



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



In the matter of:)
)
) ISCR Case No. 15-06243
)
Applicant for Security Clearance)

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

03/09/2017

Decision

COACHER, Robert E., Administrative Judge:

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

Statement of the Case

On February 21, 2016, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. DOD acted 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 (AG) effective within the DOD on September 1, 2006.

Applicant answered (Ans.) the SOR on March 10, 2016, and requested a hearing before an administrative judge. The case was assigned to me on July 15, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 20, 2016, and the hearing was convened as scheduled on October 25, 2016. The Government offered exhibits (GE) 1 through 3, which were admitted into

evidence without objection. The Government's discovery letter and exhibit index were marked as hearing exhibits (HE) I and II. Applicant testified, and offered exhibits (AE) A and B, which were admitted without objection. The record was held open for Applicant to submit additional information, but he failed to offer any additional evidence (AE A and B were admitted at hearing, but since these were originals, Applicant submitted copies of the documents post-hearing. He did not submit any additional documents). DOHA received the hearing transcript (Tr.) on November 2, 2016.

Findings of Fact

Applicant admitted SOR allegations ¶¶ 1.a and 1.b. He denied ¶¶ 1.c through 1.f. These admissions are incorporated as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 53-year-old employee of a defense contractor. He has worked for this employer since May 2015. He has a bachelor's degree. He served in the Army for over 30 years in an active duty and reserve capacity. He retired as a major. He is married and has an adult son.¹

The SOR alleges six delinquent debts in the approximate amount of \$26,027. The debts were listed in credit reports from June 2014 and July 2015.²

Applicant testified that his tax lien came about after he sold a house in 2012. He purchased the house for approximately \$590,000 in 2008 and sold it for approximately \$660,000 in 2012. He claimed improvements and expenses associated with the house as deductions on his taxes. Those were disallowed by the IRS, resulting in tax liability of over \$18,000. When Applicant failed to pay the amount owed, a federal tax lien was filed in April 2014. Applicant claims he made a \$4,000 payment upon notification of the tax lien in 2014. He failed to provide documentation of this payment. He further stated that over the years he made sporadic payments toward the amount owed on the underlying tax lien debt. Again, he did not supply documentation to support his claim. He satisfied his back taxes and the lien was released in April 2016 (the lien which was released on April 2014 was due to an error by the IRS and is not relevant to the issues in the SOR). Applicant admitted that he failed to satisfy the amount of the tax lien before April 2016 as his form of "civil disobedience" with the IRS. He had the financial resources available to pay this debt at any time before April 2016, but he chose not to do so. It was only after he received the SOR that he decided to pay the tax due and get the lien released in April 2016. As an example, he invested \$100,000 in a small business venture rather than use those funds to pay the tax lien. He also owns three pieces of property, two of which are unencumbered. He refinanced his current residence to pay the amount of taxes due and release the lien. Applicant's current

¹ Tr. at 5, 19; GE 1.

² GE 2-3.

salary is approximately \$186,000 per year and his wife's is approximately \$86,000. There is no evidence of financial counseling.³

The status of the remaining SOR-related debts is as follows:⁴

SOR ¶ 1.b (consumer debt \$6,012):

In his Ans., Applicant acknowledged this debt but claimed it was settled. The most recent credit report shows that the most recent action on this charged-off account was in August 2009. Applicant testified that he paid this debt, but failed to supply supporting documentation of payment, establishment of a payment plan, or correspondence with the creditor. This debt is unresolved.⁵

SOR ¶¶ 1.c – 1.f (medical and telecommunications accounts \$384, \$514, \$275, \$227):

Applicant claimed he was a victim of identity theft and he had no knowledge of these debts. He disputed them previously. None of these debts appear on his most recent credit report. These debts are resolved.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 that 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." In reaching this

³ Tr. at 28, 30, 32-34, 37-38, 40-44; GE 1-2; AE A-B.

⁴ GE 3.

⁵ Tr. at 45; Ans.; GE 3.

⁶ AE B.

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable 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 about 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* Executive Order 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 as follows:

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. Two are potentially applicable in this case:

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

Applicant had six delinquent debts. The evidence is sufficient to raise the above disqualifying conditions.

Several 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, 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 debts are recent and multiple, and his deliberate failure to pay his tax debt shows a lack of reliability, trustworthiness, and good judgment. It was only when his security clearance was in jeopardy that he finally paid the tax debt. He failed to produce documentation supporting his claimed payment of the credit card debt. AG ¶ 20(a) is not applicable.

Applicant's failed to present evidence that his financial difficulties were beyond his control. Quite the contrary is the case. He had the means to pay his tax obligation, but chose not to do so as a form of "civil disobedience." Overall, the record evidence does not support that Applicant's actions were responsible under the circumstances. AG ¶ 20(b) is not applicable.

Applicant has not sought financial counseling. Applicant finally paid the tax debt once his security clearance was threatened, but he did not present documentation showing payment of the credit card debt. Evidence of good-faith efforts to pay or resolve the remaining debts is lacking. AG ¶ 20(c) and ¶ 20(d) partially apply.

The latest credit report does not show SOR debts ¶¶ 1.c – 1.f, which corroborates Applicant's claim that he successfully disputed these debts. AG ¶ 20(e) applies to SOR ¶¶ 1.c – 1.f.

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 relevant 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.

I considered Applicant's military service and the circumstances by which he became indebted. However, I also considered that he has made little effort to resolve his financial situation, even when he had the resources to do so. He has not established a meaningful track record of debt management, which causes me to question his ability to resolve his debts.

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 has not mitigated 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.b:	Against Applicant
Subparagraphs: 1.c – 1.f:	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.

Robert E. Coacher
Administrative Judge