



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



In the matter of:)
)
) ISCR Case No. 15-08684
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

09/07/2017

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant refuted the personal conduct security concerns, but he did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On May 4, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E (personal conduct) and F (financial considerations). Applicant responded to the SOR on May 25, 2016, and requested a hearing before an administrative judge.

The case was assigned to me on August 23, 2016. After coordinating with the parties, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 23, 2016, scheduling the hearing for October 6, 2016. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 5 and 7 were admitted in evidence without objection. The objection to GE 6 was sustained. Applicant indicated that he had not received copies of the Government's exhibits. He was provided a copy of GE 1 through 7, and his request for a continuance was granted.

DOHA issued another notice of hearing on June 20, 2017, scheduling the hearing for July 20, 2017. The hearing was reconvened as scheduled. Applicant withdrew his objection to GE 6, and it was admitted. GE 8 was admitted without objection. Applicant testified and submitted Applicant's Exhibit (AE) A, which was admitted without objection. DOHA received the hearing transcripts (Tr.1 and Tr.2) on November 30, 2016, and July 28, 2017.

Findings of Fact

Applicant is a 65-year-old employee of a defense contractor. He has worked for his current employer, or a predecessor contractor, since 1996. He served on active duty in the U.S. military from 1973 until he retired with an honorable discharge in 1993. He attended college for a period without earning a degree. He is married with three adult children.¹

Applicant is an enthusiast of a certain car model. He bought a new one every few years. Credit reports show that car loans of more than \$30,000 were initiated in 2003, 2005, and 2007. He refinanced his mortgage loans several times to help him pay the car loans. Eventually, he was unable to pay his mortgage loan, and he could not refinance it again or sell his home because of the collapse of the real estate market.²

Applicant filed a Chapter 13 bankruptcy case in April 2009. Under Schedule D, Creditors Holding Secured Claims, the petition listed auto loans of \$32,852 and \$16,008, and a \$197,499 mortgage loan with the value of the property listed as \$125,000. There were no claims under Schedule E, Creditors Holding Unsecured Priority Claims. Under Schedule F, Creditors Holding Unsecured Nonpriority Claims, the petition listed debts totaling \$14,106. The case was converted to a Chapter 7 case in June 2011. Applicant's dischargeable debts were discharged in September 2011.³

Applicant's financial problems did not end with his bankruptcy. Applicant did not file his 2009 through 2012 federal income tax returns when they were due. The IRS garnished his wages in about 2013 or 2014 to recover about \$18,000 in back taxes, penalties, and interest. Applicant stated that he filed his delinquent returns in 2013, which lowered the amount owed, and the remaining taxes were paid through the garnishment.⁴

Applicant helped his daughter buy a car in 2012. He testified that he cosigned the loan on the car. The credit reports list the loan as solely in Applicant's name. In either event, his daughter was supposed to pay the loan, but did not. The creditor charged off the loan leaving a balance of more than \$6,000 (SOR ¶ 1.d). Applicant knows he is

¹ Tr.2 at 15, 33; GE 1, 6.

² Tr.2 at 15-16; GE 2-4, 6.

³ Tr.2 at 14-16; Applicant's response to SOR; GE 2-8.

⁴ Tr.2 at 29-31, 38-40; GE 6.

legally obligated to pay the debt, but he refuses to do so because he thinks his daughter should pay it.⁵

Applicant bought another of his favorite-model cars in 2012. He testified that he paid about \$32,000 for the car. The credit reports indicate a high credit on the loan as \$43,504. Applicant stopped paying the car loan when the IRS was garnishing his wages. The car was repossessed leaving a deficiency balance, which was charged off. The most recent credit report shows a balance of \$8,029 (SOR ¶ 1.g).⁶

SOR ¶ 1.e alleges an \$11,582 delinquent debt owed to a landlord organization. Applicant admitted renting a property, but he denied owing the amount alleged. The debt is reported by Experian on the May 2015 combined credit report. It is not listed on the 2016 and 2017 Equifax credit reports.⁷

An \$87 medical debt (SOR ¶ 1.f) is reported by Experian on the May 2015 combined credit report. It is not listed on the 2016 and 2017 Equifax credit reports.⁸

Applicant stated that his finances are good. If he received financial counseling as a requirement of his bankruptcy case it did not have much of an impact on him because he testified that he did not receive financial counseling. He bought another car in 2016. The credit reports indicate the high credit as \$31,148, with \$615 monthly payments for 72 months. He is current on the car loan.⁹

Applicant submitted a Questionnaire for National Security Positions (SF 86) in May 2015. He reported his bankruptcy case and the defaulted loan for his daughter's car. He did not report his tax issues.¹⁰ I find that any failure to report his tax issues on the SF 86 or initially during his background interview was unintentional and not designed to mislead the DOD about his finances.

Applicant submitted his 2017 performance appraisal. It reflects that Applicant's job performance was exceptional.¹¹

⁵ Tr.2 at 17-21; Applicant's response to SOR; GE 2-4, 6-8.

⁶ Tr.2 at 24-26; GE 2-4, 6-8.

⁷ Tr.2 at 21-23; GE 2-4, 6-8.

⁸ Tr.2 at 23-24; GE 2-4, 7, 8.

⁹ Tr.2 at 33-34; GE 2-4, 7, 8.

¹⁰ Tr.2 at 31-32; GE 1, 6.

¹¹ AE A.

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(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."

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 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 has a history of financial problems including a bankruptcy petition, late tax returns, unpaid taxes, and repossessed vehicles. The evidence is sufficient to raise the above disqualifying conditions.

SOR ¶ 1.g alleges that Applicant owes \$33,755 for the balance due on a car loan after the car was repossessed. The Government established that the amount owed is \$8,029. The greater amount is found for Applicant, leaving the lesser amount owed of \$8,029.

The \$87 medical debt (SOR ¶ 1.f) does not generate security concerns. SOR ¶ 1.f 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;

(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; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's love of a certain car model led to his financial problems. He refinanced his mortgage loans several times to help him pay the car loans. Eventually, he was unable to pay his mortgage loan, and he could not refinance it again or sell his home because of the collapse of the real estate market. He resorted to bankruptcy as a means of addressing his finances.

Bankruptcy did not end his financial problems. He did not file his federal tax returns on time, and the IRS had to garnish his wages. Failure to comply with tax laws suggests that an applicant has a problem with abiding by well-established government rules and systems. Voluntary compliance with rules and systems is essential for protecting classified information. See e.g. ISCR Case No. 14-06686 at 2 (App. Bd. Apr. 27, 2016).

Applicant's fascination with the model car did not end, as he bought another one in 2012. That car and his daughter's car were repossessed, with Applicant making no effort to pay the deficiency balances.

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), 20(b), 20(c), and 20(d) are not applicable. AG ¶ 20(e) is applicable to the disputed debt alleged in SOR ¶ 1.e. AG ¶ 20(g) is applicable, but it does not completely mitigate the judgment issues raised by Applicant's failure to comply with the tax laws. I find that financial considerations concerns remain despite the presence of some mitigation.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative.

Applicant did not intentionally provide false information on his SF 86 or during his background interview. AG ¶¶ 16(a) and 16(b) have not been established. SOR ¶¶ 2.a and 2.b are concluded for Applicant.

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 Guidelines E and F in my whole-person analysis.

I considered Applicant's honorable military service and his exceptional job performance. However, he disregarded his tax obligations for several years, and he has a history of financial problems that appear to be mostly related to his love of a certain car.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant refuted the personal conduct security concerns, but he 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.f:	For Applicant
Subparagraph 1.g:	Against Applicant (in the amount of \$8,029)
Paragraph 2, Guideline E:	For Applicant
Subparagraphs 2.a-2.b:	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.

Edward W. Loughran
Administrative Judge