



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



In the matter of:)
)
) ISCR Case No. 15-05670
)
Applicant for Security Clearance)

Appearances

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

03/27/2017

Decision

GARCIA, Candace Le'i, 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 10, 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 22, 2016, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on April 21, 2016. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant

received the FORM on April 25, 2016. Applicant did not object to the Government's evidence. The Government's documents identified as Items 1 through 5 are admitted into evidence. Other than his Answer to the SOR, identified also as Item 1, Applicant failed to submit any additional documentation. The case was assigned to me on March 10, 2017.

Findings of Fact

Applicant is 39 years old. He obtained his high-school diploma in 1995, and attended community college but did not earn a degree. He has never been married and does not have any children.

Applicant was unemployed from May 2011 to December 2011. He was also unemployed from October 2013 to April 2014, when a prior employer laid him off due to a lack of work. During both periods of unemployment, Applicant supported himself through unemployment benefits and part-time work as a waiter. He began his current job with a federal contractor in April 2014.¹

The SOR alleges Applicant's failure to file his federal and state income tax returns for tax years 2002 through 2013 as required, and four consumer debts totaling about \$820. Applicant completed a Questionnaire for National Security Positions (SF 86) in June 2014 and was interviewed by an authorized DOD investigator in July 2014. In his SF 86, Applicant disclosed his failure to file his federal and state income tax returns for tax years 2007 through 2013. He disclosed during his interview that his failure to file his federal and state income tax returns dated back to 2002. He stated that on unrecalled dates between 2002 through 2013, he twice filed a federal income tax return and received refunds. He has not provided corroborating evidence of actions he may have taken to file any of his federal income tax returns from 2002 through 2013. He indicated an intent to immediately resolve his unfiled tax returns, and planned to find an accountant to assist him.²

Credit reports from June 2014 and January 2016 verify the four debts alleged in the SOR as ¶¶ 1.c to 1.f.³ Applicant knew that he had fallen behind on SOR debt ¶ 1.c and received notice of SOR debts ¶¶ 1.d and 1.e, but forgot about them. When he pulled a copy of his credit report in May 2014, he learned that these debts were still delinquent. He indicated an intent to immediately resolve them.⁴

¹ Items 2, 3.

² Items 2, 3.

³ While both credit reports list SOR debt ¶ 1.c. as having a zero balance, they also show that the debt was transferred or sold to another lender, and the January 2016 credit report reflects that the debt was charged off for \$519. Items 4, 5.

⁴ Items 2, 3.

Applicant attributes his financial problems to his period of unemployment from October 2013 to April 2014, and a move that resulted in him not receiving mail concerning his debts.⁵ His failure to timely file his relevant federal and state income tax returns began in 2002, when he was laid off by a previous employer. He did not have the income to pay the taxes he knew he would owe if he filed for that year. He then repeatedly failed to file his tax returns because he feared the consequences of his actions. There is no evidence that Applicant has sought the assistance of a credit counselor.⁶

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.

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

⁵ Applicant does not provide the date of this move; his SF 86 reflects that he moved to his current address in June 2013. Items 2, 3.

⁶ Items 1, 2, 3.

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;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant failed to file his federal and state income tax returns for tax years 2002 through 2013 as required, and he has four delinquent debts. There is sufficient evidence to support the application of the above disqualifying conditions.

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.

Applicant has yet to file his federal and state income tax returns for tax years 2002 through 2013. He also has four unresolved debts. There is insufficient evidence to conclude that his financial problems are unlikely to recur. His failure to timely file his relevant tax returns and address his delinquent debts casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Circumstances beyond his control contributed to Applicant's financial problems. For the full application of AG ¶ 20(b), Applicant must provide evidence that he acted responsibly under the circumstances. Applicant has not filed his relevant federal and state income tax returns, despite his indication that he immediately planned to resolve them. He has not provided evidence of actions he may have taken to resolve his debts. There is insufficient evidence to conclude Applicant acted responsibly under the circumstances. AG ¶ 20(b) is partially applicable.

Applicant has not sought financial counseling. Applicant's financial problems are not under control. AG ¶ 20(c) does not apply. Applicant has not provided evidence of any efforts he may have taken to repay or otherwise resolve his debts. AG ¶ 20(d) 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 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 this whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant has worked for a federal contractor since 2014. Circumstances beyond his control contributed to his financial problems. He failed to file his federal and state income tax returns from 2002 through 2013 as required, and he has financial delinquencies that remain unresolved. His finances remain a security concern. He 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.f:	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.

Candace Le'i Garcia
Administrative Judge