



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



In the matter of:)
)
) ISCR Case No: 15-03944
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esquire, Department Counsel
For Applicant: *Pro se*

03/13/2018

Decision

DAM, Shari, Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns, resulting from unpaid taxes and delinquent debts. Based upon a review of the pleadings and exhibits, national security eligibility for access to classified information is denied.

Statement of Case

On December 30, 2015, 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. On June 8, 2017, new AG were implemented and are effective for decisions issued after that date.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 February 4, 2017, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2) On March 9, 2017, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing nine Items, was mailed to Applicant and received by him on March 16, 2017. 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. In response, Applicant submitted a letter and attachments (Reply). He did not object to any of the Government's Items and Department Counsel did not object to his Reply. Hence, Items 1 through 9, and the Reply are admitted into evidence. The Defense Office of Hearings and Appeals (DOHA) assigned this case to me on October 1, 2017.

Findings of Fact

Applicant is 44 years old. He is married and has two children and two-stepchildren. He finished high school in 1990 and earned a certification from a state drafting institute in 1995. Since 2001, he has worked for his current employer, a defense contractor. In 2011, he started a part-time position for a state agency. (Item 3)

On September 21, 2012, Applicant submitted a security clearance application (SCA). In it, he disclosed that he failed to timely pay state taxes for 2010 and 2011. He noted that financial stress and mishandling his tax obligations contributed to the tax problems. He planned to pay or begin resolving the debts by November 2012. (Item 3)

During June and July 2013 interviews, Applicant discussed various delinquent debts, including many that were subsequently alleged in the SOR. He disclosed that he owed unpaid taxes to the Federal government for 2011 and 2012, and unpaid state taxes for 2010, 2011, and 2012. He stated that some financial problems arose in 2007 after other family members moved into his home because of unforeseen difficulties. He admitted that he could have managed his finances better during those times. (Item 9) In his February 2017 answer, he also noted that the debts arose after he experienced a loss of income for 2014 and 2015. (Item 2) In his Reply, he added that he was unable to pay his obligations as a consequence of the unexpected family problems, home repairs, and the loss of yearly employment bonuses due to a decrease in his company's profits. (Reply)

Based on credit bureau reports (CBR) from April 2015, May 2013, and December 2012, the SOR alleged 11 delinquent debts, including 2 judgments. They debts became delinquent between 2012 and 2015, and total about \$20,000. The SOR also included three allegations of unpaid state and Federal taxes for years 2010, 2011, and 2012. (Item 4, Item 5, Item 6) Applicant admitted all allegations in the SOR, except the tax lien in SOR ¶ 1.j because he did not recognize the state listed. (Item 2) The status of each allegation is as follows:

1. Applicant stated that he paid \$1,000 on the \$7,448 debt listed in SOR ¶ 1.a, through a payment plan. He did not provide proof of his assertion. (Item 2) It is unresolved.

2. The \$3,751 credit card debt listed in SOR ¶ 1.b is unresolved.

3. Applicant paid the \$254 debt listed in SOR ¶ 1.c. (Item 2) It is resolved.

4. The \$980 debt listed in SOR ¶ 1.d is unresolved.

5. Applicant is making payments on the \$1,112 debt listed in SOR ¶ 1.e. As of January 2016, he reduced the balance to \$859. (Item 2) It is being resolved.

6. Applicant said he was negotiating a resolution of the \$650 cell phone debt listed in SOR ¶ 1.f. He provided no proof of payments on the plan. (Item 2) It is unresolved.

7. Applicant said he thought he paid the \$594 debt, listed in SOR ¶ 1.g, which is owed to the same cell phone carrier listed in SOR ¶ 1.f, above. (Item 2) It is unresolved.

8. In February 2016, Applicant paid \$96 on the \$481 retail debt listed in SOR ¶ 1.h. He agreed to make four payments. (Item 2) It is being resolved.

9. The \$408 credit card debt listed in SOR ¶ 1.i is unresolved.

10. The \$2,464 state tax lien filed in 2012 and alleged in SOR ¶ 1.j is unpaid.²

11. The \$2,275 judgment owed to the homeowner's association listed in SOR ¶ 1.k was paid through a garnishment and released in January 2016. (Item 2) It is resolved.

12. The \$1,934 judgment owed to homeowner's association listed in SOR ¶ 1.l was paid through a garnishment and released in April 2017. This is the same creditor as listed SOR ¶ 1.k above. (Reply) It is resolved.

13. Applicant submitted documentation that he resolved his unpaid 2010 and 2011 state taxes through a 2016 state tax refund he received in April 2017. (Reply) There is no evidence that he paid or has a plan to pay state taxes owed for 2012, as alleged in SOR ¶ 1.m. These taxes are unresolved.

14. Applicant's 2011 and 2012 unpaid Federal taxes, as alleged in SOR ¶ 1.n, remain unresolved. In his Reply, he stated that he was in contact with a tax specialist to address his 2014 taxes, indicating that they also remain unresolved.³

² The name of the state listed in this allegation is incorrect. The \$2,464 unpaid tax lien is owed to the state listed in SOR ¶ 1.m. (FORM at 2)

³ This derogatory information is not alleged in this case. Hence, it will not be considered in my analysis of disqualifying conditions. It may be considered in analyzing mitigating conditions and the whole-person concept, and in evaluating Applicant's credibility.

During a June 2013 interview, Applicant discussed his budget. His net monthly income was \$5,765 and his expenses were \$6,335, leaving a deficit of about \$570. He said he contacted a company in 2012 to help manage his debts and set up payment plans. He said he was unable to consistently maintain those payment plans. There is no information related to his current financial obligations from which to determine his financial reliability.

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.

This concern is broader than the possibility that an individual might knowingly compromise sensitive information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting sensitive information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified or sensitive information.⁴

AG ¶ 19 describes four 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;
- (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 income tax as required.

⁴ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant has a history of being unable or unwilling to meet his financial and tax obligations, which began in 2010 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 conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties. They are as follows:

- (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
- (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.

Applicant paid the debt in SOR ¶ 1.c. It is mitigated. He presented sufficient proof that the debts in SOR ¶¶ 1.e and 1.h are being paid. They are mitigated. He paid and satisfied the judgments listed in SOR ¶¶ 1.k and 1.l, albeit through garnishments. These debts are mitigated. He resolved his 2010 and 2011 state tax debt as alleged in SOR ¶ 1.m; however, that allegation is not fully mitigated because he has not resolved his 2012 unpaid taxes.

There is insufficient evidence to find that Applicant acted responsibly under the circumstances that contributed to his financial problems, or to demonstrate that he has made a good-faith effort to pay all of his debts and resolve the unpaid Federal and state taxes for several years. These outstanding debts and taxes continue to cast doubt on his current reliability and judgment. He did not provide proof that he established a repayment plan with the taxing bodies and is adhering to the terms. There is limited evidence that he participated in credit counseling and there is insufficient evidence that his financial problems and all SOR allegations are under control. AG ¶¶ 20(a), 20(b), 20(c), 20(d) and

20(g) are not applicable. The 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 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. I have incorporated my comments under Guideline F in this whole-person analysis.

Applicant is a mature individual, who has worked for a defense contractor since 2001. He has been experiencing financial problems for over ten years, beginning in 2007 when family members moved into his home. In 2012, he disclosed unresolved debts and taxes in his SCA. During a June 2013 interview, he discussed his history of financial issues with an investigator. In early January 2016, he received the December 2015 SOR. In February 2016, he answered the SOR. One year later, in March 2017, the FORM notified him that he did not fully mitigate the SOR allegations because he did not provide sufficient proof that he was paying or resolving many debts and delinquent taxes. In April 2017, he submitted additional information about the satisfaction of some taxes and debts. Despite being aware of the Government's security concern for many years, he has not yet established a solid record of addressing debts, resolving state and Federal taxes, or responsibly managing his finances. Overall, the absence of evidence creates sufficient doubt as to Applicant's judgment, reliability, 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
Subparagraphs 1.a and 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f and 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i and 1.j:	Against Applicant
Subparagraphs 1.k and 1.l:	For Applicant
Subparagraphs 1.m and 1.n:	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 access to classified information. National security eligibility for access to classified information is denied.

SHARI DAM
Administrative Judge