



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



In the matter of:)
)
) ISCR Case No. 15-04325
)
Applicant for Security Clearance)

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

03/28/2018

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On June 21, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) 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) effective within the DOD on June 8, 2017.

Applicant answered the SOR on August 22, 2017, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM), and it was received by Applicant on November 1, 2017. He was afforded an opportunity to file objections and submit

material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 6. Applicant did not provide a response to the FORM, object to the Government's evidence, or submit documents. The Government's evidence is admitted. The case was assigned to me on March 2, 2018.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a-1.d, and 1.i. He denied the SOR allegations in ¶¶ 1.e-1.h. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 42 years old. He received an associate's degree in 2005. He has been employed by his present employer, a federal contractor, since November 2013. He disclosed periods of unemployment from August 2010 to December 2011, and January 2009 to March 2009. He served in the military from 1994 to 2007 and was honorably discharged. He married in 2003 and divorced in 2008. He remarried in 2013. He has a four-year-old child and stepchildren ages 19 and 10 years old.¹

Applicant disclosed in his July 2014 Electronic Questionnaire for Investigation Processing (e-QIP) that he previously held a Secret security clearance, which was "denied, suspended, or revoked" in August 2007, due to "negative debt on my credit report."² During his September 2014 background interview with a government investigator he confirmed that his security clearance was suspended due to his negative credit report.³

Applicant admitted the debt in SOR ¶ 1.a (\$12,167). In his SOR answer, he stated the debt was for a repossessed vehicle that he was unable to keep up with the payments. No other information was provided. The debt is unresolved.⁴

Applicant stated in his SOR answer that the debt in SOR ¶ 1.b (\$733) and the judgment in ¶ 1.e (\$866) were the same debt, and he was currently paying ¶ 1.b. I find the debts are duplicates. He did not provide documented proof that he was making payments on the judgment and it remains unresolved.⁵

Section 26 of the e-QIP, asked if Applicant failed to file or pay Federal, state, or other taxes when required by law. He responded "no." He also did not disclose any financial delinquencies. During his background interview, he disclosed that he failed to

¹ Item 3.

² Item 3.

³ Items 2, 3.

⁴ Items 2, 5, 6.

⁵ Items 2, 4, 5, 6.

file his 2008 income tax returns because he could not find the paperwork, but he was searching for it so he could file. SOR ¶ 1.i alleged that Applicant failed to file his 2008 Federal and state income tax returns. Applicant's SOR response was, "I admit. Will file." SOR ¶ 1.d (\$3,229) alleged a delinquent state tax lien. In his SOR answer, he stated, "I admit. Currently repaying." Applicant did not provide evidence that he filed his Federal or state income tax returns or documented proof that he is repaying the state tax lien.⁶

The investigator confronted Applicant with the collection account in SOR ¶ 1.c (\$505). In his SOR answer, he admitted the debt and stated he was "seeking information to start repayment." He was also confronted with the debt in SOR ¶ 1.g (\$504). Applicant indicated he had no knowledge of the account, but would contact the creditor. It appears SOR ¶ 1.c is the original creditor before the debt was transferred to a collection agency and is a duplicate of SOR ¶ 1.g. He did not provide evidence of his action to resolve the debt in SOR ¶ 1.c. It is unresolved, however, I find in his favor for the debt in SOR 1.g.⁷

The investigator confronted Applicant with the collection account in SOR ¶ 1.f (\$185) for car insurance. Applicant told the investigator the account became delinquent when he moved, and he thought he had paid the account, but did not. He stated he would contact the creditor and pay the balance in full. In his SOR answer, he denied the debt. He did not provide evidence that he successfully disputed or resolved the debt.⁸

The investigator confronted Applicant with the collection account in SOR ¶ 1.h (\$250) owed to a government entity. Applicant told the investigator he had no knowledge of the account and would contact the creditor to resolve it, and if it were his debt, he would pay it. He denied the debt in his SOR answer. He did not provide evidence that he successfully disputed or resolved the debt.⁹

Applicant's admissions, statements, and credit reports from April 2017 and July 2014 corroborate the allegations in the SOR. Applicant attributed his financial problems to his 2008 divorce. The loss of his wife's income made it difficult to maintain his financial obligations. He told the government investigator that he was financially stable, and he did not anticipate financial problems in the future. He was willing to pay his debts and intended to take care of his financial obligations.¹⁰

⁶ Items 2, 3, 4, 5, 6.

⁷ Items 2, 4, 5, 6.

⁸ Items 2, 4, 5, 6.

⁹ Items 2, 4, 5, 6.

¹⁰ Items 2, 4, 5, 6.

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 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, these guidelines are applied 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that 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 relating to the guideline 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 greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (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
- (g) 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.

Applicant has delinquent debts that he has been unable or unwilling to resolve. He failed to file his 2008 Federal and state income tax returns. He has an outstanding state tax lien. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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, 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;

(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; 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 did not provide evidence that he has paid, resolved, or is paying any of the alleged delinquent debts. He did not provide evidence that he has filed his 2008 Federal or state income tax returns or made arrangements to pay an outstanding state tax lien. During Applicant's 2014 background investigation, he was made aware of the security concerns raised by his finances. He did not provide evidence of actions he may have taken to dispute or resolve any of the SOR allegations. I conclude the debts alleged in SOR ¶¶ 1.c and 1.g are duplicates and find in his favor for ¶ 1.g. Applicant's financial problems are recent and ongoing. AG ¶¶ 20(a), 20(d), 20(e), and 20(g) do not apply.

Applicant attributed his financial problems to his 2008 divorce. This was beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly. It has been nine years since his divorce. He was made aware of the security concerns during his 2014 background interview. At that time, he indicated his intention to file his 2008 Federal and state income tax returns. Three years later, in his August 2017 SOR answer, he also indicated he was going to file the delinquent returns. There is no evidence he complied or that he has paid any of his delinquent debts. There is no evidence he sought financial counseling and there is no evidence that his financial problem are under control or being resolved. AG ¶ 20(b) has minimal application and AG ¶ 20(c) does not apply.

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 the 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 in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is 42 years old. He is a veteran. While in the military his security clearance was suspended due to his negative financial history. Therefore, he was aware that financial issues are a security concern. He continued to have financial problems. After his background interview, he again was put on notice that his delinquent debts, state tax lien, and failure to file his 2008 Federal and state tax returns were a security concern, but he failed to resolve the issues. He did not provide sufficient evidence that he is paying or resolving his financial obligations. The record evidence leaves me with significant questions and doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

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.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h-1.i:	Against Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge