings. At the time, Applicant was also involved in a long-running dispute with his HOA over what he believed was the HOA's failure to make repairs to his home, such as a leaking roof. Applicant decided to stop making monthly payments to the HOA. Instead, he used the money to pay his legal fees from the custody suit. Once the suit was resolved, Applicant attempted to resume his HOA payments, but was told that his account had been turned over to a law firm for collection. Applicant indicates that he made, or attempted to make, payments towards the debt but he provides no corroborating documentation.⁵ Applicant also experienced family tragedy during this period, when one

¹ Applicant labeled his SOR Answer attachments B, C and D to correspond with the SOR allegations.

² Applicant labeled his FORM Response attachments A-J and X.

³ Item 2.

⁴ Item 2.

⁵ Items 2, 3.

of his brothers was killed and another brother was paralyzed in an accident in January 2011.⁶

In March 2013, the HOA obtained a judgment against Applicant for about \$14,429.⁷ Beginning in early 2015, Applicant's wages were involuntarily garnished for this debt. Applicant believes he may be owed money due to an overpayment on the garnishment order. He provides paystubs indicating that about \$15,383 of his wages were garnished between about February 2015 and June 2016, when the garnishment ended.⁸ However, he also provides a filing from his bank (the "garnishee") indicating that as of February 2016, they held only \$9,838 of his property. Applicant did not submit any documentation from the court showing that the \$14,429 garnishment order has been satisfied or released.⁹ Applicant did not submit any documentation showing that he made any payments on the debt before the HOA sought a judgment against him. Applicant did not submit any documentation of any payments he made other than through involuntary garnishment. SOR ¶ 1.d is unresolved.

As of April 2014, Applicant was \$2,207 behind on his mortgage payments.¹⁰ However, a March 2015 credit report shows the account as current.¹¹ Applicant provides several mortgage statements from early 2016 showing that his account remained current and in good standing at that time.¹² SOR ¶ 1.b is resolved.

SOR ¶ 1.c is a charged-off credit card account for \$8,482. Applicant disclosed the account on his SCA. It is listed as in collection on his April 2014 credit report. By April 2015, the account had been charged off. Applicant denies the debt. In his Answer, he claims that he arranged a payment plan and satisfied the debt in February 2015. He provides no corroborating documents. With his Answer and FORM Response, he provides three credit card statements for November 2014, December 2014 and January 2015. Each statement shows balances of a few hundred dollars. However, these statements are for a credit card account with a different bank than the one alleged. Applicant provides no documentation of any payments towards the debt alleged in SOR ¶ 1.c, which remains charged off. The debt is unresolved.

Applicant disclosed on his March 2014 SCA that he failed to file his 2010 state and federal income tax returns as required. He stated that he regularly files his taxes

⁶ Answer at 4.

⁷ Items 4, 5.

⁸ AE A attachments F & G (Applicant's paystubs from Dec. 31, 2015 & June 30, 2016).

⁹ AE A attachment H.

¹⁰ Item 5 at 6.

¹¹ Item 4 at 1.

¹² Answer attachment B; AE A attachment J.

electronically through a well-known computer software program. While preparing his 2013 tax return, he contacted the IRS, and learned that his 2010 returns had not been properly filed. He indicated on his SCA that he filed the returns in March 2014.¹³ With his FORM Response, Applicant provided proof of two electronic payments he made in June 2014 to the IRS towards his 2013 taxes. His 2013 taxes, however, are not at issue, and the payments he provides do not establish that his 2010 federal or state tax returns have been filed. Applicant has provided no documentation to corroborate his claim that his 2010 federal or state tax returns have now been filed. SOR ¶ 1.a is unresolved.

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

¹³ Items 2, 3.

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.

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.¹⁴

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state or local income tax returns, or the fraudulent filing of the same.

Applicant began accumulating delinquent debt during a custody dispute between 2008 and 2010. He failed to file his 2010 state and federal income tax returns as required. There is sufficient evidence to support the application of the above disqualifying conditions.

¹⁴ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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 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 financial difficulties began between 2008 and 2010, when he had \$15,000 in legal fees during a lengthy custody dispute with the mother of his oldest son. He stopped paying his HOA fees and used the money for his legal expenses. There is insufficient evidence that Applicant took reasonable action on his own to resolve the debt before the HOA pursued a legal judgment against him for the unpaid fees, and then sought to garnish his wages to recover the judgment. There is insufficient evidence that the judgment is resolved. There is also insufficient evidence that Applicant's credit card debt is resolved. There is insufficient evidence that Applicant's financial issues are infrequent or unlikely to recur. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant's financial issues began during his custody dispute. Shortly afterwards, a brother was killed and another was paralyzed in a tragic accident. The first prong of AG ¶ 20(b) applies. However, for the full application of AG ¶ 20(b), Applicant must provide evidence that he acted responsibly under the circumstances. Applicant has not provided sufficient evidence that he did so. By his own admission, he stopped paying his HOA fees so he could pay the legal fees from the custody dispute. This was not a responsible act on his part. The HOA sought and obtained a judgment against Applicant several years later, and was forced to garnish his wages to satisfy it. Applicant has not shown that he has acted responsibly in resolving either the HOA debt, the credit card debt or his 2010

tax issues. He has not provided sufficient evidence that he acted responsibly under the circumstances. The second prong of AG ¶ 20(b) does not apply.

Applicant provides no evidence of financial counseling. Without additional evidence, there are not clear indications that Applicant's financial problems are being resolved or are under control. AG ¶ 20(c) does not apply.

The Appeal Board has held that "on its face, satisfaction of a debt through the involuntary establishment of a creditor's garnishment is not the same as, or similar to, a good-faith initiation of repayment by the debtor."¹⁵ Applicant has not shown that he has exercised good faith in resolving either his HOA debt, his charged-off credit card debt, or his 2010 tax returns. Applicant has not provided sufficient evidence to establish that he has a reasonable plan to resolve his debts, or that he has taken steps towards establishing a reliable financial track record. AG ¶ 20(d) does not apply.

Applicant has rebutted the allegation that his mortgage is delinquent, with appropriate supporting documentation. AG ¶ 20(e) applies to SOR ¶ 1.b.

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, but some warrant additional comment.

¹⁵ ISCR Case No. 08-06058 at 6 (App. Bd. Sep. 21, 2009).

Applicant is a 39-year-old veteran and long-time defense industry employee. His financial problems began several years ago during a lengthy and costly custody dispute. He stopped paying his HOA fees and used the money to pay his legal bills, which were significant. He has not shown sufficient evidence that he acted responsibly in the years since then to resolve his two remaining delinquent debts or his tax filings. Applicant does not have a reliable financial track record at this time. His finances remain a security concern. He has failed to meet his burden of persuasion. The record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Braden M. Murphy
Administrative Judge