



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



In the matter of:)
)
) ISCR Case No. 15-07062
)
Applicant for Security Clearance)

Appearances

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

07/18/2017

Decision

MURPHY, Braden M., Administrative Judge:

Applicant did not provide sufficient evidence to mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for access to classified information is denied.

Statement of the Case

On June 15, 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 (Exec. Or.) 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 effective within the DOD for SORs issued after September 1, 2006.

On December 10, 2016, the Director of National Intelligence issued new National Security Adjudicative Guidelines (AG). The new AGs are effective June 8, 2017 for all

decisions after that date, and they supersede the AGs that Applicant received with the SOR. Any changes resulting from the implementation of the new AGs did not affect my decision in this case.

Applicant answered the SOR on June 24, 2016, and elected to have his case decided on the written record in lieu of a hearing. On July 20, 2016, Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 5. Applicant received the FORM on July 26, 2016. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant responded to the FORM on August 17, 2016. He provided a statement and two additional documents, which are marked as Applicant's Exhibits (AE) A through C and admitted into evidence without objection. Applicant did not object to the Government's evidence. The SOR and the answer (combined as Item 1) are the pleadings in the case. Items 2 through 5 are admitted into evidence without objection.

The case was assigned to me on April 27, 2017. On May 11, 2017, I e-mailed the parties and reopened the record until May 25, 2017, to allow Applicant the opportunity to provide updated information.¹ Applicant provided e-mail responses, but no documents, on May 17, 2017, and May 18, 2017. Those e-mails are marked AE D and AE E, and admitted without objection.² Department Counsel's e-mails in response have also been considered. Applicant then requested, and was granted, until June 7, 2017 to submit documentation, but he did not do so.³ On June 29, 2017, I provided Applicant a copy of the new AGs by e-mail, and gave him additional time, until July 12, 2017, to review the document and respond.⁴ He did not submit additional documentation. The record closed on July 12, 2017.

Findings of Fact

Applicant admitted SOR ¶ 1.a and denied SOR ¶ 1.b with explanations. I have incorporated his admissions and other comments into the findings of fact. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is 50 years old. He and his wife have been married since 2001. He has two college-aged stepchildren from her prior marriage. Since about April 2007, Applicant has worked for various government contractors. He was laid off from a prior position in September 2011. He was then unemployed until April 2012, when he was hired for his

¹ Hearing Exhibit (HE) I.

² HE II.

³ HE III.

⁴ HE IV.

current position. Applicant's wife also lost her job in October 2013, and was unemployed for about nine months.⁵

Applicant completed a security clearance application (SCA) in July 2014. He disclosed that after his wife lost her job, they fell behind on their mortgage but were attempting re-financing.⁶ His wife did not receive a severance. She was the "breadwinner" in the family, though there are no record details about her income, either then or now. Applicant indicates that around this time, their mortgage also doubled, from \$1,100 to \$2,200 a month. Property taxes increased from \$2,100 to \$3,500 a year. Their homeowner's insurance also increased from \$700 to \$2,880 a year. They were also paying college tuition for their two sons. They fell behind on their mortgage payments, student loans and other debts. He indicates that they made an effort to reduce their monthly expenses, sold many household items, and returned a car that they were leasing.⁷

Applicant and his wife entered a debt relief program and were told that filing bankruptcy was the only way to save their home. They filed Chapter 13 bankruptcy in November 2015. (SOR ¶ 1.a). They declared \$284,439 in secured claims (most of which was their \$280,521 mortgage). They declared \$137,717 in unsecured claims, including federal and other student loans, credit cards and other consumer debts, and an auto repossession. Among these was SOR ¶ 1.b, an \$11,000 judgment regarding a home equity loan. Applicant denied ¶ 1.b because he said it would be resolved under the Chapter 13 bankruptcy payment plan.⁸

The Government's evidence included various documents related to the bankruptcy: a) the Chapter 13 bankruptcy petition and related schedules; b) the bankruptcy trustee's objection to confirmation of the plan;⁹ c) the bankruptcy judge's July 21, 2016 order confirming Applicant's modified Chapter 13 plan; d) a proof of claim from the department of taxation for Applicant's home state, reflecting that as of December 31, 2015, he and his wife owed about \$715 in past-due state taxes; and e) a proof of claim filed by the Internal Revenue Service reflecting that as of May 20, 2016, Applicant owed about \$15,590 in past-due federal taxes.¹⁰ These documents did not include information on Applicant's monthly household income and expenses.

⁵ Item 2; Answer; AE A, AE E.

⁶ Item 2.

⁷ Items 1, 2, 3; AE A.

⁸ Item 1; Item 5; AE A.

⁹ Item 5.

¹⁰ Item 5.

Applicant and his wife had paid \$2,800 into the plan since December 17, 2015. Beginning on May 17, 2016, they were to pay \$700 a month for ten months, and then pay \$1,415 a month for the remaining 45 months of the plan.¹¹ Applicant did not submit any documentation with his FORM Response that he and his wife maintained compliance with the plan. (AE A)

Applicant provided two documents concerning his mortgage. AE B is a June 2016 consent order proposing that Applicant and his wife resume making monthly mortgage payments of \$2,082 to cure a \$15,600 arrearage. AE C indicates that, as of July 27, 2016, his mortgage company had approved a modification of the mortgage and that he was eligible for a short sale and a deed-in-lieu of foreclosure.¹² Applicant indicated that the house was on the market as of August 1, 2016.¹³

Applicant provided updated information, but no documents, in his May 2017 e-mails. He indicated that the Chapter 13 bankruptcy was dismissed in November 2016. He and his wife then filed a Chapter 7 bankruptcy petition in January 2017, which he said was discharged on April 24, 2017. He also indicated that their home was under contract for more than the full amount owed. Applicant's plan was to use the proceeds of their impending house sale (July 2017) to pay off any remaining debts. He stated that their financial situation has improved since the bankruptcy, but provided no supporting documentation. Applicant also explained that his \$15,590 tax debt was a consequence of using his wife's 401k plan as a financial resource to pay debts. He indicated that they were currently paying on their past-due taxes, but offered no specifics. Applicant did not submit any subsequent information, and no corroborating documentation.¹⁴

Policies

It is well established that no one has a right to a security clearance.¹⁵ As noted by the Supreme Court in *Department of the Navy v. Egan*, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials."¹⁶

The adjudicative 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

¹¹ Item 5.

¹² AE C.

¹³ AE A.

¹⁴ AE D, AE E.

¹⁵ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance").

¹⁶ 484 U.S. at 531.

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, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or 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.

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. . . .

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.¹⁷

¹⁷ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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

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

Applicant and his wife fell behind on their mortgage and many other bills after they both went through periods of unemployment. They filed Chapter 13 bankruptcy in 2015. The \$11,000 judgment (SOR ¶ 1.b) is listed in the bankruptcy (SOR ¶ 1.a) among about \$283,000 in secured claims; \$137,000 in unsecured claims; and about \$16,000 in past-due state and federal taxes. Other than the judgment, these debts themselves are not specifically alleged. However, the bankruptcy proceeding is sufficient to establish 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; and
- (d) the individual initiated and is adhering to good-faith effort to repay overdue creditors or otherwise resolve debts.

The periods of unemployment that Applicant and his wife experienced were circumstances beyond their control that impacted their ability to pay their mortgage and other expenses. The first prong of AG ¶ 20(b) applies. They sought credit counseling from a debt relief service and filed Chapter 13 bankruptcy in late 2015. Applicant indicated that they were not able to meet their approved payment plan, so they refiled under Chapter 7, and that bankruptcy was discharged in April 2017. However, given the lack of supporting documentation, I cannot find that AG ¶ 20(b) is fully established.

It is reasonable to expect applicants to present documentation about the satisfaction of specific debts.¹⁸ Applicant submitted no documentation and no details concerning his Chapter 7 bankruptcy proceeding. SOR ¶ 1.a is therefore unresolved. He also provided no documentation to establish that the judgment at SOR ¶ 1.b has been resolved, either through bankruptcy or otherwise.

Even if Applicant had submitted corroborating documentation of the bankruptcy discharge, that would not have been sufficient to mitigate the security concerns arising from his financial difficulties. A discharge in bankruptcy may give a person a financial fresh start, but it does not substitute for evidence of a demonstrated track record of financial reform, a track record that is necessary to satisfy Applicant's burden of persuasion that it is clearly consistent with the national interest to grant him access classified information.¹⁹ Applicant filed for Chapter 7 bankruptcy because he was not able to meet the approved Chapter 13 repayment plan. He has not provided sufficient evidence of his good-faith efforts to repay his creditors or otherwise resolve his debts. AG ¶ 20(d) does not apply.

Applicant indicated that he pursued credit counseling both before and after filing bankruptcy. However, he provided no documented information since then about his monthly income and expenses, and he has outstanding past-due tax debt. Applicant's tax debt was not alleged in the SOR. However, unalleged conduct may be considered: (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) as part of a whole person analysis.²⁰

Applicant provided no documentation to corroborate his statement that he is current on any tax repayment efforts. If there is an agreed-upon plan in place, there is no documentation of it. His past-due state and federal tax debts remain unresolved. There is also no specific information about the family's current finances. Without additional evidence, there are not clear indications that Applicant's financial problems are being resolved or are under control. AG ¶ 20(c) does not fully apply.

Likewise, given the limited documentation submitted, there is insufficient evidence to conclude that his financial issues are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

¹⁸ See ISCR Case No. 09-07091 at 2 (App. Bd. Aug. 11, 2010) (quoting ISCR Case No. 04-10671 at 3 (App. Bd. May 1, 2006)).

¹⁹ ISCR Case No. 98-0445 at 3 (App. Bd. Apr. 2, 1999).

²⁰ ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006).

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(a), 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. Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility based on demeanor.²¹ He did not provide sufficient documented information that his financial problems are in the past. Overall, the record evidence leaves me with questions and doubts as to 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	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 security interests of the United States to grant

²¹ ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

Applicant's eligibility for access to classified information. Eligibility for access to classified information is denied.

Braden M. Murphy
Administrative Judge