



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



In the matter of:)
)
) ISCR Case No. 15-03445
)
)
Applicant for Security Clearance)

Appearances

For Government: Andrea M. Corrales, Esq., Department Counsel
For Applicant: *Pro se*

03/23/2017

Decision

MURPHY, Braden M., Administrative Judge:

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

Statement of the Case

On November 19, 2015, 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 December 23, 2015, and elected to have his case decided on the written record in lieu of a hearing. On April 26, 2016, Department Counsel submitted the Government's file of relevant material (FORM). The Government submitted documents identified as Items 1 through 5. The FORM was mailed to Applicant, and he

received it on May 5, 2016. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not respond to the FORM or object to the Government's evidence. Items 1 and 2 are the pleadings in the case. Items 3 through 6 are admitted into evidence without objection. The case was assigned to me on March 13, 2017.

Findings of Fact

Applicant admitted all the allegations in the SOR. His admissions and other comments are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact,

Applicant is 33 years old. He graduated from high school in 2002. Applicant was married from 2003 to 2007. He and his ex-wife have a daughter, born in 2003. He remarried in 2007. He and his wife have a son, born in 2008.¹

Applicant served in the U.S. Army from February 2003 until May 2006. His highest rank was an E-4. He had various postings in the United States and South Korea, and was deployed to Iraq from September 2005 to May 2006. This deployment ended when he was medically evacuated. He was later medically discharged under honorable conditions.²

From May 2006 to February 2008, Applicant worked as a financial manager. In February 2008, he accepted a position in the defense industry as an instructor. He attended classes for the job from March to May 2008. He worked for the employer that hired him until July 2009. From July 2009 to July 2010, he worked in Afghanistan with a different defense contractor. He returned to the United States due to a family issue. He was then unemployed from July 2010 to September 2010. He did not work during this period, nor did he receive unemployment benefits. Since October 2010, he has been employed as a technician or instructor at a U.S. Army base, working for various defense contractors. He has held his most recent job since November 2011. There is no indication that any of the jobs were less than full-time positions. Applicant was granted a security clearance with the Army in 2003.³

The SOR alleges 12 delinquent debts totaling about \$45,483. Nine of the debts are medical accounts, which are \$2,095 of his debt total. The three largest debts, a repossessed auto and two consumer credit card accounts, total about \$43,388. All of the SOR debts are verified by their listing on credit reports from March 2015 and May 2013.⁴

¹ Item 3.

² Item 3. Applicant provides no further details in either his SCA or his SOR Response.

³ Item 3.

⁴ Items 4, 5.

Applicant admits all the debts in his Answer to the SOR. He provides a brief explanation for each. He also provides excerpts from a December 2015 credit report. Applicant's name does not appear on that credit report, but many of the accounts found on it are also on Applicant's earlier credit reports. I find that this document is Applicant's own credit report.⁵

Applicant completed a security clearance application (SCA) in March 2013. Applicant's May 2013 credit report lists numerous delinquent debts, including SOR debts ¶¶ 1.a-1.e, and 1.g-1.l.

Applicant states in his Answer that he has been working in the Army or as a contractor since 2003. In explaining the origin of his debts, he states that one job ended in 2010 when the contract was terminated. He then accepted a position in a different state, and at a substantial decrease in pay. As a result, he became financially overextended. He does not elaborate, and he provides no details about how he was financially impacted by this job change.⁶

Applicant notes that any extra money he has earned, such as per diem, overseas hazard pay, deployment pay and paying less in taxes, has gone towards repayment of his debts. He states that he has sought financial counseling, and has been working on a repayment plan.⁷ He provided no corroborating documentation. He provided no other documentation about his current income stream, his monthly expenses, credit counseling, or his efforts to repay or resolve his debts.

The specific SOR debts and their status are detailed as follows:

The debt in SOR ¶ 1.a (\$26,065) is a credit card account that Applicant opened in 2008, and the date of last activity was February 2012. The account was reported as delinquent in September 2012. The account is now charged off.⁸ Applicant admits this debt and that he is unable to pay it. He says he has been in contact with the creditor, but cannot afford the monthly amount proposed. No corroborating documents were provided. The debt remains unresolved.

The debt in SOR ¶ 1.b (\$13,355) is for a repossessed vehicle. According to his credit reports, Applicant purchased the auto in September 2010 (shortly before he began working as an instructor) and the date of last activity was February 2012.⁹ The account is

⁵ Items 2, 4, 5.

⁶ Item 2 at 2; Item 3 at 17-18.

⁷ Item 2 at 2.

⁸ Items 4, 5.

⁹ Item 4.

listed as being charged off on the two Government credit reports and the one Applicant provided. Applicant believed that the debt would be settled through the repossession. However, he admits the debt, and plans on paying it when he can afford it. The debt remains unresolved.

The debt in SOR ¶ 1.c (\$3,968) is for a consumer account that Applicant opened in October 2010, and the date of last activity was March 2012. The account is charged off.¹⁰ Applicant admits the debt and plans on paying it. He offered no documents about this debt. It remains unresolved.

The debts in SOR ¶¶ 1.d-1.l are medical debts. They total \$2,095. Applicant admits all of them. In his Answer, he states that some of them have been paid (SOR ¶¶ 1.f, 1.j, 1.k and 1.l). He believes two should have been covered by insurance. (SOR ¶¶ 1.d and 1.i). He admits three others, but does not recognize them. (SOR ¶¶ 1.e, 1.g and 1.h). According to Applicant's December 2015 credit report, all these accounts have either been paid, or have a zero balance.¹¹ They are resolved.

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

¹⁰ Item 6.

¹¹ Item 2.

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.

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.¹²

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

(a) inability or unwillingness to satisfy debts; and

¹² See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

(c) a history of not meeting financial obligations.

Applicant has outstanding delinquent debts totaling over \$45,000 that he began accumulating in 2010 and that remain unresolved. 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 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.

Applicant has paid or resolved his medical debts. Of the \$45,483 in delinquent debts alleged in the SOR, the three remaining debts (SOR ¶¶ 1.a, 1.b and 1.c) total \$43,388. He did not provide any documentary evidence of his efforts to pay or otherwise resolve them. He provided no evidence of his current financial situation. There is insufficient evidence to conclude that his financial problems are unlikely to recur. His ongoing delinquent debts continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to a loss of income in 2010. However, but for a brief period of unemployment in 2010, he has been gainfully employed in the defense industry since 2008. He did not provide any information to document his claim that his debts are due to a substantial decrease in pay, or to this brief period of unemployment. Further, he did not incur two of the remaining SOR debts until after his period of unemployment.

There is some evidence to support that Applicant's debts are attributable to circumstances beyond his control, due to a brief period of unemployment. However, for the full application of AG ¶ 20(b), Applicant must provide evidence that he acted responsibly under the circumstances. Applicant has not shown sufficient evidence that he did so. His medical debts have been paid or are now resolved, but the bulk of his

delinquent debt remains outstanding, despite Applicant's gainful employment in the defense industry since October 2010. There is insufficient evidence to conclude Applicant acted responsibly under the circumstances. AG ¶ 20(b) partially applies.

Applicant indicated that he pursued financial counseling. He provides no information about his monthly income stream, his monthly expenses, or his ability to pay his debts. Without additional evidence, there are not clear indications that Applicant's financial problems are under control. AG ¶ 20(c) partially applies.

Applicant's credit reports show his medical debts have been paid or otherwise resolved. His largest debts remain delinquent, and Applicant has not set forth a plan for resolving them. AG ¶ 20(d) applies to the medical debts that are resolved. Applicant has not established a good-faith effort to repay the creditors on the larger debts remaining. AG ¶ 20(d) does not apply to them.

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.

Applicant is a 33-year-old Army veteran and long-time defense contractor employee. But for a brief period of unemployment in 2010, he has been gainfully employed in the defense industry for many years. He has a history of financial delinquencies going back to at least 2010. He provided insufficient evidence that his debts are tied to a circumstance beyond his control. He provided insufficient documentary evidence of his attempts to resolve his delinquent debts, the bulk of which remain

outstanding. 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
Subparagraphs 1.a-1.c:	Against Applicant
Subparagraphs 1.d-1.i:	For 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