



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



In the matter of:)
)
) ISCR Case No. 15-08711
)
Applicant for Security Clearance)

Appearances

For Government: Andrea Corrales, Esq., Department Counsel
For Applicant: *Pro se*

05/31/2017

Decision

COACHER, Robert E., Administrative Judge:

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

Statement of the Case

On June 9, 2016, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD acted 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 July 11, 2016, and requested a hearing before an administrative judge. The case was assigned to me on September 28, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 13, 2016, and the hearing was convened as scheduled on January 11, 2017. The Government offered exhibits (GE) 1 through 3, which were admitted into evidence

without objection. Department Counsel's exhibit index was marked as Hearing Exhibit (HE) I. Applicant testified, called three witnesses, and offered exhibits (AE) A through W, which were admitted without objection. The record was kept open and Applicant submitted AE X through DD, which were admitted without objection. DOHA received the hearing transcript (Tr.) on January 24, 2017.

Findings of Fact

Applicant admitted SOR allegations ¶¶1.a – 1.d, 1.g and 1.h, but denied 1.e, 1.f, and 1.i – 1.m. His admissions are incorporated as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 46-year-old employee of a defense contractor. He has worked for this employer since August 2015. He has a master's degree. He is married and has two children. He has never held a security clearance.¹

The SOR alleged Applicant failed to file his federal income tax return for tax year 2013, that he is indebted to the IRS in the amount of approximately \$45,321 for tax years 2011, 2012, and 2014, and that a federal tax lien was filed against Applicant in April 2011 in the amount of \$20,371. It also alleged that Applicant was delinquent on three charged-off accounts, two past-due student loan accounts, and three collection accounts. Applicant's admissions during his testimony support the tax-related allegations (other than the failure to file allegation, explained below). His admissions to a defense investigator in October 2015, and a credit report support the delinquent collection, past due, and charged-off accounts.²

Applicant's financial difficulties arose because of two failed businesses that he owned and that incurred federal tax liability that he could not pay. When the businesses shut down, he still owed the taxes due, but he did not have the funds to pay them. The first business failed in approximately 2006. Applicant began a similar type of business with a partner in 2009. This business operated until approximately 2014 when Applicant's partner died and the company lost its major contract to a competitor, which caused the business to ultimately close down. Applicant testified that his current federal tax debt is approximately \$98,000. He stated to a defense investigator that he retained a tax attorney in June 2014 to handle his tax issues. The attorney provided a letter in December 2016, stating he was working towards establishing a payment plan with the IRS to resolve the tax debt for years 2008 to 2015. He opined the matter would be resolved by January 2017. In February 2017, the attorney provided a follow-up letter stating that an agreement had been reached with the IRS whereby Applicant would pay \$1,184 monthly for 84 months, beginning in March 2017, to resolve his tax debt. A written copy of the agreement was not provided. Applicant did not provide proof of any additional payments. Applicant's federal tax debt is not resolved.³

¹ Tr. at 6, 35, 38; GE 1.

² Tr. at 40-41; GE 2-3.

³ Tr. at 36-42, 52-54; GE 3; AE H, CC.

Applicant provided written documentation showing he timely filed his 2013 federal tax return. The Government also conceded this issue. SOR ¶ 1.e is resolved in Applicant's favor.⁴

Applicant provided documentation showing that the charged-off and collection debts listed in SOR ¶¶ 1.g, 1.k and 1.m were all paid. These debts are resolved.⁵

Applicant and his wife both incurred student loan debt. Applicant estimated his debt between \$50,000 and \$60,000. He claimed that his loans were in forbearance and not currently delinquent. He admitted that they were delinquent from time to time starting in 2006. A September 2015 credit report indicated that his loans were 90 days past due. Applicant documented that he entered into a repayment plan for his student loans. He currently owes approximately \$98,850 and his monthly payments under the agreement are \$314. He has made four or five payments under the plan, the most recent was in February 2017. Applicant has started to resolve this debt.⁶

Applicant disputed the debt listed in SOR ¶ 1.i. He claims he has no idea about this debt. He provided documentation showing his action disputing this debt and the credit report in evidence also noted his dispute of the debt.⁷

Applicant's two charged-off bank debts (¶¶ 1.f and 1.h) were for an overdrawn bank account and a car loan. Applicant worked with the bank when he had difficulty making the monthly payments. For a time the bank agreed to accommodate Applicant, however, at some point a business decision was made to "write off" the debts. Applicant was never contacted after that point and did not make any further payments. These debts are resolved.⁸

Applicant testified that he and his wife have combined gross income of about \$120,000 annually. He also receives income from a second job. He provided a budget showing two months' worth of income and expenses. In both cases, the net discretionary income each month was under \$100. Applicant took a financial course from a nationally known financial personality and practices those learned concepts in his financial affairs.⁹

Applicant presented character statements and witnesses who described him as highly thought of in his community and as a person who has earned an excellent

⁴ Tr. at 43-44, 82; AE H.

⁵ Tr. at 45, 47-48; AE E, J, L, Y, Z, DD.

⁶ Tr. at 46-47, 58-59; AE K, BB.

⁷ Tr. at 47; GE 2; AE M.

⁸ Tr. at 44-45, 57-58; AE X.

⁹ Tr. at 48-49, 51, 60; AE U, AA.

reputation as having a strong work ethic. He is described as honest and loyal. All his witnesses described him as trustworthy. I considered all of Applicant's positive character traits.¹⁰

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 that 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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 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 about 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

¹⁰ Tr. at 65-79; AE A, F.

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 as follows:

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. Three 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 has been delinquent paying his federal taxes over an extended period. He also accumulated several other debts that became delinquent. The evidence does not support the failure to file his 2013 federal tax return. That allegation is resolved in his favor. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) for the remaining allegations.

Several financial considerations 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's tax debts are recent events and cast doubt on his reliability, trustworthiness, and good judgment. His tax issues have been unresolved since at least 2008. Although he provided correspondence from his attorney who is working towards a payment plan with the IRS, Applicant did not present a documented plan to pay his delinquent federal taxes, nor did he show proof of any payments on his \$98,000 of federal tax debt. Similarly, he has only recently established approximately six months of continuous payments on his \$98,000 worth of student loan debt. AG ¶ 20(a) is not applicable.

Applicant's business failures (death of business partner), were events beyond his control. However, these events took place a number of years ago. Applicant's tax issues go back as far as 2008, long before his partner passed away. He also failed to engage professional tax assistance until August 2014. No progress was made in terms of reaching an agreement with the IRS until February 2017. His delayed response to his tax problems was not responsible. AG ¶ 20(b) is partially applicable.

Applicant received financial counseling by participating in a financial planning course in November 2016. Given Applicant's delayed reaction to dealing with his tax problems and his current tax debt that remains unaddressed, there are not clear indications that Applicant's financial problems are under control. Concerning SOR ¶¶ 1.f – 1.h, 1.k and 1.l, Applicant resolved those debts. He also successfully disputed ¶ 1.l. All those debts are resolved in favor of Applicant by applying AG ¶¶ 20(c), 20(d), and 20(e). It is too soon to tell whether Applicant's student loan debts are being resolved or otherwise under control since he has yet to establish a meaningful track record of payment for those 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 relevant 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 comment.

I considered the circumstances by which Applicant's tax situation came to be an issue as well as his student loan debt. I also considered all the positive character evidence he presented. However, I also considered that he failed to timely resolve his tax obligations. Although he resolved several delinquent debts, he has not established a meaningful track record of financial responsibility in paying his student loans or his federal income tax debt.

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 has not mitigated 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.d:	Against Applicant
Subparagraphs: 1.e – 1.h:	For Applicant
Subparagraphs: 1.i – 1.j:	Against Applicant
Subparagraphs: 1.k – 1.m:	For Applicant

Conclusion

In light of all of the circumstances, 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.

Robert E. Coacher
Administrative Judge