



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-04528

Appearances

For Government: Carroll Connelley, Esq., Department Counsel

For Applicant: *Pro se*

11/09/2016

Decision

RICCIARDELLO, Carol G., 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 December 12, 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 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 January 30, 2016, and elected to have his case decided on the written record. Department Counsel submitted the Government's file of relevant material (FORM). The FORM was mailed to Applicant, and it was received on March 10, 2016. Applicant was afforded an opportunity to file objections and submit

material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant did not object to the Government's evidence identified as Items 2 through 5, and it is admitted into evidence. Applicant submitted documents that were marked as Applicant Exhibits (AE) A and B. Based on Applicant's response; I left the record open until October 20, 2016, to permit Applicant to submit additional documents, which he did. The documents were marked as AEs C through J, and admitted into evidence without objection. The case was assigned to me on September 13, 2016.

Findings of Fact

Applicant admitted all of the allegations in the SOR except ¶ 1.e, which he denied. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 51 years old. He is college educated. He married in 1987 and has four children, ages 25, 23, 17, and 16. He served in the Army Reserve from 1982 to 1994 and deployed during Operations Desert Shield and Desert Storm.

In Applicant's answer to the SOR, he attributed his financial problems to periods of unemployment and underemployment. In 2008, he left his employment because he was aware that the contract he was involved in would be ending, and he would be laid off. In anticipation of being laid off, Applicant took a loan from his 401k retirement account. He did not provide information as to the total amount of the loan. He stated: "The bulk of the State of [] debt was part of a 401k loan I took out prior to being laid off from [employer] in 2008 that was converted to reportable income and taxed."¹

Applicant found another job and was employed until March 2010 when the contract ended. He took another position, but his annual salary was reduced from \$120,000 to \$100,000, and his health insurance costs increased. The company he worked for lost the contract, and he was laid off in August 2011. He was quickly hired by another employer with the promise his salary would increase in the coming months, but for the short-term his salary would be \$84,000, and he had to pay his health insurance costs. The decrease in salary caused him financial difficulties.

Applicant began falling behind on his financial obligations, including his mortgage, which went into foreclosure. In April 2012, he began working again at a salary level of \$120,000. He began to remediate his debt and get his house out of foreclosure. Applicant was laid off again in March 2014 for seven months. He had a job then for five months, earning \$120,000 annually. He stated he again caught up on his delinquent mortgage. He was laid off in March 2015 for five months and got another job where he is currently working for an annual salary of \$120,000.

The SOR alleged Applicant's tax debts in ¶ 1.a-state tax lien entered 2014 for \$1,385; ¶ 1.l-state tax lien entered 2012 for \$4,033; ¶ 1.m-judgment from state filed in

¹ Item 1.

2011-\$2,898; 1.o is a judgment from the state filed in 2010 for \$9,555; and ¶ 1.p-unpaid state taxes for tax year 2013 for \$2,068. Credit reports from November 2010 and September 2014 substantiate all of these tax debts, except the judgment in SOR ¶ 1.o. Although Applicant admitted to owing this debt, there is insufficient evidence to support it, and I find for him on this allegation. The other debts alleged in the SOR are supported by the credit reports noted above.²

Applicant indicated in his January 2016 answer that he has a payment plan with the state regarding these debts. He stated “our payment on this debt is about \$290 per month.”³ He did not provide documents to show any payments. In his March 2016 response to the FORM, he provided a copy of an “installment bill” from the state dated October 2015 indicating that the current balance owed was \$13,807, and he was to pay \$269 a month. In his October 2016 response, he indicated he had made a lump-sum payment of \$2,000 by check to the state, and he arranged a payment plan of \$500 per month. He provided a copy of a check from June 2016 made out to cash and a withdrawal from his account in June 2016 for \$503. He did not provide supporting documents to show these amounts were sent to the state or if he had complied with his previous monthly payment plan. SOR ¶ 1.p alleges he failed to pay his 2013 state taxes. Applicant did not provide an explanation.⁴

Applicant also incurred federal tax consequences from his 401k withdrawal. SOR ¶ 1.n alleges a judgment owed to the federal government for \$28,766 entered in 2010. He indicated it is a tax lien, and he is paying it. He provided documents that show he made payments of \$791 in February, March, August, September, and October 2016. He indicated that his federal income tax refunds were applied to the tax lien. He provided a letter from October 2016 that his request to the IRS that the federal tax lien be withdrawn was approved. He indicated that he still owes the IRS approximately \$15,500.⁵

SOR ¶ 1.b is a judgment (\$158) that was filed in 2013. This was for a ticket Applicant received in 2012. He did not complete the full payment of the debt until April 2016.⁶

SOR ¶ 1.c is a judgment (\$2,859) filed in 2012 for a delinquent timeshare account. Applicant indicated in his October 2016 response that he was resolving the debt. He provided a document dated September 23, 2016, that showed an agreement

² Items 4, 5.

³ Item 1.

⁴ Item 1, AE B, C.

⁵ AE B, C, I.

⁶ AE C.

to modify his loan and resume a payment plan of \$277 per month on a mortgage balance of \$12,822. The plan is to begin in November 2016.⁷

The debt in SOR ¶ 1.d (\$3,332) is for Applicant's mortgage. In his SOR answer, he indicated his mortgage was current as of December 2015. In October 2016 he stated:

At the time in December when we were current, we were barely so and that was a fragile situation. Over the next few months, we fell behind again because we were not able to make full payments. We were still making payments and the information below shows that we just were not able to catch up the two months. However, in working with [mortgage company] we entered into a plan to bring the account current again and drop our interest rate 0.5% and monthly payment by \$50 per month.⁸

Applicant did not provide documents from the mortgage company to show he no longer has a delinquent balance owed or the terms and compliance with a modification of his mortgage.⁹

SOR ¶ 1.e is a credit card debt. Applicant represented that this debt was a judgment (\$21,275) that was entered in July 2011 and was satisfied in January 2015. He provided supporting documents.¹⁰

SOR ¶ 1.f is a delinquent line of credit. Applicant believed the balance owed is \$24,000. In his SOR answer, he anticipated reengaging the creditor in the spring of 2016 because his mortgage was current. He did not provide additional updated information of actions to resolve this debt.¹¹

Applicant stated in his answer to the SOR that he was unable to pay the medical debts owed in SOR ¶¶ 1.g (\$637), 1.h (\$366), 1.i (\$92), 1.j (\$55), 1.k (\$50), and 1.r (\$387). He intended to pay these debts in 2016. In October 2016, Applicant indicated the debts in SOR ¶¶ 1.g, 1.h, 1.i, 1.j, 1.k, and 1.r are paid in full and they are "no longer an open item on my credit report." He failed to provide documents showing his payments or a complete credit report that shows they are reflected as paid.¹²

⁷ AE C, H, J.

⁸ AE C.

⁹ Applicant provided "screen shots" of payments he made and then his notations about the information, but did not provide documents from the creditor regarding the current status of the debt.

¹⁰ AE C.

¹¹ Item 1; AE C.

¹² Item 1.

Applicant indicated that the medical judgment in SOR ¶ 1.q (\$1,238) was resolved through a garnishment in 2011. In his updated response in October 2016, the court document he provided is for a different amount than the amount reported on his credit report. The credit report shows the judgment was entered in March 2010. The documents Applicant provided from the court reflect the judgment was entered in May 2010. It is unclear if this is the same debt. However, I will accept Applicant's statement that the debt is resolved as credible.

Applicant stated he has been working hard to reduce his debt, establish payment plans, and work on resolving collection accounts, and he has reduced his spending.¹³

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 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

¹³ Item 1; AE A, B, C.

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 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.” 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.¹⁴

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

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

Applicant has numerous delinquent debts, tax liens, and judgments that were unresolved. There is sufficient evidence to support the application of the above disqualifying conditions.

¹⁴ See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

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;
- (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 has not resolved or paid all of his delinquent debts, judgments and tax liens. His financial problems are recent. Although he has addressed some of his delinquent accounts, there is insufficient evidence to conclude his financial problems are unlikely to recur. As recently as October 2016, he was implementing a new payment plan because he was unable to pay his mortgage. This occurred after he had responded that he was current in December 2015. Applicant did not provide evidence of his current financial situation. His financial issues cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to periods of unemployment and underemployment. These were conditions beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant did not provide sufficient amplifying information about his 401k loan, only to say it was later taxed as income. He owed both state and federal income taxes. State tax liens and judgments were filed against him and a federal tax lien was filed in 2010. He did not explain why he failed to pay his 2013 state taxes. He provided a document from October 2015 that shows an installment plan with the state, but it did not show he has been making payments. He provided a copy of a check made out to cash and a withdrawal from his account, but he did not show that these amounts were paid to the state. Applicant did show that he made payments on his federal tax debt, and the IRS

has agreed to withdraw the tax lien. It is unknown if Applicant's tax debt is solely from his 401k transaction. He indicated that "the bulk" of it was, but failed to explain. Applicant also indicated he paid the medical debts owed, but did not provide proof of his payments or a complete credit report. A judgment was resolved through garnishment and another judgment was paid years after it was entered. I cannot find Applicant acted responsibly with regard to his finances. AG ¶ 20(b) partially applies.

There is no evidence Applicant participated in financial counseling. He has addressed some delinquent debts, but he failed to provide sufficient evidence of his finances to conclude they are under control. He was unable to make his full mortgage payments, but then stated he made a lump-sum payment of \$2,000 on his state tax debt, and during this same period he paid all of his delinquent medical bills and negotiated a new payment agreement to make monthly payments on his timeshare. AG ¶ 20(c) does not apply.

Resolving a debt through garnishment, after a judgment or tax lien has been entered, or after the account has gone to collection, does not constitute a good-faith effort to pay overdue creditors. There is evidence that some of his debts are now resolved. They are the debts in SOR ¶¶ 1.b, 1.e, and 1.q. It also appears that Applicant is paying his federal tax debt, and the IRS has agreed to withdraw the lien. Applicant indicated he still owes about \$15,500 to the IRS. AG ¶ 20(d) applies to these debts.

Applicant indicated he paid some debts, but he failed to provide documentary evidence to show the debts are resolved or to support his disputes. AG ¶ 20(e) does not 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 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 51 years old. He had periods of unemployment and underemployment that impacted his finances. He failed to pay his state and federal taxes with regard to a 401k withdrawal. He failed to pay his 2013 state taxes. He also failed to provide sufficient information about the facts surrounding his tax debts. Some of Applicant's debts were resolved through garnishment after judgments were entered. He indicated others are paid, but he did not provide documentary proof. He recently indicated he had difficulty making his mortgage payments, but had negotiated a modification. However, he failed to provide the supporting documents to show his mortgage is current. He also has a large delinquent debt incurred through a line-of-credit that he has not addressed. Insufficient evidence was provided to make a determination as to Applicant's current financial stability. Applicant does not have a reliable financial track record. He has 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c-1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f-1.m:	Against Applicant
Subparagraphs 1.n-1.o:	For Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	For Applicant
Subparagraph 1.r:	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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge