



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 15-03709
)	
Applicant for Security Clearance)	

Appearances

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

03/24/2017

Decision

BORGSTROM, Eric H., Administrative Judge:

Applicant did not mitigate the security concerns stemming from his history of financial problems. Eligibility for access to classified information is denied.

Statement of the Case

On December 9, 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 January 6, 2016, and he elected to have the case decided on the written record in lieu of a hearing. On January 5, 2017, the Government submitted its file of relevant material (FORM) and provided a complete copy to Applicant. Applicant received the FORM on January 16, 2017. He was afforded an opportunity to respond to the FORM within 30 days of its receipt and to file

objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant's FORM response was received on February 13, 2017. The case was assigned to me on February 16, 2017.

On February 28, 2017, I reopened the record to permit the parties to supplement the written record by March 15, 2017. Neither party submitted any additional documents, and the record closed on March 20, 2017.¹

Procedural Issues

In the FORM, Department Counsel references FORM Items 1-6.² FORM Item 3 is an unauthenticated summary of a February 25, 2013 interview with a government investigator. In the FORM, Department Counsel advised Applicant that he could object to FORM Item 3 and it would not be admitted, or that he could make corrections, additions, deletions, and update the document to make it accurate. Applicant was informed that his failure to respond to the FORM or to raise any objections could be constituted as a waiver, and the evidence would be considered by me. Applicant responded to the FORM, and he raised no objections. Given Department Counsel's advisement and Applicant's education and work experience, I find his waiver to be knowing and intelligent.³ Therefore, FORM Items 2-6 are admitted into evidence as Government Exhibits 2-6, without objection.

In his FORM response, Applicant included a one-page letter. I admitted this document as Applicant Exhibit (AE) A, without objection.

Findings of Fact

The SOR alleges a bankruptcy case (SOR ¶ 1.a.), an unpaid judgment (SOR ¶ 1.c.), a foreclosure (SOR ¶ 1.e.), and five other delinquent debts (SOR ¶¶ 1.b., 1.d., 1.f., 1.g., and 1.h.). Applicant admitted all eight allegations, and he claimed that everything was now paid or current.⁴ After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact:

Applicant is 47 years old. He graduated from high school in 1988, and he has taken some undergraduate-level classes. He served on active duty in the U.S. military from 1988 to 1992 and from 1993 to 2009, and he was honorably retired. Except for two

¹ My order and the relevant emails are admitted into the record as Appellate Exhibit (AX) I, II, and III, respectively.

² FORM Item 1 consists of the Statement of Reasons and Applicant's response to the SOR, which are pleadings and are entered into the administrative record.

³ See ISCR Case No. 15-05252 at 3 (App. Bd. Apr. 13, 2016) (Applicant's waiver of the authentication element must be knowing and intelligent.). See ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016) ("Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive.")

⁴ Response to SOR; AE A.

periods of unemployment – October 2011 to March 2012 and April 2012 to July 2012 – he has been gainfully employed full time since his discharge. He has been employed full time by a DOD contractor since July 2012. Applicant has been married since August 1993, and they have a 10-year-old child.⁵

In April 2014, Applicant and his spouse filed a petition for Chapter 13 bankruptcy (SOR ¶ 1.a.). The petition listed assets totaling \$234,500 and liabilities totaling \$338,300. The Chapter 13 bankruptcy plan was confirmed in October 2014, and it required 60 monthly payments of \$3,750, to end in 2019. The debts alleged in SOR ¶¶ 1.c., 1.d., and 1.e. were listed in the bankruptcy petition. In his response to the SOR, Applicant claimed to have paid approximately \$71,463 through the bankruptcy. In his FORM response, he states that he “transitioned out of Chapter 13 bankruptcy effective November 2016,” but he provided no further explanation or documentation.⁶

Applicant admitted all seven alleged debts, of which three (SOR ¶¶ 1.c., 1.d., and 1.e.) were included in his bankruptcy filing. His security clearance application and the February 2013 and March 2015 credit reports establish all seven debts. There is no documentation of any payments made on any of the alleged debts or of debt-resolution efforts beyond the filing of the bankruptcy petition.

Applicant attributed his financial problems to his and his wife's periods of unemployment. He did not provide any further information about his wife's employment history, but the May 2014 bankruptcy plan documentation listed his wife as unemployed. Applicant further explained that his security clearance had been revoked in October 2011 for financial issues, triggering his initial unemployment. He referenced working with a credit-counseling service from December 2012 to February 2013; however, he provided no documentation to corroborate his claims. In his FORM response, he claimed to be attempting a mortgage loan modification, that all debts had been satisfied, and to be working with a second credit-counseling service to resolve any remaining debts, but he included no documentation in support of these claims.⁷

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

⁵ GE 2; GE 3.

⁶ GE 2; GE 6; Response to SOR; AE A.

⁷ GE 3; GE 6; AE A.

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, 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 seven delinquent debts total approximately \$49,000, and some of the debts date back to 2008. There is no evidence that his Chapter 13 bankruptcy was completed and the debts discharged. Accordingly, the evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as disqualifying conditions.

The Government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 19(a) and 19(c), thereby shifting the burden to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts.⁸ 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.

There is no documentary evidence of payments on the seven alleged debts or that they were discharged under the bankruptcy plan. Applicant's financial delinquencies have persisted for several years and are ongoing. AG ¶ 20(a) does not apply.

The application of AG ¶ 20(b) requires both that (1) Applicant's financial indebtedness resulted from circumstances beyond his control and (2) Applicant acted responsibly under the circumstances.⁹ Although some of Applicant's financial delinquencies predate his unemployment, these periods of unemployment hindered his

⁸ Directive ¶ E3.1.15. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005) (An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.).

⁹ See ISCR Case No. 07-09304 at 4 (App. Bd. Oct. 6, 2008).

ability to address his delinquent debts and constitute circumstances beyond one's control in the context of AG ¶ 20(b).

AG ¶ 20(b) also requires that an applicant act responsibly under the circumstances.¹⁰ Applicant referenced working with two credit-counseling programs to address his delinquent debts; however, he provided no documentation to demonstrate what actions were taken under these programs. Similarly, there is no documentation of any payments under the bankruptcy plan or outside of bankruptcy to resolve his delinquent debts. There is insufficient evidence to conclude that Applicant acted responsibly to address his delinquent debts or to develop and implement a reasonable debt repayment plan. Therefore, AG ¶ 20(b) does not apply.

There is no documentary evidence of credit counseling (except through the bankruptcy process) or of a monthly budget to conclude that there are clear indications that Applicant's financial problems are under control. Rather, the absence of evidence of payments or other steps to resolve the alleged delinquent debts undercuts such a conclusion. Therefore, AG ¶ 20(c) does not apply.

The concept of good faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation."¹¹ There is no documentation of any payments on the delinquent debts, whether inside or outside of the bankruptcy. As discussed above, there is insufficient evidence of good-faith payments or other steps taken to resolve the alleged delinquent debts. AG ¶ 20(d) does not apply.

There is no evidence of payments under Applicant's bankruptcy plan, that the bankruptcy was discharged, or of any payments or debt-resolution efforts outside of bankruptcy. Furthermore, he has not demonstrated that he can maintain his current monthly financial obligations. Absent evidence of debt repayment and financial responsibility, I find that financial considerations concerns remain.

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

¹⁰ See ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009) ("All that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by 'concomitant conduct,' that is, actions which evidence a serious intent to effectuate the plan.").

¹¹ See ISCR Case No. 08-12184 at 10 (App. Bd. Jan. 7, 2010) (Good-faith effort to resolve debts must be evidenced by a meaningful track record of repayment).

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 and the factors in AG ¶ 2(c) in this whole-person analysis.

Circumstances beyond Applicant's control – his and his wife's periods of unemployment – contributed to his financial delinquencies. Nonetheless, he bears the burden to demonstrate that he acted responsibly under the circumstances. Besides filing a bankruptcy petition, there is no evidence of good-faith efforts to repay or resolve these debts or evidence that he meets his current financial obligations. As a result, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. Applicant did not mitigate the financial considerations security concerns.

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.h.:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Eric H. Borgstrom
Administrative Judge