



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



In the matter of:)
)
) ISCR Case No. 15-07687
)
Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Esquire, Department Counsel
For Applicant: *Pro se*

02/21/2017

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On May 8, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F, financial considerations, and E, personal conduct. 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 June 1, 2016, and requested a hearing before an administrative judge. The case was assigned to me on October 5, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on

December 20, 2016. I convened the hearing as scheduled on January 25, 2017. The Government offered exhibits (GE) 1 through 3. Applicant testified and offered Applicant Exhibits (AE) A through E. All exhibits were admitted without objection.¹ DOHA received the hearing transcript on February 2, 2017.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a through 1.e, and 1.g. He denied SOR ¶ 1.f and did not admit or deny ¶¶ 2.a and 2.b. His failure to respond to those two allegations will be construed as a denial of the allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 57 years old. He earned some college credits, but does not have a degree. He was married from 1991 to 1998, and has two children, ages 24 and 23, from the marriage. He has a 12-year-old child from a previous relationship. Applicant served four years in the Marine Corps and received an honorable discharge. He has worked at his current job since May 2012.²

In 2005, Applicant and his former girlfriend purchased a house for approximately \$210,000. She was working at the time. Applicant withdrew \$50,000 from his 401k retirement account for the purchase. He paid the taxes owed on the withdrawal. In 2007, he obtained a second mortgage on the home for \$30,000 (SOR ¶ 1.e). In approximately 2008 and 2009, he took two loans from his 401k retirement account. He could not remember the amounts of the loans. He used the money to remodel the home. He also purchased an \$8,500 engagement ring, a four-wheeler recreational vehicle, and a new vehicle.³

Applicant's girlfriend lost her job in 2008. Applicant was able to continue to pay the bills. He worked for a government contractor from 1987 until he was laid-off due to a reduction-in-force in October 2009. He received severance pay, which was about \$19,000 after taxes. He is entitled to a pension, but it is held in escrow until he retires. He was unable to repay his 401k loans, due to his unemployment, and was required to pay taxes on the amounts. He had some savings that he used to support his girlfriend and their son. He was also paying child support for his other two children. He moved his family to another state, where his father lived, so they could live with him. In June 2010, he then moved to a different state hoping to get a job, but was unsuccessful. He worked odd jobs and received unemployment benefits. Due to the country's economic crisis, he had difficulty finding work. He was aware of his delinquent debts, but did not have the

¹ Hearing Exhibit (HE) I is Department Counsel's exhibit list. HE II is the discovery letter.

² Tr. 16-19.

³ Tr. 35-40.

means to pay them. A June 2015 credit report and Applicant's admissions substantiate the debts.⁴

Applicant testified that he contacted the IRS in 2010 and told it that he was unemployed, and he would pay his tax debt when he was able. In May 2011, Applicant attempted to resolve some of his tax problems and contacted Tax Masters. He paid \$1,500 for its services. It went bankrupt, and he was not reimbursed.⁵

In May 2012, Applicant was rehired by his long-term employer. He had child support arrearages that he paid. He was no longer cohabitating with his girlfriend, and he had child support obligations for their son.⁶

In 2014, Applicant's father passed away, and in July money from his father's trust was released. Applicant inherited approximately \$100,000 in various stocks and bonds. He sold some and used the proceeds to purchase a new vehicle for \$20,000. He explained he purchased the vehicle so he could reestablish his credit and having a new car loan is better to accomplish this. He was aware he had a federal tax lien at the time. He testified he began to pay some of his delinquent debts, but was not specific.⁷

A federal tax lien was entered against Applicant in 2012 in the approximate amount of \$13,814 (SOR ¶ 1.a). Applicant testified that this debt is from 2009 and 2010 for the taxes owed on his 401k loans. He has not resolved this lien. He explained that he takes zero exemptions for his federal tax withholdings so that any refund he is owed will be applied to his tax debt. He has made a conscious decision to have whatever tax refund he is entitled to, be applied to his tax debt. He does not intend to use the money he inherited to pay his tax debt at this time because he wants to set up a trust for his children and leave them an inheritance when he dies. If his tax refund does not pay the balance owed to the IRS, he testified he will then use his inheritance to pay it. Applicant provided a copy of check to the IRS dated June 2016 for \$8,378 to be applied toward his 2009 delinquent taxes. He does not know what the current balance he owes on this tax lien.⁸

The debts in SOR ¶¶ 1.b (\$2,842) and 1.c (\$1,531) are for state tax liens entered in 2011. Applicant testified that the debts are attributed to his 401k loans, severance pay, and additional income from working overseas. He was required to pay taxes on this income. He testified he decided not to pay the tax because he was unemployed and

⁴ Tr. 30-35, 40-44; GE 2, 3.

⁵ Tr. 48, 52.

⁶ Tr. 44.

⁷ Tr. 45-47, 59-60.

⁸ Tr. 48-58; AE B.

needed the money. Applicant paid the state tax lien in SOR ¶ 1.c in October 2016.⁹ The other state tax lien remains delinquent. He testified that he intends for this tax lien to be satisfied after he files his 2016 state income tax returns and has his refund applied to the debt. If the refund does not cover the lien, then he will pay the amount owed.¹⁰

When Applicant's girlfriend lost her job in 2008, they were able to get a loan modification for the mortgage on their house. It was modified from a monthly payment of approximately \$1,100 to \$800. When Applicant lost his job he could no longer pay the mortgage. The house was foreclosed and sold. He testified he was notified that he owed \$155,000. He has not contacted the creditor and does not know the status of the debt. He did not know if he received an IRS 1099c form.¹¹

The judgment in SOR ¶ 1.d (\$26,983) is for a credit card. Applicant and his girlfriend used the card and were unable to pay it after he lost his job. During a background interview with a government investigator in July 2015, Applicant told the investigator that he received calls and letters from a collection company regarding the debt. He told the investigator he would contact the creditor and attempt to settle the debt if he could afford it. Since going back to work in May 2012, he has not made an attempt to contact the creditor or repay the debt.¹²

Applicant has not contacted the creditor for the charged-off second mortgage in SOR ¶ 1.e (\$31,118). He testified he does not anticipate paying this debt. Applicant said he does not know what the charged-off debt is for in SOR ¶ 1.f (\$515). During his background interview, he told the investigator that he would research the debt and dispute it or resolve it within three months.¹³ He testified that he had no way to contact the creditor. It was brought to his attention that a credit report he was provided as part of discovery contained the creditor's address.¹⁴ He testified the debt is no longer on his credit report. The debt was charged-off in February 2009.¹⁵

Applicant provided a copy of financial statement prepared by a financial counselor. The statement lists all of his expenses and his past due and delinquent debts. It shows his debt balance is \$242,070 and his past-due or delinquent debt balance is \$183,891. The financial statement does not include Applicant's inheritance.¹⁶

⁹ AE A, C.

¹⁰ Tr. 62-64, 66-67.

¹¹ Tr. 64-66, 77-78.

¹² Tr. 67-74; GE 3.

¹³ Tr. 74-77; GE 3.

¹⁴ GE 2.

¹⁵ Tr. 67-74; GE 2; AE D.

¹⁶ Tr. 70-72; AE E.

Applicant disclosed on his security clearance application (SCA) that he owed delinquent child support. He failed to disclose any of his other delinquent debts or tax liens, as required. During Applicant's interview with a government investigator in July 2015, he disclosed that his home mortgage was foreclosed when he lost his job. He advised the investigator that he assumed the balance owed on the mortgage was excused. He advised the investigator that he did not have any other debts he thought needed to be listed or discussed. He was then confronted with his federal and state tax liens and other delinquent debts. He told the investigator that the reason he failed to disclose his federal tax lien was because he planned to dispute it and did not agree with the debt. He felt he could win the dispute because he borrowed money for home improvements and then lost his job; so his basis for a dispute was financial hardship. The reason he failed to disclose his state tax liens was because he was unaware of them and had no prior notice of them. The reason he did not disclose the judgment (SOR ¶1.d) and credit card debt (SOR ¶ 1.e) was because he either forgot to list them due to oversight or he tried to list them and then forgot to hit save on the computer, but he could not recall specifically. He indicated he did not intentionally fail to disclose his delinquent debts.¹⁷

At his hearing, Applicant testified that the reason he failed to disclose any of his other debts was due to problems with the SCA computer program. He stated he attempted to disclose information and the computer program would not accept his information. He did this multiple times and the SCA was rejected. He called the help desk and was told to delete certain entries. He was in a hurry to get the application completed. He testified that he deleted entries as advised and submitted the SCA. He could not recall which specific entries he deleted. He testified that because he felt he had a legitimate hardship for not paying his federal tax lien and was going to hire an attorney to resolve it, he decided not to disclose the information. He did not put explanations about his difficulties with the computer program in the SCA comment section for financial inquiries or the general comment section. He was able to provide explanations about his child support arrearages in the SCA. He did not tell the government investigator that he was unable to disclose his delinquent debts due to a problem with the computer program.¹⁸

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.

¹⁷ Tr. 79-90.

¹⁸ Tr. 79-90; GE 3.

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.¹⁹

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 delinquent debts and taxes that began to accumulate in 2008 and he is unwilling or unable to resolve. 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

¹⁹ See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

(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 delinquent debts that are ongoing, unresolved, and include federal and state tax liens. He does not anticipate paying the debts in SOR ¶¶ 1.d and 1.e. He is unsure about the status of his foreclosed mortgage. His failure to address and resolve them casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to a lengthy period unemployment from October 2009 to May 2012. This was a condition beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstance. Applicant has been employed full time for more than four and a half years. In 2014, he received an inheritance of approximately \$100,000. He recently paid a state tax lien (SOR ¶ 1.c) and made a payment toward a federal tax lien (SOR ¶ 1.a). Applicant does not intend to pay the balance of his federal tax lien, but prefers to wait for any refund on his future tax return be applied to the delinquent lien. He has not made payments to resolve a large credit card debt (SOR ¶ 1.d), and he does not “anticipate” paying the second mortgage debt (SOR ¶ 1.e). He does not want to use resources he inherited to pay his debts because he wants to leave his children an inheritance when he dies. AG ¶ 20(b) has some application because his financial problems began due to unemployment. However, Applicant has failed to act responsibly in resolving his just debts.

