



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



In the matter of:)
)
) ISCR Case No. 15-08745
)
Applicant for Security Clearance)

Appearances

For Government: David Hayes, Esq., Department Counsel
For Applicant: *Pro se*

03/23/2017

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 June 10, 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 (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.

Applicant answered the SOR on June 28, 2016, and he requested a hearing before an administrative judge. The case was assigned to me on January 5, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 13, 2017. I convened the hearing as scheduled on February 28, 2017. The

Government offered exhibits (GE) 1 through 5, which were admitted into evidence without objection. Applicant testified and offered Applicant's Exhibit (AE) A, which was admitted into evidence without objection. The record was held open until March 14, 2017, to allow Applicant to submit additional documents. None were received and the record closed. DOHA received the hearing transcript (Tr.) on March 8, 2017.

Findings of Fact

Applicant admitted all of the allegations in the 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, completed vocational education courses, and earned his civilian pilot's license in 1998. He served in the military from 1997 until 1998 when he was honorably discharged due to medical reasons. He married in 2000 and divorced in 2003. He remarried in 2004 and has children ages 13 and 9. Applicant has worked for a federal contractor since 2014. His wife is employed by the county.¹

Applicant attributed his financial difficulties to a six-month period of unemployment beginning in March 2012. He took a lower-paying job and his wife was attending school and not working at the time. Applicant was made aware of the delinquent accounts alleged in the SOR during his December 2014 background interview and that they were a security concern. He acknowledged each debt, indicated he disputed each debt, and did not intend to pay any of the debts. He explained that the debts became delinquent when his income was reduced. Credit reports from October 2014, December 2015, and July 2016, support the validity of the delinquent debts alleged in the SOR.²

In October 2016, several months after receiving the SOR, Applicant secured the services of a financial company to help him rebuild his credit. Its letter stated that it had "started the process of repairing and fixing his credit," but it had not yet completed all of the necessary work on his file. It hoped to increase Applicant's credit score and put him in a better financial position. Applicant testified that he did not take any action on his delinquent debts until he hired the financial company after receiving the SOR. He and his wife want to purchase a home and this company will deal with his creditors and secure financing for a mortgage. Applicant admitted the debts in the SOR were approximately four years old and he had not taken any action to resolve them until he hired the financial repair company. He testified he received financial counseling from the company.³

¹ Tr. 16-21; GE 1.

² Tr. 21-23; GE 2-5.

³ Tr. 33-36, 45; AE A.

Applicant testified that he resolved the debt in SOR ¶ 1.c (\$398) for a delinquent cable bill, which he disputed, and it was removed from his credit report. He did not provide the credit report to show that the debt is resolved. He stated that he paid the debt in SOR ¶ 1.d (medical \$182), but did not provide supporting documents.

The debt in SOR ¶ 1.a (\$9,199) is the deficiency amount for a repossessed vehicle. The debt in SOR ¶ 1.b (\$1,003) is a credit card debt that was defaulted on in 2012 or 2013. It is not paid or resolved. Applicant indicated this debt is a duplicate of SOR ¶ 1.g. A July 2016 credit report supports that it is a duplicate debt and this allegation is resolved in his favor. The debt in SOR ¶ 1.e (\$8,734) is a car repossession deficiency debt that is unpaid and unresolved. The debt in SOR ¶ 1.f (\$666) is a credit card debt. Applicant has not contracted the creditor, and the debt is unpaid and unresolved.⁴

Applicant earns approximately \$75,000. His wife earns approximately \$14,000. He purchased a new car in 2015 and financed it for \$23,000. He purchased a 2007 used car about two years ago and financed it for \$20,000. He owns a motorcycle, purchased in 2009 and owes about \$13,000 on it. He has approximately \$600 in the bank. He has credit cards that he makes more than the minimum payments on that have balances totaling about \$4,000. His wife has student loans, but he does not know the amount of them or their status. He pays between \$700 and \$800 a month for his children to participate in five different sports programs. He believes his financial problems were exclusively caused by his unemployment in 2012. He testified that he does everything he can to keep his children happy. He is now trying to clean up his credit because he is tired of paying high interest rates.⁵

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.

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.

⁴ Tr. 23-34.

⁵ Tr. 36-45.

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 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 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.⁶

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; and
- (c) a history of not meeting financial obligations.

Applicant has numerous financial delinquencies. 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;
- (d) the individual initiated 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 not paid or resolved his delinquent debts. He has not taken any action to address them since he began employment in 2014. There is insufficient evidence to apply AG ¶ 20(a) as Applicant's debts are recent, multiple and not resolved.

⁶ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant attributed his financial delinquencies to a six-month period of unemployment in 2012. This is a circumstance beyond his control. For the full application of AG ¶ 20(b) Applicant must have acted responsibly under the circumstances. Although Applicant admitted he owed each debt, he did not intend to pay any of them and indicated he disputed them, without further explanation. He was placed on notice during his interview that his delinquent debts were a security concern. Four months after receiving the SOR, he contracted with a financial company to repair his credit because he hopes to purchase a house and is tired of paying high interest rates. He indicated he resolved two of the SOR debts. The record was held open for him to provide documentary proof of the resolutions, but he did not submit any. There is insufficient evidence that Applicant acted responsibly under the circumstances in resolving his delinquent debts. AG ¶ 20(b) partially applies.

Applicant testified he has had financial counseling and provided a letter showing that he contracted with a credit repair company. No evidence was provided to show he has paid or resolved any of the delinquent debts alleged. Applicant admitted he ignored the debts until months after he received the SOR. The first par of AG ¶ 20(c) applies because he has received financial counseling.

Applicant admitted the SOR debts, but also indicated in his background interview that he disputed each of them and did not intend to pay them. He did not take action to resolve them since he has been gainfully employed. Although he hired a credit repair service, there is no evidence he made a good-faith effort to repay any of the creditors or otherwise resolve the debts. AG ¶ 20(d) does not apply.

During his background interview he indicated he disputed each debt, but failed to explain the basis of the dispute. AG ¶ 20(e) does not apply because Applicant has not provided a reasonable basis to dispute the legitimacy of the alleged debts or documented proof of his actions to resolve the 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 comments.

Applicant is 37 years old. He experienced financial difficulties when he was unemployed for six months in 2012. In 2014, he advised a government investigator that he did not intend to pay the delinquent debts and disputed each of them. In his answer to the SOR, he admitted each debt and testified about them at his hearing. He recently employed a credit-repair company, but he provided no evidence that his debts have been paid or resolved. Applicant does not have a reliable track record of acting responsibly toward his financial obligations. His conduct raises questions about his judgment, reliability, and trustworthiness. 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 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
Subparagraphs 1.a-1.f:	Against Applicant
Subparagraph 1.g:	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 a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge