



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



In the matter of:)
)
) ISCR Case No: 14-03172
)
Applicant for Security Clearance)

Appearances

For Government: Alison O'Connell, Esquire, Department Counsel
For Applicant: *Pro se*

01/04/2018

Decision

DAM, Shari, Administrative Judge:

Applicant has unresolved delinquent debts. He failed to mitigate the resulting financial considerations security concerns. Based upon a review of the pleadings and exhibits, national security eligibility is denied.

Statement of Case

On December 3, 2013, Applicant submitted a security clearance application. (Item 4.) On July 31, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. (Item 1.) 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 for Determining Eligibility for Access to Classified Information* (AG), effective within the DOD after September 1, 2006.¹

¹ I considered the previous AG, effective September 1, 2006, as well as the new AG, effective June 8, 2017. My decision would be the same under either set of guidelines.

Applicant answered the SOR on August 12, 2014, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 3.) On September 28, 2016, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing eight Items, was mailed to Applicant on September 29, 2016, and received by him on October 10, 2016. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant timely submitted three exhibits in response to the FORM, and did not object to its contents; Items 1 through 8 are admitted into evidence.² Department Counsel did not object to Applicant's exhibits that I marked as Applicant's Exhibits (AE) A through C; thus I admitted them into evidence. The Defense Office of Hearings and Appeals (DOHA) assigned this case to me on August 14, 2017.

Findings of Fact

Applicant is 31 years old and a high school graduate. He started working for a defense contractor in October 2013. He served on active military duty from September 2004 to October 2013. He was honorably discharged. He was married to his first wife between 2004 and 2009. He married his second wife in 2011 and is separated. (Item 4) He attributed his delinquent debts to the 2009 divorce, legal costs related to it, and a change in his duty station while in the divorce process. He held a security clearance during his service. (Item 3)

Based on credit bureau reports (CBR) from August 2016, July 2014, and December 2013, the SOR alleged seven debts that became delinquent between 2000 and 2013, and totaled over \$72,000. (GE 5, GE 6, GE 7) The status of each debt is as follows:

SOR ¶ 1.a: As of August 2016, the \$1,993 charged-off account for a personal loan had been disputed by Applicant. According to the CBR, the outcome of that dispute is unknown. The debt remains unresolved. (GE 5)

SOR ¶ 1.b: The \$3,474 credit card debt is paid. (GE 5)

SOR ¶ 1.c: Applicant stated that the \$50,720 balance owed on his jointly held \$134,000 mortgage was resolved through a foreclosure and sale in February 2016. He asserted that any deficiency was his ex-wife's responsibility. (AE B) He did not provide documentation verifying his position.

SOR ¶ 1.d: In his Answer, Applicant stated that the \$2,355 debt was a joint account he had with his ex-wife and she was responsible for it. (Item 3) Subsequently, Applicant stated that he was resolving the debt. (AE B) He did not provide documentation verifying that it is being resolved.

² In addition to three new exhibits, Applicant provided many of the previously submitted Government's Items contained in the record.

SOR ¶ 1.e: In his Answer, Applicant admitted owing the \$1,906 debt. (Item 3) Subsequently, he denied the debt and stated it was removed from his credit report. (AE B) The status of this debt is unclear. It is unresolved.

SOR ¶ 1.f: In his Answer, Applicant admitted owing the \$10,280 automobile loan. (Item 3) Subsequently, Applicant stated that he denied being indebted to the creditor. (AE B) The status of this debt is unclear. It is unresolved.

SOR ¶ 1.g: The \$1,963 credit card debt is paid. (GE 5)

Applicant did not submit evidence of financial or credit counseling, or that he sought other assistance to resolve his delinquent debts. He did not provide budget information from which to predict future solvency or a plan to address the delinquent debts.

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the pertinent AG. In addition to brief introductory explanations of the security concern, the guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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 national security eligibility will be resolved in favor of the 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person applying for national security eligibility seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *a/so* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline F: Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

AG ¶ 19 describes three conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has a history of being unable or unwilling to meet financial obligations, which began in 2009 and continues to date. The evidence raises security concerns under

the above disqualifying conditions, and shifts the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could potentially mitigate the security concerns arising from Applicant's financial difficulties:

- (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 individual has received or is receiving financial 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
- (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.

Five SOR-alleged debts are ongoing and unresolved. Applicant offered insufficient evidence from which to conclude that similar problems will not recur. Mitigation was not established under AG ¶ 20(a). He provided some evidence that the delinquencies were caused by his divorce and a change of duty station. Those were circumstances beyond his control; however, he did not provide evidence that he acted responsibly under those circumstances. AG ¶ 20(b) applies partially. He presented no evidence of financial counseling or a budget. There are not clear indications that the five remaining delinquent debts, including a mortgage and automobile loan, are being resolved in good faith or are under control. AG ¶¶ 20(c) and (d) do not apply. He presented evidence that two debts were resolved in good faith. AG ¶ 20(d) applies to them. Although he disputed one debt, he did not provide a legitimate basis for doing so, and he did not submit evidence of the outcome of that dispute. AG ¶ 20(e) does not apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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(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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a mature adult, who honorably served in the military for nine years. He has worked for a defense contractor for four years. I have considered his military service in analyzing this case. However, Applicant has unresolved financial problems, in particular a large mortgage debt and unpaid car loan, which total over \$60,000 and have remained security concerns for several years. Although he submitted three exhibits, none of them were sufficient proof that he resolved the alleged debts. Overall, the evidence creates doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. He failed to meet his burden to mitigate the security concerns arising under the guideline for financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c through 1.f:	Against Applicant
Subparagraph 1.g:	For 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 access to classified information. National security eligibility is denied.

SHARI DAM
Administrative Judge