



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



In the matter of:)
)
) ISCR Case No. 15-07951
)
Applicant for Security Clearance)

Appearances

For Government: Bryan J. Olmos, Esq., Department Counsel
For Applicant: *Pro se*

03/27/2017

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 March 4, 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 April 7, 2016, and requested a hearing before an administrative judge. The case was assigned to me on December 1, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 19, 2016, scheduling the hearing for January 24, 2017. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 4 were admitted in

evidence without objection. Applicant testified, but he did not submit any documentary evidence. DOHA received the hearing transcript (Tr.) on February 2, 2017.

Findings of Fact

Applicant is a 44-year-old engineer employed by a defense contractor. He has worked for his current employer since September 2014. He has a bachelor's degree. He married in 1997 and divorced in 2012. He and his ex-wife reconciled, and they remarried in 2013. They divorced again in 2015. He has three minor children.¹

Applicant attributed his financial problems to the costs associated with his marriages and divorces, and relocating to obtain his current job. He is current on his child support for his three children who live with their mother.²

The SOR alleges a mortgage loan that was \$29,096 past due, with a balance of \$123,795. It also alleges six miscellaneous delinquent debts totaling about \$10,100. Applicant admitted owing all the debts.

Applicant's house was lost to foreclosure. He believes it was sold for less than what was owed on the mortgage loan. His ex-wife was co-owner of the property, but she was not on the mortgage loan. She filed a Chapter 13 bankruptcy petition. The holder of the mortgage loan has been unwilling to discuss the loan with Applicant because of the bankruptcy.³

Applicant paid the \$31 medical debt alleged in SOR ¶ 1.f. He made some payments on the \$5,880 debt alleged in SOR ¶ 1.b, reducing the balance to \$4,781. He has not paid any of the other debts alleged in the SOR. He stated that he plans to pay his debts, but he is waiting until he finds out if there is anything owed on the foreclosed mortgage loan before he addresses any of his other debts. He has not filed his federal income tax return for tax year 2015. He stated that he was confused because his divorce was finalized in 2015. He estimated that he owes about \$5,000 to the IRS. He received financial counseling. He has also been in contact with a lawyer, but he has not yet retained the lawyer. He hopes the lawyer will assist him in resolving any deficiency owed on the mortgage loan, file his tax return, and either assist him in obtaining a debt-consolidation loan or file Chapter 13 bankruptcy proceedings on his behalf.⁴

¹ Tr. at 13, 17, 35; GE 1.

² Tr. at 13, 17-18; GE 1.

³ Tr. at 14-15, 19; GE 1-4.

⁴ Tr. at 14-16, 19-20, 29-35; GE 1-4. Applicant's tax issues were not alleged in the SOR and will not be used for disqualification purposes. They may be considered in assessing Applicant's overall financial situation, in the application of mitigating conditions, and during the whole-person analysis.

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.

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

Applicant accumulated delinquent debts and was unable or unwilling to pay his financial obligations. The above disqualifying conditions are applicable.

Conditions that could mitigate 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, 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 attributed his financial problems to the costs associated with his marriages and divorces, and relocating to obtain his current job. He started his new job in September 2014, and his divorce was final in 2015. He paid a \$31 medical debts, and

he made payments toward another debt. He has done nothing to pay his other debts. Additionally, he has yet to file his 2015 income tax returns, and he estimated that he owes about \$5,000 to the IRS.

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) is not applicable. AG ¶ 20(b) is partially 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. AG ¶ 20(d) is not applicable except for the \$31 medical debt alleged in SOR ¶ 1.f.

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 the factors that led to Applicant's financial difficulties and the limited steps he has taken to rectify them. Applicant has not convinced me that he has a viable plan to address his finances.

Overall, the record evidence leaves me with questions and doubts as to 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.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	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