



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No.15-07520

Appearances

For Government: Benjamin Dorsey, Esq. Department Counsel
For Applicant: *Pro se*

08/29/2017

Decision

LYNCH, Noreen, A., Administrative Judge:

The Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant alleging security concerns arising under Guideline F (Financial Considerations). The SOR was dated June 6, 2016. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) implemented in September 2006. Revised Adjudicative Guidelines were issued on December 10, 2016, and became effective on June 8, 2017.¹

Applicant timely answered the SOR and requested a hearing. The case was assigned to me on February 15, 2017. A notice of hearing was issued on May 9, 2017,

¹In this case, the SOR was issued under Adjudicative Guidelines effective within the Defense Department on September 1, 2006. Revised Adjudicative Guidelines became effective June 8, 2017. My decision and formal findings under the revised Guideline F would not be different under the 2006 Guidelines.

scheduling the hearing for August 3, 2017. Government Exhibits (GX) 1-3 were admitted into evidence without objection. Applicant testified but did not submit any exhibits at the hearing. I kept the record open for additional submission, and Applicant timely sent Applicant Exhibits (AX) A-H for the record. The transcript was received on August 9, 2017. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his answer to the SOR, Applicant admitted allegations in SOR ¶ 1, with the exception of ¶ 1c. He provided explanations for the allegations under Guideline F (Financial Considerations).

Applicant is a 41-year-old service technician for a defense contractor. He is single and has one stepchild. He obtained an associate's degree in 2006. He has additional technical certificates. Due to his employer's Chapter 7 bankruptcy in 2009, he lost a ten-year position with that company. He has worked for his current employer since 2014. Applicant completed his security clearance application (SCA) in 2015. (GX 1)

Financial Considerations

The SOR alleges that Applicant failed to timely file his Federal and state income tax returns for tax years 2012 and 2013; an indebtedness to the Federal Government for delinquent taxes in the amount of approximately \$1,843 for tax year 2011; a medical account in collection for \$100; a charged-off account in the amount of \$4,655; a charged-off account in the amount of \$11,850; a charged-off account in the amount of \$6,742; and a charged-off account in the amount of \$14,235.

Applicant lost employment unexpectedly and with short notice in 2009, due to the company closing. He had worked with that company for a decade and was in fine financial condition. Applicant maintained an almost 20-year history of excellent credit before 2009. However, when he lost the employment he began to incur debt.

Applicant's father became quite ill at the same time, and Applicant cares for him on a daily basis. He also provides some financial help to him. (Tr. 20) He received some unemployment, and decided to work as a contractor with a new company (LLC) which took more of his resources and savings before turning a profit. In the interim while the business venture was thriving, his partner left the partnership in 2014. (Tr. 14) Applicant liquidated his retirement accounts to pay expenses. It took him about a year to find steady employment. He prioritized his bills during this period. His mortgage payment was his highest priority, followed by household expenses.

Applicant owns his home, which is valued at about \$500,000. He has great equity in his home and tried to refinance with mortgage companies to get a lower rate and to cash out to pay his debts. He has not been successful in obtaining any refinancing. His plan is to take the money from the refinancing and pay all outstanding

bills. As to the debts on the SOR, he claimed some have been paid and with other accounts he has been systematically making payments. He also stated that he was working with an organization to help him with the financial issues.

As to SOR allegation 1.a, Applicant did not timely file his Federal income tax returns for tax years 2012 and 2013. At the hearing Applicant still had not filed, but noted that he had the forms completed. He wanted to pay other bills first. He stated that he did not have the funds to file in a timely manner. He is not certain how much he will owe in tax for those years. He hopes to pay in a lump sum. (Tr. 28) Applicant also noted that he has not filed his 2014 Federal tax return. (Tr. 28)

As to SOR allegation 1.b, Applicant did not timely file his state income tax returns for tax years 2012 and 2013. He did not have the money to fulfill the debt. (Tr. 34) In 2016, Applicant stated the state filed his income tax returns for 2012 and 2013 and sent Applicant a bill for the amount of tax owed (\$11,000). Applicant submitted a copy of his pay stub from 2016 showing that a garnishment of \$400 a month is in place. (AX F) He sent another document which showed outstanding liabilities for unpaid taxes for 2012-2014. (AX E) It is not clear from the document whether payments were made.

As to SOR allegation 1.c, Applicant owed the Federal Government \$1,843 in delinquent taxes for tax year 2011. As a post-hearing submission, he sent a copy of a check payable to the IRS, dated August 26, 2013 in the amount of \$1,000. (AX G) along with a payment voucher for tax year 2011. He submitted a copy of a money order in the amount of \$500, but it was not possible to determine if it was for the tax owed. In any event, the two checks did not total \$1,843, and at the hearing he stated that in April 2016, he paid the full amount.

