



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



In the matter of:)
)
) ISCR Case No. 15-07921
)
Applicant for Security Clearance)

Appearances

For Government: Douglas Velvel, Esq., Department Counsel
For Applicant: *Pro se*

11/18/2016

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for a security clearance is denied.

Statement of the Case

On April 15, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken 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 the SOR on May 12, 2016, and requested his case be decided based on the administrative record. On July 25, 2016, Applicant requested his case be converted and requested a hearing before an administrative judge. On July 26 2016, Department Counsel converted Applicant's case. The case was assigned to me

on August 26, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 16, 2016. I convened the hearing as scheduled on October 19, 2016. The Government offered exhibits (GE) 1 through 3, which were admitted into evidence without objection.¹ Applicant testified and offered Applicant Exhibits (AE) A and B. The record was held open until November 2, 2016, to permit Applicant an opportunity to submit additional documents. On October 31, 2016, Applicant requested a continuance, which was granted until November 9, 2016, when the record closed. Applicant submitted AE C and D, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on October 27, 2016.

Procedural Issues

Based on Applicant's testimony, Department Counsel moved to amend the SOR by adding ¶ 1.o, which reads: "You failed to timely file and pay your federal income tax returns for tax year 2015, as required." There was no objection and the motion was granted.²

Findings of Fact

Applicant admitted all of the allegations in SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 37 years old. He graduated from high school in 1997. He served in the military from 1997, until he was honorably discharged in 2008. Applicant married in 2001 and has a 13-year-old child. Since being discharged from the military he had a three-month period of unemployment in 2009. He has worked for his current employer since January 2015.³

Applicant testified that it was a family decision for him to leave the military. He stated that when he was discharged, it was at the height of the recession, and he had a difficult time finding a job that matched his military salary. His wife has been steadily employed since Applicant's discharge. Applicant and his wife both chose not to pay for the medical insurance that was offered by their employers because of its expense.⁴

In 2009, Applicant had an 8-day hospital stay. Since then he has had other medical issues that required treatment. Applicant testified that with his other expenses, he was living paycheck to paycheck. He was late paying his bills, and it was difficult to

¹ Department Counsel's exhibit list is Hearing Exhibit I.

² Tr. 68-74.

³ Tr. 14-18.

⁴ Tr. 16, 18-23.

get caught up. Since he started his current job, his pay has increased, and he has medical insurance. He stated he received a substantial pay raise last year.⁵

Applicant completed a security clearance application in April 2015. In it he disclosed the following debts: a medical bill (SOR ¶ 1.d, \$21,909) delinquent since October 2010; cell phone bill (SOR ¶ 1.e, \$1,764) delinquent since August 2013; fitness club bill (SOR ¶ 1.m, \$534) delinquent since April 2014. He indicated he was working on monthly payment plans with the creditors.⁶

Applicant did not take any action on any of his delinquent debts until after he received the SOR in April 2016. The debt in SOR ¶ 1.a (\$1,024) is a charged off account for furniture that Applicant financed sometime before 2008. He stopped making payments on it in 2010. He made a couple of small payments after May 2016 and was then offered a settlement. In September 2016, he settled and paid the debt for \$256. He provided documentary evidence.⁷

The debt in SOR ¶ 1.b (\$989) is a charged off credit card debt. Applicant has no idea when he stopped paying this debt. In May 2016, he made a payment plan to pay \$15 bi-monthly. He has made consistent payments on this plan since then.⁸

The debt in SOR ¶ 1.c (\$596) is a charged off credit card debt. Applicant does not know when it became delinquent, but believes it was around 2010. In May 2016, he made one payment of \$15. No other payments have been made.⁹

The debt in SOR ¶ 1.d (\$21,506) is a collection account for medical services that has been owed by Applicant since 2009. Applicant made one payment of \$15 in May 2016. No other payments have been made. The debt in SOR ¶ 1.k (\$403) is a collection account for medical services to the same creditor, also owed since 2009. Applicant made a \$10 payment on this debt in May 2016. No other payments have been made.¹⁰

The debt in SOR ¶ 1.e (\$1,764) is a collection account for a cell phone debt. The debt became delinquent around 2011. In May 2016, Applicant made two payments of \$20 and \$30. He then made \$30 payments in June, July, and August 2016. No other information was provided as to the current status of this debt.¹¹

⁵ Tr. 19-23.

⁶ GE 1.

⁷ Tr. 23-28; AE A.

⁸ Tr. 28-31; Answer to SOR, page 13; AE D.

⁹ Tr. 31-33; Answer to SOR, page 12.

¹⁰ Tr. 33-35, 46-47; Answer to SOR, pages 6, 7.

¹¹ Tr. 35-38; Answer to SOR, pages 3, 4; AE D.

The debt in SOR ¶ 1.f (\$1,082) is a collection account for a medical debt for an emergency room visit in 2010. Applicant has been making bi-monthly payments of \$15 since May 2016.¹²

The debt in SOR ¶ 1.g (\$824) is a collection account for a telecommunication bill that has been owed for about two years. In May 2016, Applicant made a \$15 payment. No proof of additional payments was provided.¹³

The debt in SOR ¶ 1.h (\$686) is a collection account for an internet provider bill. Applicant testified he defaulted on the debt about three years ago. He stated he made a payment of \$25. The letter he provided confirmed that Applicant contacted the creditor and the current balance owed was \$669. No proof of additional payments was provided.¹⁴

The debt in SOR ¶ 1.i (\$582) is a collection account for a medical debt incurred in July 2014. Applicant made a \$15 payment in May 2016. No other proof of payments was provided.¹⁵

The debt in SOR ¶ 1.j (\$538) is a collection account for satellite television service that has been owed since about 2014. Applicant made a \$20 payment on the account in May 2016. No other proof of payments was provided.¹⁶

The debt in SOR ¶ 1.l (\$378) is a collection account for an electric bill owed since 2010. Applicant contacted the creditor in May 2016 and promised to begin making monthly payments of \$40. He did not make any payments.¹⁷

The debt in SOR ¶ 1.m (\$534) is a collection account for a fitness club membership. Applicant indicated he defaulted on the debt in about 2014. When asked why he signed a contract for a gym membership when he had so many delinquent debts, he stated: "my thinking was it was \$10 a month and it wasn't a big deal for me."¹⁸ He contacted the creditor in May 2016 and has made eight payments of \$15 since then.¹⁹

¹² Tr. 38-43; Answer to SOR, page 2; AE D.

¹³ Tr. 43; Answer to SOR, page 8.

¹⁴ Tr. 43-45; Answer to SOR, page 21.

¹⁵ Tr. 45; Answer to SOR, page 10.

¹⁶ Tr. 46; Answer to SOR, page 11.

¹⁷ Tr. 47-48; Answer to SOR, page 18.

¹⁸ Tr. 50.

¹⁹ Tr. 48-51; Answer to SOR, page 17; AE D.

The debt in SOR ¶ 1.n (\$184) is a collection account for medical services that became delinquent sometime in 2013. Applicant made 13 payments since May 2016 for a total of \$120 towards resolving the debt. Applicant was asked why, in 2013 when this debt was incurred, he could not afford to pay this bill when both he and his wife were employed. Applicant stated: "I don't have an answer. I don't."²⁰

Applicant testified that he did not timely file or pay his 2015 Federal income taxes as required. He filed about a month late because he did not have the money to pay for a tax professional to prepare his tax return. He estimated he owes about \$1,200 to the IRS. He indicated he received a bill from the IRS, but has not arranged an installment payment plan. Applicant was given an opportunity to provide documents to show his 2015 federal income tax return was filed. He did not provide any documents.²¹

Applicant estimated that his wife's annual salary is about \$45,000 and has been for a couple of years. In 2013, Applicant was earning about \$30,000. It is unknown what his current annual income is, but he testified that since January 2016 he has doubled his income from his previous job. He does not have a written budget. He has no savings. He has a 401k retirement account. He testified that he does not know where he and his wife spend their money. He is hoping to pay off his smaller debts and then the larger ones.²²

Applicant's admissions and credit reports dated May 2015 and June 2016 substantiate the debts alleged in the SOR.²³ In addition, Applicant provided a consolidated credit report from September 2016, which includes all three of the credit bureaus. Applicant testified he has a cable service account. All three credit bureaus report an additional collection account with this same provider and there is a past due balance of \$682.²⁴

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 are used in evaluating an applicant's eligibility for access to classified information.

²⁰ Tr. 51-52, 54, 57; Answer to SOR, page 14, AE D.

²¹ Tr. 68-75.

²² Tr. 22-24, 35, 55, 60, 62, 65-68.

²³ GE 2, 3.

²⁴ AE B. I have not considered this debt for disqualifying purposes, but I may consider it when analyzing Applicant's credibility, in mitigation, and the whole person.

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 access to classified information 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. Likewise, I have not drawn 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. 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 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 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 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.

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.²⁵

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and the following two are potentially applicable:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant has a history of financial delinquencies that began in 2009. He failed to timely file his 2015 Federal income tax return and pay his 2015 federal income taxes. The above disqualifying conditions apply.

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, 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; and

²⁵ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant voluntarily left military service in 2008. He attributed his financial difficulties to being underemployed after his discharge and not having medical insurance. In his April 2015 SCA, Applicant indicated that he was making monthly payment arrangements with several creditors for delinquent accounts. He did not take any action to resolve his delinquent debts until after he received the SOR in April 2016. He made minimal payments on his delinquent debts. His numerous delinquent debts remain unresolved. He failed to pay his 2015 federal income taxes. He does not know where he spends his money. I cannot find that his financial problems are unlikely to recur. His behavior cast doubt on his reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

For the application of AG ¶ 20(b), there must be conditions that were beyond Applicant's control that resulted in the financial hardship, and he must have acted responsibly under the circumstances. Applicant attributed his financial problems to being underemployed and not having medical insurance. It has been eight years since his discharge. Applicant and his wife have had a combined salary of about \$75,000 since at least 2013. Applicant indicated that since he started his current job and received a raise, he has doubled his salary from then. There is no evidence that Applicant attempted to pay any of his delinquent debts until after receiving the SOR. Since May 2016, he has made consistent payments on some debts, others he has only made one small payment, and at least for one debt he promised to make \$40 payments and did not make any. He also failed to pay his 2015 federal income taxes and his most recent credit report shows a new collection account. Applicant failed to show he acted responsibly. AG ¶ 20(b) partially applies.

There is no evidence Applicant received financial counseling. After receiving the SOR, he made small payments toward his delinquent debts, but he incurred new delinquent debts. He has not followed through on promises to pay. He does not have a budget or a grasp for where he spends his money. Despite making some payments, there are not clear indications that his financial problems are under control. Applicant's minimal payment on each of his delinquent debts, made after he received the SOR, does not constitute a good-faith effort to repay his creditors. AG ¶ 20(c) does not apply. Applicant settled and paid the debt in SOR ¶ 1.a. AG ¶ 20(d) applies to this debt, but not to any of the other SOR debts.

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 the 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.

Applicant is 37 years old. He attributed his financial problems to being underemployed and not having medical insurance. However, he has been steadily employed since 2009, as has his wife. He testified that since starting to work for his current employer, his salary has increased. He made no effort to repay his creditors, some that have been owed for more than six years, until after he received the SOR. He failed to pay his 2015 federal income taxes. He does not know where he and his wife spend their money. Although Applicant has recently made consistent payments on some of his delinquent debts, he does not have a reliable track record for me to conclude that he will continue making the payments. He has not followed through on paying other creditors as promised or he discontinued making payments on some debts. Applicant does not have a realistic grasp on his current finances. 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 financial considerations guideline 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:

For Applicant

Subparagraphs 1.b-1.o:

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.

Carol G. Ricciardello
Administrative Judge