



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



In the matter of:

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) ISCR Case No. 15-03180
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Applicant for Security Clearance

Appearances

For Government: Andre Gregorian, Esq., Department Counsel

For Applicant: *Pro se*

04/13/2017

Decision

DAM, Shari, Administrative Judge:

Applicant did not resolve a large number of delinquent debts that he assumed while investing with an investment company. He failed to mitigate the resulting financial security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On June 25, 2014, Applicant submitted a security clearance application (SF 86). On May 24, 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 (AG) effective within the DOD for SORs issued after September 1, 2006.

On July 2, 2016, Applicant answered the SOR (Answer), and requested a hearing. On September 8, 2016, the Defense Office of Hearings and Appeals (DOHA) assigned Applicant's case to me. On November 15, 2016, DOHA issued a Notice of Hearing, setting the hearing for December 7, 2016. At said hearing, Department Counsel offered Exhibits (GE) 1 through 5. Applicant testified and offered Exhibits (AE) A through Z. All exhibits were admitted. DOHA received the hearing transcript (Tr.) on December 16, 2016.

Procedural Rulings

At the commencement of the hearing, Department Counsel moved to withdraw the allegation in SOR ¶ 1.i. Applicant did not object. Said motion was granted. (Tr. 8-9.)

Findings of Fact

Applicant admitted all SOR allegations, and provided explanations and attachments. (Answer.) His admissions are accepted as factual findings and incorporated herein.

Applicant is 38 years old and married. He and his wife have three young children. He earned a bachelor's degree in business administration in 2001. He has been employed with his current employer since 2003, except from 2009 to 2011, when he worked for another company. (Tr. 25-28.)

Applicant's financial problems began in July 2008, when he decided to participate in an investment opportunity with a company that he learned of through his friend. Between July and September, Applicant opened lines of credit and bank credit cards, and used those loans and credit cards to invest in the company. He also co-signed two large automobile loans for luxury cars for the owners of the company. He legally assumed these liabilities, totaling over \$220,000, based on a belief that the company would make monthly payments to him for the outstanding debts he assumed. He believed that he would earn 10% on his initial investment and as a quarterly return. (Tr. 35-41, 69; AE B.)

After the first two months of using his loans to invest in the company, Applicant received a payment of between \$30,000 to 35,000 from the company to apply to the monthly amounts that were due on the loans and credit cards. Applicant did not receive a reimbursement payment from the company for the third month or any months thereafter. When he was unable to reach the company's owners, he realized that he was involved in an investment fraud scheme. (Tr. 42-43, 54.) Sometime in 2009, Applicant liquidated all of his personal investments and used that \$40,000 to pay the loan debts that were due. He has not made any payments toward the debts since 2009. He said he could not afford the monthly payments that totaled thousands of dollars for those debts. (Tr. 58; AE B.)

In late 2008 or early 2009, Applicant contacted the police and inquired about filing possible criminal charges against the principals in the fraudulent company. The police were unable to help Applicant because he assumed various personal loans, co-signed for the automobile loans, and allowed the owners to drive the cars. (Tr. 44-45.) Both cars were eventually repossessed. (AE A.)

In August 2009, Applicant contacted a debt-consulting firm to help him manage his debts and negotiate settlements with the creditors. Applicant made monthly payments of \$500 to the firm, for a total of \$12,000 for two years. The firm settled one case and negotiated a non-suit for another debt. (Tr. 59; GE 5; AE B, F, H.) In February 2011, Applicant hired a lawyer to negotiate a settlement with the creditor listed in SOR ¶ 1.g, to whom he owed \$7,808.¹ The lawyer resolved this debt, along with another debt owed to said creditor that was not listed on the SOR. Applicant paid the creditor \$3,500, and both debts were cancelled in 2011. The lawyer's fee for handling the two cases was \$2,150. In 2013, Applicant received a notice from the Internal Revenue Service (IRS) stating that he owed \$2,980 in taxes for said cancellation. (Tr. 61-65; AE B, I, J, K, L, T.) This IRS debt remains unpaid.

After a background interview in November 2014, Applicant hired a credit-repair law firm in December 2014. He paid the law firm \$100 a month for 13 months to repair his credit and help him manage debts. The law firm did not negotiate any settlements with creditors, but did rebuild his credit. It successfully had delinquent debts removed from his credit report through its efforts or after the passage of time. He terminated the legal relationship in January 2016. He has not subsequently contacted any creditors alleged in the SOR to resolve outstanding debts. (Tr. 65-68, 81-82; AE B, R, S.)

Based on credit bureau reports (CBR) from July 2014 and March 2015, and Applicant's admissions, the SOR initially alleged 10 delinquent debts, totaling over \$221,000. The debts were reported as delinquent starting in 2009. (GE 2, 3.) Other than the debt alleged SOR ¶ 1.g, and the debt alleged SOR ¶ 1.i that was withdrawn, Applicant has not paid or resolved any of the eight remaining SOR debts because he was not and is not financially able to do so. (Tr. 65-69.)

Applicant stated that not all debts related to the investment scheme were alleged on the SOR. He provided an Excel spreadsheet that listed 14 delinquent debts, for which he became financially responsible while investing in the company. According to his calculation, those 14 debts totaled \$368,425. He paid \$39,650 toward that debt between October and December 2008 from his own funds. One credit card debt not listed on the SOR was resolved through legal action. (Tr. 71-79; AE A, N, Q.)

Applicant earns \$78,000 annually. According to a budget he provided, his monthly income is \$4,285, and his expenses are the same amount. In 2008, he earned \$58,000. (Tr. 33; AE C.)

¹ Applicant opened another account with this creditor, which also became delinquent. (AE A.)

Applicant testified candidly and remorsefully. Prior to this situation, he never had delinquent debts, and since then he has not accumulated additional ones. He accepted responsibility for the serious financial mistakes he made in 2008, which had a devastating effect on his family's finances. (Tr. 84-85.) Applicant admitted that his decision to invest with the company was irresponsible and something he could not afford. He acknowledged that he was naïve when he became involved with the investment scheme and did not consider the financial risk. Instead, he assumed that risk with the "hope to get rich quick." (Tr. 39, 47, 69-70; AE B.)

Applicant submitted two letters of recommendation. His co-worker commented on Applicant's integrity and commitment to his job. He considered Applicant a valuable asset to their team. (AE Y.) Applicant's pastor has known him for seven years, and has observed him during a family crisis. He described Applicant as a "man of great character." (AE X.)

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 (AG) list potentially disqualifying conditions and mitigating conditions, which 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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. According to Directive ¶ E3.1.15, "[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of EO 10865 provides: "[a]ny determination under this order adverse to an

applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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 protect or 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.

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.²

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

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

² See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

Beginning in mid-2008, Applicant accumulated a large amount of delinquent debt that he has been unable or unwilling to resolve. The evidence raises the above security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial problems:

- (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 delinquencies are ongoing and unresolved. His bad judgment in assuming and managing those financial obligations casts doubt on his reliability and trustworthiness. AG ¶ 20(a) does not provide mitigation. Applicant's financial problems are attributable to his personal decisions, and are not the result of circumstances beyond his control. He made some efforts to manage the financial obligations when he hired a firm in 2009, a lawyer in 2011, and a credit repair company in 2014. Those efforts established some mitigation under AG ¶ 20(b). Applicant did not produce evidence of financial counseling or evidence that there are clear indications that the financial delinquencies are under control. He did not establish mitigation under AG ¶ 20(c). He produced evidence that he resolved one debt, SOR ¶1.g, through a settlement; however, he did not produce evidence that he resolved the tax issue that resulted from the partial cancellation of the debt. Minimal mitigation was established under AG ¶ 20(d) as to that debt. He admitted all of the debts, so a discussion of AG ¶ 20(e) is not pertinent.

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.

According to 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 pertinent facts and circumstances surrounding this case. Applicant is an intelligent 38-year-old employee of a defense contractor, for whom he has successfully worked for 11 years. He expressed deep affection for his family and community. A co-worker wrote a letter of recommendation for Applicant, attesting to his integrity and capability. Applicant stated that he did not have any financial problems prior to mid-2008.

In mid-2008, Applicant made an impulsive decision that resulted in devastating financial and personal consequences, which continue to date. In three months in 2008, he assumed over \$220,000 of debt that he could not afford, in the hopes of becoming wealthy. He was candid and remorseful about his poor judgment. Although he made some efforts to handle the debt since incurring it in 2008, the majority of that debt remains unresolved. There is no evidence that he has any intention to take action to resolve the debts, other than allow them to fall off his credit history through the passage of time. While he may not make a similar financial decision in the future, his past actions demonstrated a significant lapse of judgment. Applicant did not meet his burden of persuasion to mitigate the security concerns arising from his financial considerations.

Formal Findings

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

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| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 1.a through 1.h: | Against Applicant |
| Subparagraph 1.i: | Withdrawn |
| Subparagraph 1.j: | Against Applicant |

Conclusion

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

SHARI DAM
Administrative Judge