There is some evidence Applicant received financial counseling by having a financial statement completed for him, but there is no indication that his delinquent debts and tax liens are under control. Applicant does not intend to pay some of his legitimate delinquent debts. Since 2014, he has had the resources to resolve his tax debts, but has chosen to delay doing so based on a prospective refund. He does not intend or “anticipate” paying other delinquent debts. Only the first part of AG ¶ 20(c) applies.

Applicant resolved a 2011 state tax lien in June 2016. He had been employed since May 2012. He made a payment in June 2016 toward a federal tax lien entered in 2012 for delinquent taxes from 2009 or 2010. He has not addressed any of his other delinquent debts. He has not researched the current status of his foreclosed mortgage, which may not be owed. Applicant has not initiated good-faith efforts to repay his other delinquent debts. It is understandable that after Applicant returned to his job, it would take him some time to get his finances in order. That time has expired. He received an inheritance in 2014 and does not intend to use it to pay his delinquent debts. AG ¶ 20(d) applies to his resolution of one state tax lien (SOR ¶ 1.c).

Applicant advised the government investigator that he would research the debt in SOR ¶ 1.f (\$515) and dispute it. He did not. He disputed the debt at his hearing. It is no

longer on the credit report he provided, but it is on the combined credit report provided by the government. This debt is unresolved. AG ¶ 20(e) does not apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct;

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. I find the following 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.

I find that Applicant was aware he had delinquent debts and was aware he had not paid the taxes owed for his 401k loan. Despite his assertion that he was going to hire an attorney and dispute the tax lien, he deliberately chose not to disclose it as required. At his hearing, he confirmed he did not disclose his federal tax lien because he was going to dispute it. He indicated to the investigator that he either forgot about the other debts or did not save them to the computer when he completed his SCA. At his hearing, he stated he did not disclose his other delinquent debts due to computer problems. He did not tell the investigator that he had computer problems. I did not find Applicant's testimony credible. I find he deliberately failed to disclose tax liens and delinquent debts. The above disqualifying condition applies.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused by or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon

being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully; and

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant made a conscious decision not to disclose his federal tax lien on his SCA. His explanation that he wanted to dispute them does not negate his responsibility to disclose the information. He claimed he was unaware of his state tax liens because he did not receive notice, but attributed them to his failure to repay his 401k loans, severance pay, and increased income from overseas employment. He disclosed he had child support arrearages and an explanation in the SCA. He failed to do this with other delinquent debts. Although he attributed his failure to disclose any of his other debts due to computer problems, I did not find his testimony credible. He did not disclose his debts to the government investigator until they were brought to his attention. His explanation to the investigator was either he forgot to disclose them on the SCA or he forgot to save them on the computer program. I have considered the applicability AG ¶ 17(b) under the facts of this case and conclude it does not apply. Applicant was aware of his federal tax lien and consciously decided not to disclose it despite a specific question about tax debts. Even if he were advised by a computer support personnel to delete entries on his SCA, it does not absolve him of his responsibility to disclose to an authorized official that he was unable to provide accurate information. He did not do this after completion of the SCA, and he did not do this when he was interviewed by a government investigator. AG ¶ 17(a) does not apply. Applicant's conduct was not minor and did not happen under unique circumstances that are unlikely to recur. His conduct casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 17(c) does not 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 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 Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is 57 years old. He served four years in the military. He worked for his employer for 25 years and was laid off when the economy was in a downturn. He had loans from his 401K that he was unable to pay, and which resulted in a federal tax lien. He concluded his state tax liens were also the result of those circumstances. He defaulted on a second mortgage and large credit card debt. Applicant was rehired by his employer in May 2012. He received an inheritance of approximately \$100,000 in 2014. He recently made a payment toward his federal tax lien, but the balance owed is unknown. He resolved one state tax lien. He is not paying the balances owed on his tax debts because he intends to have any future refunds applied to the debt. He has not addressed his other delinquent debts. He purchased a new car. He decided not to use the money he has on hand to pay his tax debts or his other debts because he wants to leave his children an inheritance. Applicant cannot be relied upon to follow rules and regulations. Instead of complying with them, he adjusts them for his benefit. He has ignored his financial obligations and commitments despite having the resources at this time to make progress toward resolving them. Applicant's conduct raises questions about his judgment, reliability, and trustworthiness. Overall, the record evidence leaves me with serious questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concern arising under the financial considerations guideline and the personal conduct guideline.

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.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.g:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-2.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 interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge