



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No.15-03775

Appearances

For Government: Rhett Petcher, Esq. Department Counsel
For Applicant: *Pro se*

07/28/2017

Decision

LYNCH, Noreen, A., Administrative Judge:

The Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant alleging security concerns arising under Guideline F (Financial Considerations). The SOR was dated January 29, 2016. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) implemented in September 2006. Revised Adjudicative Guidelines were issued on December 10, 2016, and became effective on June 8, 2017.¹

Applicant timely answered the SOR and requested a hearing. The case was assigned to me on February 15, 2017. A notice of hearing was issued on March 27,

¹In this case, the SOR was issued under Adjudicative Guidelines effective within the Defense Department on September 1, 2006. Revised Adjudicative Guidelines became effective June 8, 2017. My decision and formal findings under the revised Guideline F would not be different under the 2006 Guidelines.

2017, scheduling the hearing for June 22, 2017. Government Exhibits (GX) 1-4 were admitted into evidence without objection. Applicant testified but did not submit any exhibits for the record. The transcript was received on June 30, 2017. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his answer to the SOR, Applicant admitted all allegations in SOR ¶¶ 1a, 1.b, and 1c. He provided explanations for the allegations under Guideline F (Financial Considerations).

Applicant is a 44-year-old environmental specialist for a defense contractor. He is single and has one child. He graduated from high school in 1991 and attended technical courses. Due to lack of steady employment in the construction field, he sought employment in the contracting field. He has worked for his current employer since 2014. Applicant completed his security clearance application (SCA) in May 2014. (GX 1)

Financial Considerations

The SOR alleges that Applicant failed to file his Federal and state income tax returns for tax years 2005 through 2013 and had a delinquent collection account in the amount of \$9,562.

Applicant stated that he was unemployed for the years 2011, 2012, and 2013, and part of 2010, 2005, and 2006, when he was a stay at home father. He takes care of his mother and the mother of his child. (GX 2) Applicant and his partner lived together until 2013. She does not contribute financially to their child. She is not capable of taking care of the child, thus Applicant's son lives with him full time. Applicant has not filed any formal papers with the court as to custody, because he does not have the money. (GX 2)

Applicant disclosed in his SCA that he failed to file his tax returns since 2005 due to unemployment and living in poverty. He stated that he refused welfare and was depressed and stressed that he did not have enough money to sustain himself and his family. He stated that he will resolve the financial issues. (Tr. 17) He also has other bills to pay. Applicant was not certain how much he owed in taxes. Applicant added that he probably has not filed his tax returns for the years 2007, 2008, 2009 and 2010. (GX 2)

Applicant explained during his 2014 investigative interview when he was late on his mortgage account, he was able to borrow money from family or friends. In 2013, his mother gave him about \$28,000 to help him financially. He used his savings to pay for his mortgage account, but when the mother of his child left the home and did not help with the mortgage payments, he could not maintain his expenses. He did not receive any unemployment benefits. At one point, he thought he would sell his home and move in with his mother. (GX 2)

Applicant further explained that the mother of his child abandoned them in 2013 and because he lost her income, financial issues were exacerbated. The mother of his child has some mental health issues, which devastated Applicant and his son. He looked for jobs and caught fish to eat.

At the hearing, Applicant stated that his partner is now back in the home and sometimes works part time. She pays for her medications and sometimes buys some groceries. (Tr.20)

In 2010, Applicant's work was part time in the construction field. His last period of stable, full-time work in the construction field was in 2009. Applicant has sufficient income to live frugally week to week. He hunts for food, drives a ten-year-old truck, and does not make random purchases. He still hopes to sell his house. He has not received financial counseling or established a debt consolidation plan.

As to the amount of \$9,562 (SOR 1.c), this is the result of a credit card which was opened in 2003 or 2004. He made payment until 2008, and he recalls in 2010 the account was turned over to a collection agency. An offer of settlement was made to Applicant, but he does not have the money to pay the settlement amount. The company would not accept a payment plan.

As to the SOR allegations 1.a and 1.b, Applicant stated that he just could not seem to filing his income tax returns. He needed an accountant but he is unable to afford to hire one. (Tr. 29) He stated that he has now filed his 2014-2016. He claims that he still needs help to prepare the unfiled ones. (Tr. 31) He is still uncertain how much he owes in taxes, if anything. (Tr. 32)

The 2016 credit bureau report in the file shows that Applicant has various accounts that reflect that he pays as agreed. (GX 3) It also confirms the collection account. He is current on his mortgage loan. (GX 4)

Applicant earns about \$53,000 a year. He believes he has \$7,000 in savings, which he needs to pay property taxes. His home is now paid in full. (Tr. 39) He may have to buy a new truck soon. Some months Applicant has a positive net remainder.

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The Government must present evidence to establish controverted facts alleged in the SOR. 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. . . .”² The burden of proof is something less than a preponderance of evidence.³ The ultimate burden of persuasion is on the applicant.⁴

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 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 Executive Order 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.”⁵ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁷ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁵ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern pertaining to financial considerations:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially over-extended is at a greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required;

The Government produced credible evidence to establish the delinquent debts and the failure to file federal and state tax returns from 2005 to 2013. Consequently, the evidence is sufficient to raise disqualifying conditions ¶¶ 19(a), 19(c) and 19(f).

AG ¶ 20 provides conditions that could mitigate the security concerns:

- (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, clear

victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service; and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(g) the individual has made arrangement with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant had unsteady employment as a construction worker. He was unemployed for many years, which explains some earlier financial problems. He found employment but his partner and the mother of his child abandoned them in 2013, and he lost her income. She does not contribute financially to household expenses. Applicant helped his mother. He also tried to help his partner. He could not maintain his expenses. He used his savings and borrowed money. He lives frugally, but he does not have sufficient income to arrange a settlement offer for the collection account. He has not received any counseling. Mitigating condition AG ¶ 20(b) applies in part. None of the other mitigating conditions apply.

Applicant incurred financial debt and has not filed his federal and state returns for many years. He supported his family and his mother despite the fact that he did not have much income. Applicant now has steady employment and earns about \$50,000 a year. However, he has not met his burden to mitigate the financial security concerns in this case.

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 an applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶2(d)

(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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors.

Applicant is 44 years old. He worked in the construction field for many years, but did not have steady employment. He was unemployed for many years. He supported his child on his income when his partner could not work and left the Applicant and his son. She is now working part time. Applicant could not maintain his expenses on his income alone. He has a collection account but did not have enough money to pay for a settlement offer.

Applicant has not filed his federal and state tax returns for many years. He has filed his 2014-2016 tax returns. He intends to pay his debts and file his tax returns but he needs help. He still has unresolved debt despite his good intentions. He has supported his son who is seven years old. He always searched for employment. He tried to help his partner with her illness.

After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the record evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns under Guideline F. Accordingly, I conclude that he has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

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
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Subparagraphs 1.a-1.c:	Against Applicant
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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 a security clearance. Clearance is denied.

NOREEN A. LYNCH
Administrative Judge