As to SOR allegation 1.d, Applicant owed \$100 for a medical account that was placed in collection status. Applicant submitted documentation that the account has been paid. (AX A)

As to SOR allegation 1.e, Applicant owed \$4,655 for a charged-off account. He provided information that he has been making small monthly payments and the balance is \$3,693. The payments ended in late 2014 and are about \$52 a month. (AX A) Applicant stated that he has not contacted the creditor to negotiate payment arrangements. (Tr. 41)

As to SOR allegation 1.f, Applicant owed \$11,850 for a charged-off account. His most recent credit bureau report shows that as of July 2017, \$3,850 was past due. However, it also notes that the balance on July 25, 2017, was \$11,400. A final note states that the account was written off in the amount of \$14,000. Applicant stated the account became delinquent in 2014 or 2015, and he was sued by the company. The 2016 judgment has not been satisfied.

As to SOR allegation 1.g, Applicant owed \$6,742 for a charged-off account. Applicant had made some payments, but stopped in 2016. (AX A) He has not contacted them recently to arrange payments . (Tr. 48)

As to SOR allegation 1.h, Applicant owed \$14,235 for a charged-off account. It was not clear from the submission, if any payments had been made in recent years. (AX A) At the hearing, he stated that he has not contacted them.

Applicant submitted a 2017 credit bureau report (AX A) that shows ten non-SOR accounts that are in current status. The account notes reflect that his mortgage account and credit union account are open and never late. He points to this as a good-faith effort to pay his bills.

Applicant volunteered a submission for the city in which he resides, which shows that there is a payment plan schedule and a written notation that he paid \$175 on August 15, 2017. The amount of property tax owed is \$1,830 and the monthly payment plan ends in May 2018. (AX C) Applicant stated at the hearing that he has been paying for about four or five months. The document does not reflect that he made a payment of \$1,800, as Applicant claimed. (Tr. 43)

Applicant earns an hourly wage and his net monthly income ranges from \$2,400 to \$3,200. He has a monthly car payment of \$460. He believes he has \$100 in savings, and he has a 401(k) retirement account in the amount of \$13,000 (Tr.) He does not have a written budget. He has two credit cards that he uses that carry balances each month. (Tr. 54) He does not have any discretionary income at the end of the month after his expenses are paid. (Tr. 23)

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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 avoided drawing inferences grounded on mere speculation or conjecture.

The Government must present evidence to establish controverted facts alleged in the SOR. 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. . . .² The burden of proof is something less than a preponderance of evidence.³ The ultimate burden of persuasion is on the applicant.⁴

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 protect 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.”⁵ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁷ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁵ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially over-extended is at a 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 describes conditions that could raise a security concern and may be disqualifying:

- (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;

The Government produced credible evidence to establish Applicant's delinquent debts and his failure to timely file federal and state tax returns for tax years 2012 and 2013. Applicant acknowledged that he also did not file in 2014. Consequently, the evidence is sufficient to raise disqualifying conditions ¶¶ 19(a), 19(c) and 19(f).

AG ¶ 20 provides conditions that could mitigate the security concerns:

- (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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving 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

(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 had an unexpected loss of employment in 2009, but he then became a contractor and made some income. He also takes care of his elderly father. He has been steadily employed since 2014. He did not timely file his Federal and state income taxes in 2012 and 2013. The state filed for him in 2016, but he has not yet filed the Federal tax returns. He states that he has no discretionary income at the end of the month. He has paid one or two SOR accounts and is beginning a payment plan for the state taxes that he owes. He has not received any financial counseling. He also has collection accounts that he is not currently paying. He submitted a 2017 credit bureau report that shows he does have other accounts that are current in pay status. Some of the delinquent debt was incurred due to unforeseen circumstances, but that does not apply to the filing of income taxes. His plan is to refinance his home to pay all his debt. However, he has not had success with that plan. He has not acted responsibly in this case. Mitigating condition AG ¶ 20(b) applies in part. None of the other 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 an 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors.

Applicant is 41 years old. He worked for a company for ten years that suddenly went bankrupt. He had work as a contractor, but he stated that it was not profitable. He is helping his elderly father. He encountered circumstances beyond his control. He started working full time in a steady position in 2014. Since that time he has not made payments on the majority of the delinquent SOR debts, nor has he put in place payment

plan. He is relying on a refinancing of his home in order to pay his debts. This is not sufficient to carry his burden. The documents that Applicant submitted show that he has current accounts, but he did not provide documentation that was clear concerning the status of the state taxes. His documents do not provide a clear picture of the current status of the state taxes or how the delinquent state taxes are being paid and the outstanding balance.

Applicant has not filed his Federal tax returns for the years in question and the state filed for him because he had not filed for tax years 2012 and 2013. He volunteered that he has not filed his 2014 tax return either. He intends to pay his debts and file his Federal tax returns but he needs help. He still has unresolved debt despite his good intentions. He has supported his father who is ill.

After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the record evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns under Guideline F. Accordingly, I conclude that he has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

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.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e:-1.h:	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. Clearance is denied.

NOREEN A. LYNCH
Administrative Judge