



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-04120

Appearances

For Government: Bryan J. Olmos, Esq., Department Counsel

For Applicant: *Pro se*

12/09/2016

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On February 8, 2016, 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 March 4, 2016, and requested a hearing before an administrative judge. The case was assigned to me on July 28, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 10, 2016, scheduling the hearing for September 21, 2016. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 5 were admitted in evidence without

objection. Applicant testified and submitted Applicant's Exhibit (AE) A through G, which were admitted without objection. The record was held open for Applicant to submit additional information. He submitted documents that were marked AE H through M and admitted without objection. DOHA received the hearing transcript (Tr.) on September 30, 2016.

Findings of Fact

Applicant is a 33-year-old employee of a defense contractor. He has worked for his current employer since July 2014. He served on active duty in the U.S. military from 2001 until he was honorably discharged in 2007. He later served in the reserves. He has a bachelor's degree. He is single with a six-year-old child.¹

Applicant had recurring periods of unemployment and underemployment before he obtained his current job, particularly while he was attending college. He struggled to pay his child support and his other bills. In about 2002, he almost died in military training to become part of a special operations team. He has not been diagnosed with post-traumatic stress disorder (PTSD) from the incident, but he believes he is suffering from it. He also suffered from depression. He incurred medical expenses in about 2012 when he was involuntarily hospitalized, without medical insurance, after the mother of his child reported his suicidal thoughts and gestures (he made superficial cuts on the forearms) to the police.²

The SOR alleges 15 delinquent debts totaling about \$23,800. Applicant denied owing the debts alleged in SOR ¶¶ 1.f (\$328), 1.i (\$137), 1.j (\$100), 1.l (\$458), 1.m (\$207), and 1.o (\$80). Applicant's denials of the debts alleged in SOR ¶¶ 1.j, 1.l, and 1.o are accepted for reasons other than that the debts were paid. He stated that the \$328 debt to a telecommunications company (SOR ¶ 1.f) was for a month of service after his contract ended. There is no evidence that Applicant disputed the debt with the creditor or the credit reporting agencies. The debt appears on the three most recent credit reports in evidence. He stated that he paid the \$137 utility debt alleged in SOR ¶ 1.i in 2015, but he did not substantiate the statement with documentation, and the debt is listed on the June 2016 credit report. The \$207 Internet-services debt alleged in SOR ¶ 1.m is listed by Experian on the May 2014 combined credit report, and Applicant admitted owing the debt when he was interviewed for his background investigation. He admitted owing the remaining debts.³

Applicant reported a number of delinquent debts on his Questionnaire for National Security Positions (SF 86), which he submitted in April 2014. He stated that he would attempt to "eliminate all [his] past debts as soon as possible." He discussed his finances when he was interviewed for his background investigation in June 2014. He

¹ Tr. at 17-18, 22-23, 46-47, 50; GE 1.

² Tr. at 18-22, 25-26, 28-33; Applicant's response to SOR; GE 1, 2.

³ Applicant's response to SOR; GE 1-5; AE B.

stated that he would contact his creditors after he started working, and he was looking into retaining a credit-counseling service.⁴

Applicant's wages were garnished to pay his child support and arrearages. The amount being collected made it difficult for him to pay his other debts. By May 2015, the arrearages were eliminated.⁵

Applicant retained a law firm in about 2014 to help him with his credit. He stopped using the firm in 2015. In November 2015, he settled the \$2,559 judgment alleged in SOR ¶ 1.k with a payment of \$1,145. In March 2016, he paid the \$168 utility debt alleged in SOR ¶ 1.h. In November 2016, he entered into an agreement to pay the \$7,295 debt alleged in SOR ¶ 1.b over the course of 64 months. He has not paid any of the other debts alleged in the SOR, but he has been in contact with many of the creditors, and he stated that he intends to pay them.⁶

Applicant's annual salary is about \$70,000. He travels to visit his child about once a month. He has a long commute. He stated that he did not make a good financial decision about where he lives and the distance to work. He has about \$100 left over after expenses at the end of the month. He has about \$28,900 in student loans that were scheduled to be in deferment until May 2018. He made a \$239 payment in November 2016.⁷

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 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.

⁴ GE 1, 2.

⁵ Tr. at 32-33; Applicant's response to SOR; GE 2; AE C.

⁶ Tr. at 36-40, 47; Applicant's response to SOR; AE A, B, D-K, M.

⁷ Tr. at 40-43, 51-52; GE 3-5; AE L.

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 accumulated delinquent debts and was unable or unwilling to pay his financial obligations. The above disqualifying conditions are applicable.

Conditions that could mitigate 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;
- (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 unemployment and underemployment were beyond his control. His medical expenses for his involuntarily hospitalization were not beyond his control. Applicant has worked for his current employer since July 2014. His child support arrearages were eliminated in May 2015. In November 2015, he settled the \$2,559 judgment alleged in SOR ¶ 1.k with a payment of \$1,145. In March 2016, he paid the \$168 utility debt alleged in SOR ¶ 1.h. Those debts are mitigated. He has a new payment plan in place for one debt, but he has not paid any other debts. Despite his tight finances, he stated that he intends to pay his debts. The Appeal Board has held that "intentions to pay off debts in the future are not a substitute for a track record of debt repayment or other responsible approaches." See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013) (quoting ISCR Case No. 08-08440 at 2 (App. Bd. Sep. 11, 2009)).

I am unable to find that Applicant acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) and 20(d) are not applicable except as they relate to the two paid debts. The first part of AG ¶ 20(c) (financial counseling) is applicable; the second part (clear indications that the problem is being resolved or is under control) is not

applicable. AG ¶ 20(b) is partially applicable. AG ¶ 20(e) is not applicable to the debts alleged in SOR ¶¶ 1.f, 1.i, and 1.m. It is applicable to the debts alleged in SOR ¶¶ 1.j, 1.l, and 1.o. I find that financial considerations concerns remain despite the presence of some mitigation.

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 my whole-person analysis.

I considered Applicant's honorable military service. I also considered the factors that led to Applicant's financial difficulties and the limited steps he has taken to rectify them. Applicant has not convinced me that he has a viable plan to address his finances.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude 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.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraphs 1.j-1.l:	For Applicant
Subparagraphs 1.m-1.n:	Against Applicant
Subparagraph 1.o:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge