



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



In the matter of:)
)
) ISCR Case No. 15-03379
)
Applicant for Security Clearance)

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

05/08/2017

Decision

GARCIA, Candace Le'i, Administrative Judge:

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

Statement of the Case

On November 27, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant 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) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on December 22, 2015, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on May 4, 2016. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant

received the FORM on June 22, 2016. Applicant did not respond to the Government's FORM. The Government's documents identified as Items 1 through 8 are admitted in evidence without objection. Other than his Answer to the SOR, admitted in evidence as Item 2, Applicant failed to submit any additional documentation. The case was assigned to me on April 7, 2017.

Findings of Fact

Applicant is 44 years old. He obtained an associate's degree in December 1998, and took online university courses from December 2010 to January 2011, but did not earn a degree. He is married and has a 14-year-old daughter.

Applicant worked as a federal contractor from June 2003 to September 2008, and was first granted a DOD security clearance in September 2004. He worked as a federal employee from October 2008 until he was laid off in June 2011.

Applicant immediately obtained another job, but had to relocate from state A to state B, which had a higher cost of living. He was unable to sell his home in state A, and rented it at a loss of \$200 to \$300 monthly. His wife was unemployed for eight months in state B. While his employer in state B paid his relocation costs, Applicant did not realize that he had to declare the reimbursement for his moving expenses as taxable income on his tax returns. Applicant was also unable, due to his increased income, to claim a number of tax exemptions he had previously claimed. When Applicant filed his 2011 federal and state income tax returns, he owed \$20,000 that he was unable to pay. He entered into a payment plan of \$350 monthly with both the IRS and his then resident state. Despite adjusting his tax withholdings for the 2012 tax period, Applicant underestimated the amount he would owe. When he filed his 2012 federal and state income tax returns, Applicant owed an additional \$8,000 that he was unable to pay.¹

In January 2013, Applicant obtained his current job as a federal contractor and relocated to state A, as the climate in state B contributed to Applicant becoming increasingly ill. In June 2013, Applicant's employer laid him off for six weeks due to budgetary constraints. Applicant filed for Chapter 13 bankruptcy protection in August 2013 to resolve his delinquent debts. In October 2014, his employer's re-bid on the contract under which Applicant works resulted in a 10% to 15% pay cut. His bankruptcy case was also dismissed due to delinquent plan payments.²

The SOR alleges Applicant's Chapter 13 bankruptcy filing and dismissal, a federal tax lien of \$27,256 entered against Applicant in December 2014, delinquent federal taxes of \$21,500 for tax years 2011 and 2012, delinquent state taxes of \$4,800 for tax years 2011 and 2012, and nine delinquent consumer accounts totaling \$18,857. Applicant admitted all of the SOR allegations with the exception of SOR ¶¶ 1.c and 1.i, which he denied because he was unaware of the creditors. Credit reports from June

¹ Items 2-4, 8.

² Items 2-4, 8.

2014, February 2015, and October 2015, as well as Applicant's Chapter 13 bankruptcy documentation, verify all of the SOR allegations.³

SOR debts ¶¶ 1.b and 1.l concern Applicant's delinquent federal taxes. In his December 2015 response to the SOR, Applicant stated that SOR debt ¶ 1.l is for the same debt underlying the federal tax lien alleged in SOR ¶ 1.b. SOR debt ¶ 1.l stems from information Applicant provided in his bankruptcy case, which pre-dated the lien in SOR ¶ 1.b. I find that SOR ¶ 1.l is a duplicate of SOR ¶ 1.b.⁴

Applicant received credit counseling in May 2013 through his Chapter 13 bankruptcy case. He indicated in his October 2014 interview with an authorized DOD investigator, that he would contact and establish repayment terms with his creditors, and hire an attorney to assist him with resolving his tax issues. In his response to the SOR, Applicant stated that he was making payments toward SOR debts ¶¶ 1.b and 1.m using legal representation, and SOR debt ¶ 1.h is almost paid. Applicant also stated that the remaining SOR debts are closed accounts. Applicant has not provided corroborating evidence of actions he may have taken to resolve any of the SOR debts.⁵

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, 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, 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 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."

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,

³ Items 1-8.

⁴ Items 1-2, 4-8.

⁵ Items 1-8.

or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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* EO 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:

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. The following are potentially applicable in this case:

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

Applicant’s Chapter 13 bankruptcy case was dismissed in October 2014 due to delinquent plan payments. He has a \$27,256 federal tax lien outstanding since December 2014, owes \$4,800 in delinquent state taxes for tax years 2011 and 2012, and has nine delinquent consumer accounts totaling \$18,857. There is sufficient evidence to support the application of the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

I find in Applicant's favor on SOR debt ¶ 1.I, since it is a duplicate of SOR debt ¶ 1.b. Applicant's debts, however, remain unresolved. There is insufficient evidence to conclude that his financial problems are unlikely to recur, and they continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Circumstances beyond his control contributed to Applicant's financial problems. For the full application of AG ¶ 20(b), Applicant must provide evidence that he acted responsibly under the circumstances. Applicant filed for Chapter 13 bankruptcy protection in August 2013 to resolve his delinquent debts. He received financial counseling in May 2013 through his Chapter 13 bankruptcy. However, his bankruptcy case was dismissed in October 2014 due to delinquent plan payments, and Applicant has not provided evidence of any actions he has since taken to resolve his delinquent debts. Applicant's financial problems are not under control. AG ¶¶ 20(b), 20(c), and 20(d) partially 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 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in this whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant worked for a federal contractor from 2003 to 2008, and since 2013. He worked as a federal employee from October 2008 to June 2011. He was first granted a DOD security clearance in September 2004. Circumstances beyond his control contributed to his financial problems. He filed for Chapter 13 bankruptcy protection in August 2013, but his bankruptcy case was dismissed in October 2014. He has financial delinquencies that remain unresolved. His finances remain a security concern. He failed to meet his burden of persuasion. The record evidence leaves me with 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
Subparagraphs 1.a-1.k and 1.m:	Against Applicant
Subparagraph 1.l:	For Applicant

Conclusion

In light of all of the circumstances, 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.

Candace Le'i Garcia
Administrative Judge