



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



In the matter of: )  
 )  
 ) ISCR Case No. 15-06523  
 )  
Applicant for Security Clearance )

**Appearances**

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

10/11/2017

**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 June 7, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on August 2, 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 August 31, 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 November 29, 2016. As of January 25, 2017, he had not responded. The case was assigned to me on October 1, 2017. The Government exhibits included in the FORM are admitted in evidence.

## Findings of Fact

Applicant is a 43-year-old prospective employee of a defense contractor. He will be hired if he obtains a security clearance. He served on active duty in the U.S. military from 1992 until he was honorably discharged in 1995. He attended college for a period without earning a degree. The most recent information available indicates that he is married for the second time, with a 17-year-old child and two adult stepchildren.<sup>1</sup>

Applicant worked from 2003 to July 2014 for his state's Department of Corrections. He was forced to resign after threats were made against his life. He had financial difficulties before his resignation, which he attributed to identity theft in 2009 and a 2011 auto accident that left him unable to work for three months. He also had to move from a rental home in January 2013 when the home was unexpectedly sold.<sup>2</sup>

Applicant and his wife filed a Chapter 13 bankruptcy case in 2011 as a means of protecting their home from foreclosure. They were unable to maintain the payments, and the case was dismissed in 2012. The home was lost to foreclosure.<sup>3</sup>

The SOR alleges the Chapter 13 bankruptcy case (SOR ¶ 1.i); a \$15,409 second mortgage or home equity loan (SOR ¶ 1.f); a \$13,176 charged-off auto loan (SOR ¶ 1.a); five miscellaneous delinquent debts totaling \$3,316 (SOR ¶¶ 1.b-1.d, 1.g, and 1.h) and a \$789 federal tax lien filed in 2007 (SOR ¶ 1.e).

Applicant admitted owing all the debts with the exception of the federal tax lien (SOR ¶ 1.e), an \$805 credit card for a home improvement store (SOR ¶ 1.g), and a \$1,524 public utilities debt (SOR ¶ 1.h). A credit report from December 2014 lists a \$789 state tax lien. It does not list a federal tax lien. Applicant asserted that he never owned a credit card from the home improvement store. That debt and the \$1,524 public utilities debt are both listed on the December 2014 credit report, but not the July 2015 credit report.<sup>4</sup>

Applicant admitted owing the \$15,409 home equity loan (SOR ¶ 1.f). He thought the debt was resolved through the foreclosure. The July 2015 credit report lists the debt with a \$0 balance and that the "account was paid for less than full balance; paid charge off."<sup>5</sup>

Applicant was still unemployed when he was interviewed for his background investigation in March 2015. He stated that he was in possession of the car that was security for the \$13,176 charged-off auto loan, but he had not made any payments

---

<sup>1</sup> Items 2, 3.

<sup>2</sup> Items 2, 3.

<sup>3</sup> Items 1-5.

<sup>4</sup> Item 1, 3-5.

<sup>5</sup> Item 1, 3-5.

since 2013. The credit reports show the date of last activity on the loan as 2011. He described his financial situation as being “dirt poor.” He stated that he will pay his debts if he gets a job. He has not received formal financial counseling, but he took free on-line courses.<sup>6</sup> Because he did not respond to the FORM, the current state of Applicant’s finances is unknown.

## **Policies**

This case is adjudicated 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), which became effective on June 8, 2017.

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(a), 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 national security eligibility will be resolved in favor of the 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

---

<sup>6</sup> Item 3.

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 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable 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 to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant had delinquent debts that he was unable or unwilling to pay. AG ¶¶ 19(a), 19(b), and 19(c) are applicable.

SOR ¶ 1.e alleges a \$789 federal tax lien. There is evidence of a \$789 state tax lien, but not a federal tax lien. The facts alleged in SOR ¶ 1.e have not been established. AG ¶ 19(f) is not applicable. SOR ¶ 1.e is concluded for Applicant.

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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial 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.

Applicant's financial problems predate his resignation from the Department of Corrections. He attributed those problems to identity theft in 2009, a 2011 auto accident that left him unable to work for three months, and the unexpected sale of the home he was renting.

Applicant cannot pay his delinquent debts while he is unemployed, but other than filing a Chapter 13 bankruptcy case, which was dismissed for non-payment, there is little evidence of any actions to address his debts while he was employed. He had a car for several years without making any loan payments. He stated that he will pay his debts if he gets a job. 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)). Because he did not respond to the FORM, the current state of Applicant's finances is unknown.

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that he 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. AG ¶¶ 20(b) and 20(c) are partially applicable. The \$15,409 home equity loan (SOR ¶ 1.f) was apparently resolved through the foreclosure. That debt is mitigated. AG ¶ 20(e) is applicable to the debts alleged in SOR ¶¶ 1.g and 1.h. 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(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(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.

Overall, the record evidence leaves me with questions and doubts about 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.d:    | Against Applicant |
| Subparagraphs 1.e-1.h:    | For Applicant     |
| Subparagraph 1.i:         | 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.

---

Edward W. Loughran  
Administrative Judge