



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



In the matter of:)
)
) ISCR Case No. 15-07969
)
Applicant for Security Clearance)

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

10/26/2016

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On February 5, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant 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) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on March 7, 2016, and requested a hearing before an administrative judge. The case was assigned to me on May 5, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 10, 2016, scheduling the hearing for July 20, 2016. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 6 were admitted in evidence without

objection. Applicant's objection to GE 7 was sustained. Applicant testified and submitted Applicant's Exhibits (AE) A through E, which were admitted without objection. The record was held open for Applicant to submit additional information. He submitted documents that were marked AE F through K and admitted without objection. DOHA received the hearing transcript (Tr.) on July 28, 2016.

Findings of Fact

Applicant is a 37-year-old employee of a defense contractor. He has worked for his current employer since February 2014. He is applying for a security clearance for the first time. He is a high school graduate. He has never married, but he has lived with his fiancée since 2004. He has two children with his fiancée and an older child from a different relationship. He and his fiancée also have a foster child in their care.¹

Applicant was injured at work in 2010, resulting in several surgeries. He sued his employer. He fell behind on his bills while he was off work pending the lawsuit. His share of the settlement received in 2012 was about \$330,000. He did not pay his debts with the settlement. He used the money to take several vacations, including a trip to a foreign country; he bought a \$60,000 sports car; and his family ate out a lot. He also opened a small business that was unsuccessful. He closed the business in 2013. He sold the sports car for \$50,000.²

Applicant did not file his federal and state income tax returns for tax year 2013 when they were due. He retained a tax professional to prepare his returns, and the returns were filed in July 2016. The returns indicate that Applicant was due a \$4,744 refund from the IRS and \$8 from the state.³

The SOR alleges a delinquent mortgage loan (SOR ¶ 1.c), 28 miscellaneous delinquent debts, and that Applicant failed to file his federal and state income tax returns for tax year 2013 when they were due (SOR ¶¶ 1.a and 1.b). However, the debts alleged in SOR ¶¶ 1.e and 1.aa are duplicates. Applicant established that he has been current on his mortgage loan since February 2015. He admitted owing all of the remaining debts with the exception of the \$134 debt alleged in SOR ¶ 1.s. That debt is listed on an October 2015 Equifax credit report.⁴

With the exception of the mortgage loan, Applicant has not paid any of the debts alleged in the SOR. He stated that he put it in "the back of [his] head," and that if he "didn't think about them then [he] wouldn't have to take care of them."⁵

¹ Tr. at 26, 30-32; GE 1.

² Tr. at 19-27, 33-39, 56; Applicant's response to SOR; GE 2, 3.

³ Tr. at 27-28, 42-46; Applicant's response to SOR; GE 1; AE C.

⁴ Tr. at 24, 50-52; Applicant's response to SOR; GE 2, 3; AE A.

⁵ Tr. at 27, 46-47; Applicant's response to SOR; GE 2, 3.

Applicant filed a Chapter 13 bankruptcy case in June 2016. The \$134 debt alleged in SOR ¶ 1.s is not included in the bankruptcy petition, most likely because he did not acknowledge it was his debt, and it was not listed on the credit report that his attorney used to prepare the petition. Applicant made the first payment under the proposed bankruptcy plan in July 2016. Subsequent payments are being garnished directly from his paycheck. He received financial counseling as a requirement of the bankruptcy court.⁶

Applicant stated how much he appreciates his job and working with the military. He stated that he has learned from his mistakes and that he intends to complete the Chapter 13 bankruptcy payment plan.⁷

Applicant submitted letters attesting to his excellent job performance. He is praised for his moral character, work ethic, responsibility, trustworthiness, dependability, professionalism, dedication, loyalty, patriotism, and integrity.⁸

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 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 access to classified information will be resolved in favor of 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.

⁶ Tr. at 27, 46-53; Applicant's response to SOR; GE 4-6; AE D, E, I, J.

⁷ Tr. at 29, 48-49, 63; AE A-D, K.

⁸ AE B, F-H.

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 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (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 accumulated delinquent debts and was unable or unwilling to pay his financial obligations. He did not file his federal and state income tax returns for tax year 2013 when they were due. The above disqualifying conditions are applicable.

SOR ¶¶ 1.e and 1.aa are duplicates. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicate allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005) (same debt alleged twice). SOR ¶ 1.aa is concluded for Applicant.

Applicant has been current on his mortgage loan since February 2015. SOR ¶ 1.c is concluded for Applicant. I have doubts about the validity of the \$134 debt alleged in SOR ¶ 1.s. That allegation is concluded for Applicant.

Conditions that could mitigate financial considerations 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, 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

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

Applicant's work injury in 2010 was beyond his control. However, he received about \$330,000 from his settlement in 2012. He went on several vacations and bought a \$60,000 sports car. Except for his mortgage payments, he did nothing to pay his debts until he filed a Chapter 13 bankruptcy case in June 2016. He filed his 2013 federal and state income tax returns in July 2016. He stated that he has learned from his mistakes and that he intends to complete the Chapter 13 bankruptcy plan. The Appeal Board has held that "intentions to pay off debts in the future are not a substitute for a track record of debt repayment or other responsible approaches." See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013) (quoting ISCR Case No. 08-08440 at 2 (App. Bd. Sep. 11, 2009)).

I am unable to find that Applicant 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), and 20(d) are not applicable. The first part of AG ¶ 20(c) (financial counseling) is applicable; the second part (clear indications that the problem is being resolved or is under control) is not applicable, except as it relates to Applicant's tax returns. I find that financial considerations concerns remain despite the presence of some mitigation.

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. I considered Applicant's favorable character evidence. However, his recent steps to address his financial issues are insufficient to mitigate his questionable decisions.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant 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.b: | Against Applicant |
| Subparagraph 1.c: | For Applicant |
| Subparagraphs 1.d-1.r: | Against Applicant |
| Subparagraph 1.s: | For Applicant |
| Subparagraphs 1.t-1.z: | Against Applicant |
| Subparagraph 1.aa: | For Applicant |
| Subparagraphs 1.bb-1.ee: | 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge