



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



In the matter of:)
)
) ISCR Case No. 15-06983
)
Applicant for Security Clearance)

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: *Pro se*

08/23/2017

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline G, alcohol consumption, but failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On September 12, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F, financial considerations, and G, alcohol consumption. 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) effective within the DOD on September 1, 2006. On June 8, 2017, new AG were implemented and are effective for decisions issued after that date.¹

¹ I considered the previous AG, effective September 1, 2006, as well as the new AG, effective June 8, 2017. My decision would be the same if the case was considered under the previous AG.

Applicant answered the SOR on September 26, 2016, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM). Applicant received it on November 3, 2016. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 6. Applicant responded to the FORM and provided documents marked as Applicant Exhibits (AE) A through H.² There were no objections and all evidence was admitted. The case was assigned to me on July 21, 2017.

Findings of Fact

Applicant admitted the allegations in the SOR ¶¶ 1.a, 1.c, 1.e, 1.g, 1.h through 1.n, and 2.a.³ He denied SOR ¶ 1.f, and ¶¶ 1.b and 1.d, explaining they were duplicates of ¶¶ 1.m and 1.n, respectively. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 45 years old and a college graduate. He has worked for a federal contractor since April 2015. Before then he was self-employed from 2005 to 2015. From 1998 to 2005, he worked for the federal government. He married in 1999 and divorced in 2006. He has two children, ages 17 and 16.⁴

Applicant attributed his financial problems to overextending himself after his 2006 divorce, the downturn in the economy in 2008, and falling behind in his federal tax debt by not having adequate amounts withheld from his income.⁵ The debts alleged in the SOR are supported by credit reports from June 2015 and October 2016, along with Applicant's admissions.⁶

Applicant failed to have sufficient money withheld from his income in 2007, resulting in a tax debt. During his June 2015 background interview, he told the government investigator that he made a payment arrangement with the IRS in 2008 to pay \$500 a month on the approximately \$12,000 debt for tax year 2007. In 2008, he failed to have sufficient money withheld from his income and incurred another tax debt of approximately \$12,000. He indicated that he continued to make \$500 payments toward the 2007 debt. His income was less in 2009 and he reduced the monthly payment to the IRS to \$200. Applicant did not owe additional taxes for tax years 2009, 2010, and 2011. In 2012, 2013, and 2014, Applicant failed to have sufficient money

² Applicant's exhibits have multiple pages.

³ The SOR does not have a paragraph 1.j. For clarity I will not renumber the paragraphs.

⁴ Item 3.

⁵ Items 2, 4; AE A.

⁶ Items 2, 3, 4, 5, 6, 7; AE A.

withheld from his income to cover his tax liability. He owed approximately \$5,400 for tax year 2012; \$6,200 for tax year 2013; and \$6,900 for tax year 2014. Each year he failed to pay the amount owed, and he increased the balance already owed to the IRS. In approximately November 2014, he increased his IRS payment from \$200 to \$650 to satisfy the 2007, 2008, and 2012 debts. At the time of his interview, he had not added the 2014 tax debt to the balance owed. He did so later. In December 2015, he increased his payment to \$750.⁷

Applicant attributed his tax problems to not “properly planning for withholding while operating my own business.”⁸ He further stated:

In tax years 2012-2014, I failed to adequately withhold self-employment taxes due to the difficulties of operating my business and supporting my family. These are mistakes I regretfully admit, and the withholding of my current employer has eliminated the problem from my personal budget.⁹

Applicant did not seek the assistance of an accountant to help him with his tax planning because his tax filings were simple. Applicant explained his other delinquent debts occurred because he became overextended from 2006 to 2009, due to starting a new business and going through a divorce. He agreed to pay \$1,500 in child support for three years, and he explained that he was never able to properly budget for it, and relied on credit cards to operate his business and meet daily expenses.¹⁰ He stated that in 2011 his finances improved due to a modification in his child support payments and improved business.¹¹ Applicant provided documents from the IRS and his bank to show he has made payments toward his federal tax debt. His current balance is unknown. He stated he did not have the documents for payments before 2011.¹²

Applicant provided tax documents showing that he received IRS Forms 1099-C regarding the cancelation of two credit card debts he stated he settled in 2011. These debts were not alleged in the SOR.¹³

⁷ Items 2, 4; AE A, B, E, F, G, H, I. Applicant provided some documents supporting his payments to the IRS, but none before 2011. He stated that his 2007 tax debt has been paid.

⁸ Item 2.

⁹ Item 2.

¹⁰ Item 2.

¹¹ Item 2.

¹² AE A, B, E, F, G, H, I.

¹³ These accounts were not alleged on the SOR and this information will not be considered for disqualifying purposes, but may be considered when analyzing Applicant's credibility, in applying the mitigating conditions, and in a whole-person analysis.

Applicant admitted he owed the debt in SOR ¶ 1.b (\$6,762), a collection account that became delinquent sometime in 2009. He provided documents confirming that this account is a duplicate of the debt in SOR ¶ 1.m. The documents he provided included an offer to settle the debt. No evidence was provided to show Applicant settled or paid the debt. SOR ¶ 1.b is not resolved. SOR ¶ 1.m is a duplicate debt and is resolved in Applicant's favor.¹⁴

Applicant admitted he owed the debt in SOR ¶ 1.d (\$6,123), a collection account that became delinquent sometime in 2009. He provided documents to support that this account is a duplicate of SOR ¶ 1.n. The documents included an offer to settle the debt. No evidence was provided to show Applicant settled or paid the debt. SOR ¶ 1.d is not resolved. SOR ¶ 1.n is a duplicate debt and is resolved in Applicant's favor.¹⁵

Applicant admitted the judgment in SOR ¶ 1.l (\$7,227), entered in 2009. He told the government investigator that the debt in SOR ¶ 1.f (\$3,851) was the same debt and the amounts differed due to court costs. Applicant told the investigator that he intended to contact the court by July 2015 to make payment arrangements on the judgment. No additional information was provided to show payments have been made or that the judgment has been satisfied. SOR ¶ 1.l is not resolved. SOR ¶ 1.f is a duplicate and is resolved in Applicant's favor.¹⁶

Applicant provided documents to show he has been making \$101 payments on the collection account in SOR ¶ 1.e (\$3,877) since 2014. The debt became delinquent in 2009.¹⁷

The debt in SOR ¶ 1.h (\$3,721) was charged off in October 2015. Applicant stated in his answer to the SOR that this was a business debt, and it became delinquent when he was unemployed in early 2015. Applicant did not list this period of unemployment on his security clearance application (SCA), but rather it shows he was continually employed. Applicant provided a document to show he made nine payments of \$138 from January 2016 to September 2016, through an automatic withdrawal from his bank. He did not provide updated payments in his response to the FORM.¹⁸

Regarding the debts in SOR ¶ 1.a (\$12,315); ¶ 1.c (\$6,640); ¶ 1.g (\$262); and ¶ 1.i (\$822), Applicant provided no evidence that he paid or resolved these delinquent debts. He stated in his SOR answer that through the guidance of some credit counseling he intends to pay the IRS first and is making a good-faith effort on other accounts as his budget permits. After paying his IRS debt, he intends to pay the smaller

¹⁴ Items 2, attachment A, and 4.

¹⁵ Items 2, attachment B, and 4.

¹⁶ Items 2, 4.

¹⁷ Items 2, 4.

¹⁸ Item 2, attachment C.

debts, and then the larger debts. He further stated in his FORM response that he has resisted settlement offers because of his concern that any debt cancellation would increase his tax liability. He admitted he made mistakes and hopes to avoid future ones. He stated he has the ability and is willing to resolve his debts in a reasonable manner.¹⁹ He did not provide specific information about his current income, budget or expenses.

Applicant disclosed on his SCA that in 2007 his physician recommended he join Alcoholics Anonymous (AA), which he did. He has remained an active and sober member since then. He disclosed that he had a relapse in March 2013, when he drank to intoxication. In his SOR answer, he stated that he has been sober since his relapse, which he defines as full abstinence from any alcohol consumption. He has been active in his recovery for ten years, and it is this active commitment that prevented his brief relapse in 2013 from becoming prolonged. He currently helps lead a recovery ministry in his church.²⁰ There is no evidence of alcohol-related misconduct or issues.

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 national security eligibility will be resolved in favor of the 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. Directive ¶ E3.1.15 states an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or

¹⁹ Item 2; AE A.

²⁰ Item 2.

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 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 EO 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 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

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

- (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;

(e) consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators; 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 has experienced financial difficulty since approximately 2006 when he divorced and started a new business. He admitted he spent beyond his means and did not plan for his tax obligations. He repeatedly failed to have sufficient money withheld from his income, thereby incurring tax liabilities for multiple tax years that he could not pay. He used credit cards, which became delinquent in 2009. There is sufficient evidence to support the application of the above disqualifying conditions.

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, 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 has delinquent debts alleged in the SOR that are unresolved. Applicant's repeated failure to have sufficient withholdings taken from his income is a concern. Most of his debts have been delinquent since 2009. His financial problems are ongoing. There is insufficient evidence to conclude that these problems are unlikely to recur. His behavior casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to his divorce; his inability to properly budget for his child support payments; his inability to properly plan for withholding sufficient money from his income for his tax liability; starting a new business; and an economic downturn. Applicant's divorce was beyond his control. His child support payments were within his control, as he was aware of the amount he was required to pay over a three-year period. Perhaps for tax year 2007, Applicant might have been unfamiliar with proper tax withholding requirements when self-employed. However, after then he was on notice that he needed to increase his withholdings. He repeatedly failed to do so. He failed to pay his taxes timely, and added each year's tax debt to his balance. This was within his control. Starting a new business was also within his control. Without additional information, it is unclear how the economic downturn specifically affected his business, but I will consider the generally accepted information that the country was in an economic downturn during that period.

For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant has made payments to the IRS for his tax debt. However, I cannot find that he has acted responsibly as his tax liability continued to increase because he failed to pay what he owed for 2007, 2008, 2012, 2013, and 2014. After 2008, Applicant was on notice to have sufficient income withheld for taxes. He repeatedly failed to do so, instead he added each tax years' liability to his past balance. This was not responsible behavior. The delinquent debt in SOR ¶ 1.e, which he began paying in 2014, has been delinquent for five years. The debt in SOR ¶ 1.h became delinquent in 2015, which reflects that Applicant continues to have new financial problems. Others debts remain unresolved. I find AG ¶ 20(b) partially applies.

Applicant indicated that he has taken some financial counseling. He has a payment plan with the IRS and is making payments on two other debts. He has other large and small debts that remain unresolved. He did not provide information about his current income, budget, or expenses. I am unable to conclude that his financial problems are under control. AG ¶ 20(c) partially applies.

Applicant's repeated failure to pay his tax debt and merely add the new amount to the next year does not constitute a good-faith effort to resolve the debt, despite payments he has made. The payments to the creditor in SOR ¶ 1.e began after the account was delinquent for five years. He has made payments on the debt in SOR ¶ 1.h since January 2016. AG ¶ 20(d) applies to SOR ¶ 1.h and marginally to ¶ 1.e. Applicant provided sufficient documentation to support that the debts in SOR ¶¶ 1.f, 1.m, and 1.n are duplicates. AG ¶ 20(e) applies and these debts are resolved in Applicant's favor.

Guideline G: Alcohol Consumption

AG ¶ 21 expresses the security concern for alcohol consumption:

Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

AG ¶ 22 describes conditions that could raise a security concern and may be disqualifying. I find the following to be potentially applicable:

(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder.

Applicant admitted that in 2007 his doctor recommended he join AA. In 2013, he drank to intoxication. The above disqualifying condition applies.

The guideline also includes conditions that could mitigate security concerns arising from alcohol consumption. I have considered the following mitigating conditions under AG ¶ 23:

(a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment; and

(b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

There is no evidence Applicant was involved in any alcohol-related misconduct or issues. The only evidence is Applicant's disclosure on his SCA that his doctor recommended he join AA, which he did. He apparently abstained from alcohol consumption until 2013 when he became intoxicated. He acknowledged the incident and has been participating in AA, and abstaining from alcohol consumption since then. Applicant is involved with his church and helping others with their recovery. I find both of the above mitigating conditions 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(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 Guidelines F and G in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant is a 45-year-old college educated person. He provided sufficient evidence that his participation in AA and his 2013 relapse is not a security concern. His history of financial problems is a security concern. He repeatedly failed to adjust his withholdings to adequately plan for tax liabilities. Instead, he added each years' liabilities to the next year. This is irresponsible conduct. Although he has been making payments on his tax debt, his conduct raises serious concerns. He has large credit cards debts and some small debts that are unresolved. His failure to live within his means, satisfy debts, and meet financial obligations demonstrate poor self-control and a lack of judgment. His unwillingness to address the withholding issue raises questions about his willingness to abide by rules and regulations. 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 mitigated the Guideline G, alcohol consumption security concerns, but 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.d:	Against Applicant
Subparagraphs 1.e-1.f:	For Applicant
Subparagraph 1.g:	Against Applicant

Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Missing
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraphs 1.m-1.n:	For Applicant

Paragraph 2, Guideline G:	FOR APPLICANT
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Subparagraph 2.a:	For Applicant
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Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge