



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



In the matter of:)
)
 [NAME REDACTED]) ISCR Case No. 15-03913
)
 Applicant for Security Clearance)

Appearances

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

10/25/2017

Decision

BORGSTROM, Eric H., Administrative Judge:

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

Statement of the Case

On March 24, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations).¹ Applicant responded to the SOR on May 27, 2016, and he elected a decision on the written record in lieu of a hearing. On September 14, 2016, Department Counsel submitted his file of relevant material (FORM) and provided a complete copy to Applicant. Applicant received the FORM on September 20, 2016. He was afforded an opportunity to respond within 30 days of its receipt and to file objections and submit material to refute, extenuate, or mitigate the security concerns.

¹ 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 implemented by the DOD on September 1, 2006.

Applicant responded to the FORM on October 19, 2016 and did not include any exhibits. The case was assigned to me on June 2, 2017.

Procedural Issues

On October 2, 2017, I issued an order informing both parties that although the SOR referenced the adjudicative guidelines implemented by the DOD on September 1, 2006, I would be applying the revised adjudicative guidelines (AG) effective as of June 8, 2017, pursuant to Security Executive Agent Directive 4 (SEAD 4). I also permitted the parties to supplement the record with additional evidence and argument. Both parties received my order, and neither party raised an objection nor submitted additional documents.²

In the FORM, Department Counsel references FORM Items 1-4.³ FORM Items 2-4 are admitted into evidence as Government Exhibits (GE) 2-4 without objection.

Findings of Fact

The SOR alleges security concerns based upon two delinquent accounts (SOR ¶¶ 1.a.-1.b.) and delinquent federal income taxes for tax years 2011, 2012, and 2013 (SOR ¶¶ 1.c.-1.e.), respectively. In his response to the SOR, Applicant admitted one medical collection account (SOR ¶ 1.b.) and delinquent taxes for tax year 2013 (SOR ¶ 1.e.). After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact:

Applicant is 49 years old. He graduated from high school in 1986. From 1987 to 1993, he served on active duty in the U.S. military, from which he was honorably discharged. Since 2000, he has been employed full time as a technician for a DOD contractor. He has been married since 1988, and they have two adult children.⁴

Applicant's April 2015 credit report reflects a mortgage-loan account opened in July 2006 with a past-due amount of \$90,703 (SOR ¶ 1.a.). This account has been delinquent since 2012. In his response to the SOR, Applicant claims that the mortgage lender approved a loan modification in about December 2009 or January 2010, but that an error occurred in the processing. Applicant has not provided any documentation to show an approved loan modification, payments in accordance with the modification, or any other debt-resolution efforts associated with this account.⁵

² Hearing Exhibit I.

³ FORM Item 1 consists of the SOR and Applicant's answer, which are pleadings and are included in the administrative record.

⁴ GE 2.

⁵ Response to SOR; GE 3.

Applicant's November 2014 credit report lists a medical-collection account, delinquent since July 2009, in the approximate amount of \$54 (SOR ¶ 1.b.). Applicant admitted this account and has been unable to ascertain this creditor.⁶

As of October 2014, Applicant owed federal income taxes for tax years 2011 (\$721), 2012 (\$3,768), and 2013 (\$5,158), as alleged in SOR ¶¶ 1.c.-1.e., respectively. Applicant attributed the tax delinquency to insufficient tax withholding from his wife's second job. He previously entered into a payment agreement with the IRS, but failed to adhere to that agreement. In his response to the SOR, Applicant claimed that the taxes had been paid for tax years 2011 and 2012 and that he still owed for tax years 2013 (\$3,227) and 2014 (\$3,532). Applicant has not provided any documentation to demonstrate payments on any of the delinquent taxes for tax years 2011 through 2014, nor that he has rectified the problem with his wife's tax withholding.⁷

In his response to the FORM, Applicant acknowledged that he failed to comply with the initial repayment agreement with the IRS, and he claimed that another agreement had been initiated and payments made. However, he provided no documentation to demonstrate payments or the current balances. He further provided no documentation as to any debt-resolution efforts with respect to his mortgage-loan and the medical-collection accounts.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG 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 national security eligibility will be resolved in favor of the 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

⁶ Response to SOR; GE 4.

⁷ Response to SOR; GE 2.

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 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 personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. 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 to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state or local tax as required.

Applicant’s five delinquent debts total approximately \$100,404. The Government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 19(a), 19(c),

and 19(f). Conditions that could mitigate the 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, 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 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
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

The five alleged debts have remained delinquent for several years. Applicant has not provided any documentary evidence of debt-resolution efforts or to show that the circumstances leading to the mortgage and tax delinquencies are unlikely to recur. AG ¶ 20(a) does not apply.

Applicant has not identified any circumstances beyond his control that contributed to his financial problems. He admitted that he was approved for a mortgage-loan modification; however, he did not indicate what circumstances prompted the modification. More importantly, he has provided no documentation of any debt-resolution efforts with respect to his mortgage-loan account and his delinquent taxes. Notwithstanding his awareness of his tax problems in early 2014, his tax delinquencies persisted for tax year 2014. There is insufficient evidence he has acted responsibly in resolving his delinquent debts. AG ¶ 20(b) does not apply.

There is no evidence that Applicant has sought credit counseling. Nor is there evidence of his monthly income or expenses to establish that his financial problems are under control. AG ¶ 20(c) does not apply.

The concept of good faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation."⁸

⁸ See ISCR Case No. 08-12184 at 10 (App. Bd. Jan. 7, 2010) (Good-faith effort to resolve debts must be evidenced by a meaningful track record of repayment).

Applicant has provided no documentary evidence of any debt-resolution efforts nor evidence demonstrating Applicant has acted in a financially responsible manner. AG ¶ 20(d) does not apply.

Applicant previously had a payment arrangement with the IRS but did not adhere to it. He has not provided any documentary evidence that he has initiated and maintained a new payment arrangement with the IRS. AG ¶ 20(g) does not apply. I find that Applicant did not mitigate the financial considerations security concerns.

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(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.

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 and the factors in AG ¶ 2(d) in this whole-person analysis.

Applicant's delinquent mortgage-loan account and tax problems have persisted for several years, and he has not provided any documentary evidence demonstrating that he has made payments and resolved the underlying problems. He also has not provided any evidence demonstrating financial responsibility and good judgment. 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

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance.⁹ Eligibility for access to classified information is denied.

Eric H. Borgstrom
Administrative Judge

⁹ See SEAD 4, Appendix A, ¶¶ 1(d) and 2(c).