



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



In the matter of:)
)
) ISCR Case No. 15-05966
)
Applicant for Security Clearance)

Appearances

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

07/27/2017

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense's (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for access to classified information is denied.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on February 6, 2016, the DoD issued a Statement of Reasons (SOR) detailing security concerns. On March 31, 2016, Applicant answered the SOR and elected to have the matter decided without a hearing. On May 30, 2016, Defense Office of Hearings and Appeals (DOHA) Department Counsel (DC) submitted the Government's case in a File of Relevant Material

¹ 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 (Sept. 1, 2006 AG) effective within the DoD on September 1, 2006, and as amended on June 8, 2017.

(FORM). The FORM contained six attachments (Items). On June 28, 2016, Applicant received a copy of the FORM, along with notice of his opportunity to object to the Government's evidence and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. He had 30 days from his receipt of the FORM to submit any additional information in response to the FORM. The response was due on July 28, 2016. No additional information was received from Applicant. On April 24, 2017, I was assigned the case.

While this case was pending a decision, the Director of National Intelligence issued Security Executive Agent Directive 4, establishing the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), which he made applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The new AGs supersede the Sept. 1, 2006 AGs and are effective "for all covered individuals" on or after June 8, 2017. Accordingly, I have evaluated Applicant's security clearance eligibility under the new AGs.²

Findings of Fact

In Applicant's answer to the SOR, he denied three delinquent obligations: SOR 1.d, (\$531); SOR 1.i, (\$4,516); and SOR 1.j, (\$112). (Item 1) He admitted the remaining delinquent obligations. I incorporate Applicant's admissions as facts. After a thorough review of the pleadings and exhibits, I make the following additional findings of fact.

Applicant is a 53-year-old field program manager who has worked for a defense contractor since October 2014, and he seeks to obtain a security clearance. (Item 2) From December 1986 through October 1997, he served on active duty with the U.S. Marine Corps. (Item 2) From October 1997 through the date of his Electronic Questionnaires for Investigations Processing (e-QIP), December 2014, he was an active reservist³ in the Marine Corps serving as a colonel (O-6). (Items 1 and 2)

From October 2012 until obtaining his current job in October 2014, he was self-employed as a principle for a consulting firm. (Items 2 and 3) From April 2008 through October 2012, he was a consultant. (Item 2) From September 1999 through April 2008, he was employed as a manager. From May 2005 through April 2008 and January 2000 through November 2003, he was in the National Guard/Reserve. (Item 2)

In September 1987, Applicant married and in September 2009, he divorced. (Item 2) He has three children ages 22, 19, and 16 for which he pays \$2,000 per month child support. (Items 2 and 3) When he returned home from active duty, he discovered his wife had incurred \$128,000 of debt. (Item 3)

² Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case. The new AGs are available at http://ogc.osd.mil/doha/5220-6_R20170608.pdf.

³ As an active reservist Applicant drills one weekend a month and two weeks during the year. (Item 3)

In Applicant's December 2014 Electronic Questionnaires for Investigations Processing (e-QIP), he indicated he owed the creditor listed in SOR 1.g \$10,000. He indicated the debt was due to job loss. He also indicated that he was negotiating with the creditor to establish a payment plan since he had obtained a new job in November 2014. (Item 2)

In Applicant's March 2015 enhanced subject interview he was questioned about his delinquent obligations. (Item 5) During that interview he stated he had lost his sub-contractor job and was self-employed. The prime contractor had not provided any notice prior to termination of his job. He was attempting to establish a payment plan with the mortgage holder to repay approximately \$50,000 that was 180 days or more past due (SOR 1.g). The balance on the mortgage was \$468,000. (Item 3)

At the time of the interview, Applicant was unfamiliar with the medical debts listed in SOR 1.a (\$367) and 1.c (\$108). He stated he would contact the creditors and hoped to have the debt resolved by the end of 2015. The medical debt listed in SOR 1.b (\$427) was not discussed during the interview. He disagreed with the debt listed in SOR 1.f (\$10,188) stating he had paid the debt in full in December 2013 with a loan from his 401(k) retirement plan. (Item 3) He was not familiar with the debts in SOR 1.i (\$4,516) and SOR 1.j (\$112) owed the same creditor. He stated he would contact the creditor and if the debts were legitimate debts, he would pay them. (Item 3) The debts in SOR 1.d (\$531), which he denied, and the debt in SOR 1.h (\$23,763) were not discussed during the interview. (Item 3)

The ten SOR delinquent obligations are listed in Applicant's three credit reports: December 5, 2014; June 26, 2015; and January 21, 2016. (Items 4, 5, 6) The credit reports include the debts in SOR 1.i (\$4,516) and SOR 1.j (\$112), which Applicant denied. In his interview, he stated he was unfamiliar with these two debts. (Item 3). He also denied the mortgage debt listed in SOR 1.d (\$531). He asserted he did not have a mortgage with this company. However, the credit reports show a mortgage with this company that was paid as agreed. The most recent credit report indicates a balance of \$531, but it does not list any amount past due on this debt. (Item 4)

No response to the FORM was received from Applicant. He did not set forth what efforts he undertook to pay or otherwise resolve his delinquent debts, nor did he provide any documentation as to payment on or current status of his delinquent debts.

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 must be considered 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(a), the adjudication process is an examination of a sufficient period and a careful weight of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is known as the whole-person concept.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility 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.

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 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 Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination of 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

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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Failure 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 . . . An individual who is financially overextended is at greater risk of having to engage in illegal acts or other questionable acts to generate funds.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

AG ¶ 19 includes three disqualifying conditions that could raise a security concern any may be disqualifying in this case: "(a) inability to satisfy debts;" "(b) unwillingness to satisfy debts regardless of the ability to do so;" and "(c) a history of not meeting financial obligations."

The Government's substantial evidence and Applicant's own admissions raise security concerns under AG ¶¶ 19(a), 19(b), and 19(c). The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. September 22, 2005))

Five of the seven Financial Considerations 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, 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

(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.

During Applicant's March 2015 interview, he did not recognize four debts. He stated he would contact the creditors and pay the debts if they were his legitimate debts. He hoped to have his debts resolved by the end of 2015. He also asserted he paid the \$10,188 debt (SOR 1.f); however, the January 2016 credit report indicates \$10,188 is past due. He provided no documentation showing this debt was paid. In March 2016, he indicated he intended to pay three debts by May 2016, and intended to set up a payment agreement on four additional debts. Again, no documentation was provided showing payment or agreements to pay. The record is silent as to him having address the approximate \$50,000 in past-due mortgage payments.

Applicant's debts remain unpaid, obtaining the delinquent obligation did not occur under unusual conditions, and the failure to timely pay those obligations is not an unusual condition unlikely to recur. Returning home to discover a spouse has incurred \$128,000 in debt is an unusual circumstance. However, Applicant failed to provide sufficient documentation as to the debt, how it was incurred, what it was for, and additional relevant information concerning the debt. He provided insufficient evidence to conclude that his financial problems are unlikely to recur. His delinquencies continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

In 2012 and 2013, Applicant was unemployed for 12 months. In 2009, he was divorced. Divorce and unemployment are circumstances beyond his control that impacted his ability to maintain financial stability. However, he has been full-time employed since October 2014, and the delinquent obligations have yet to be addressed. He provided no evidence of what responsible steps he took to pay or resolve his debts. The second prong of AG ¶ 20(b) does not apply.

There is no evidence of financial counseling or clear indications that Applicant's financial problems are being resolved or are under control. AG ¶ 20(c) does not apply. There is no showing of Applicant having made good-faith payments towards his delinquent obligations or evidence to establish that he is executing a reasonable ongoing plan to pay or resolve his debts. AG ¶ 20(d) does not apply.

Applicant denied having a mortgage with the company listed in SOR 1.d. His credit reports show he had a mortgage with the company, which was agreeably paid. The credit reports indicate there is a \$531 balance, however, no amount is indicated as past due. I find for Applicant as to SOR 1.d.

Applicant denies the two debts in SOR 1.i and SOR 1.j. The debts are listed in his credit reports. He asserted he had paid the debt in SOR 1.f with money from his 401(k) retirement account. He did not provide documentation showing the debt was paid. AG ¶ 20(e) does not apply because he has not provided documented proof to substantiate the basis of the dispute over these debts. AG ¶¶ 20(f) and (g) do not apply.

The amount past due for the debt listed in SOR 1.e (\$14,482) is \$3,966 and the amount past due on the debt listed in SOR 1.h (\$23,763) is \$5,461 as of January 2016. The SOR listed the balance of these two debts not the past-due amount. Even though the amount past due is considerable less than the balance on the debts the approximately \$9,500 past-due amount has yet to be paid and still remains a security concern.

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(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(d), 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 have considered Applicant's service in the U.S. Marine Corps on active duty and in the active reserves. He has achieved the rank of colonel. His military service in support of the U.S. military merits considerable respect.

Applicant has been aware of the Government's security concern about his delinquent debts since his March 2015 interview when he was specifically confronted about his delinquent accounts. Additionally, the February 2016 SOR and May 2016 FORM put him on notice of the Government's concern about his delinquent accounts. There is no evidence he has contacted his creditors. He provided no information regarding his past efforts to address his delinquent debt and has failed to show documentation he has established repayment agreements to address the delinquent debts. There is no documentation that even the \$108 medical debt had been paid.

In requesting a decision without a hearing, Applicant chose to rely on the written record. In so doing, however, he failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding his circumstances, articulate his position, and mitigate the financial security concerns. He failed to offer evidence of financial counseling or provide documentation regarding his past efforts to address his delinquent debt. By failing to provide such information, and in relying on only the limited response in his SOR Answer, financial considerations security concerns remain.

The issue is not simply whether all the delinquent obligations have been paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(e) Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from his 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, Financial Considerations: AGAINST APPLICANT

Subparagraphs 1.a – 1.c: Against Applicant

Subparagraph 1.d: For Applicant

Subparagraphs 1.e – 1.j: 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 a security clearance. Eligibility for access to classified information is denied.

CLAUDE R. HEINY II
Administrative Judge