



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



In the matter of:)
)
) ISCR Case No. 15-04835
)
Applicant for Security Clearance)

Appearances

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

03/16/2018

Decision

GARCIA, Candace Le'i, Administrative Judge:

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

Statement of the Case

On February 23, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). The action was taken under Executive Order (Exec. Or.) 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).¹

Applicant responded to the SOR on April 1, 2016, and requested a hearing before an administrative judge. The case was assigned to an administrative judge on

¹ I decided this case using the AG implemented by DOD on June 8, 2017. However, I also considered this case under the previous AG implemented on September 1, 2006, and my conclusions are the same using either set of AG.

August 12, 2016 and reassigned to another administrative judge on September 11, 2017.

On October 25, 2017, the Government amended the SOR, pursuant to ¶ E3.1.13 of the Directive. It withdrew the allegations in ¶¶ 1.g to 1.n, 1.q, and 1.r; it amended the creditor and amount in allegation ¶ 1.o; and it added allegations ¶¶ 1.u through 1.bb.²

The case was reassigned to me on November 9, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 28, 2017, scheduling the hearing for December 7, 2017. Applicant waived the 15-day notice requirement. I convened the hearing as scheduled.³

I appended to the record as Hearing Exhibits (HE) I and II the Government's discovery letter and exhibit list. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant testified.

At Applicant's request and with no objection from the Government, I left the record open until December 21, 2017, for Applicant to submit additional documentation. Applicant timely provided additional evidence, which I marked collectively as AE A and admitted into evidence without objection. I appended to the record as HE III the Government's amendment to the SOR. DOHA received the hearing transcript (Tr.) on December 18, 2017.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.p, 1.s, and 1.u to 1.bb. He denied ¶¶ 1.a to 1.f, 1.o, and 1.t. He is 45 years old. He earned a bachelor's degree in 2007 and he was pursuing a master's degree as of the hearing. He has never been married and he did not have any children. He resided with his parents as of his 2012 security clearance application.⁴

At the time of the hearing, Applicant worked as a junior cyber analyst for a defense contractor since July 2017. He served honorably in the U.S. military from 1994 to 1999, during which time he was first granted a DOD security clearance. He worked for the federal government from 2003 to 2005. Since October 2005, he has worked for various defense contractors. He has not had any security infractions or violations.⁵

The SOR alleges 7 delinquent consumer accounts totaling \$31,543 (SOR ¶¶ 1.o – 1.p, 1.s – 1.v, 1.bb) and 11 delinquent medical debts totaling \$3,313 (SOR ¶¶ 1.a – 1.f, 1.w – 1.aa). The debts are established by Applicant's admissions and credit reports

² Tr. at 11, 13-14.

³ Tr. at 5-6.

⁴ Response to the SOR; Tr. at 7, 13-14, 22-23; GE 1.

⁵ Tr. at 7-10, 23-39, 55-78; GE 1. Applicant testified that his position was a temporary one that was slated to end in late December 2017.

from July 2012, April 2015, January 2016, and October 2017. Applicant also disclosed some of his debts on his 2012 security clearance application.⁶

Applicant attributes his delinquent debts to the changing nature of defense contracting and the periods in which he was either unemployed, without unemployment benefits, or worked full-time for a temporary agency during the interim of his contracts. He also cited to a serious illness from 2011 to 2012 as a contributing factor. He acknowledged that his decision to leave the federal government to work for defense contractors was a voluntary one. He also acknowledged that the only position with a defense contractor that he did not voluntarily leave occurred in November 2010.⁷

Applicant first worked for a defense contractor from October 2005 to November 2006. He next worked for a defense contractor from January 2007 to November 2008, the latter period in which he was scaled to a part-time status because the contract was in danger of losing funding. He voluntarily left and worked for a temporary agency for six months until May 2009. He then worked for another defense contractor until October 2009, but voluntarily left because it was not a good fit. He was unemployed for ten months from October 2009 to August 2010. From August 2010 to November 2010, he worked for another defense contractor, but left after he became ill. He then worked for another defense contractor for only 10 days after his illness worsened. He acknowledged that he was terminated because his employer was unable to track his physical whereabouts during business hours, but stated that he was falsely accused of abandoning the job. During the period in question, he stated that he was on sick leave and reported such to his supervisor.⁸

Applicant was severely ill for 16 to 18 months in early 2011 to mid-2012, during which time he had lengthy stays and multiple visits to the hospital. During this period, he was covered solely by insurance through the U.S. Department of Veterans Affairs (VA); since 2012, he obtained supplemental insurance. He also worked for a temporary agency and did not have consistent employment, in that he worked full-time only 20% of the time, at a reduced income of \$15 to \$20 an hour.⁹

From July 2012 to May 2013, he worked for another defense contractor. Less than one month into his employment, his income was reduced from \$79,000 to \$60,000, after he was given the option to take a lower position at the reduced income because the position for which he was initially hired was no longer available. He then left the job voluntarily because the position was not a good fit. Several months later, he worked for a temporary agency for two months until September 2013. He then worked for another defense contractor until April 2014, at an annual salary of \$75,000. He voluntarily left

⁶ GE 1-5.

⁷ Tr. at 23-39, 55-78; GE 1.

⁸ Tr. at 23-39, 55-78; GE 1.

⁹ Tr. at 23-39, 55-78; GE 1.

after he was told that he would likely be laid off unless he took a position in a different state. He then worked for a temporary agency for four months until September 2014.¹⁰

For nine months, from late 2014 until the summer of 2015, he worked for the same defense contractor for whom he worked in 2012. His annual salary was \$91,000. He voluntarily left to pursue new opportunities. He was unemployed for one month before he became reemployed in September 2015, with the same defense contractor for whom he worked in 2014. His starting annual salary was \$94,000. It was \$96,000 when he left in July 2016. He left primarily because he had received the SOR and was told that doing so would stop the adjudication of his security clearance. He also cited to some changes in upper management as contributing factors. He was unemployed for one month until August 2016. He then worked for a temporary agency for six months until mid-February 2017. He was unemployed until July 2017. He began working for his current defense contractor in July 2017, at an annual salary of \$30,000.¹¹

SOR ¶¶ 1.a to 1.f are medical debts associated with Applicant's 2011 hospital visits. Though he tried to go to the VA hospital for most of his medical care, he acknowledged there were times when he went to a different hospital that was in closer proximity to him. When he did so, he knew that he would be responsible for the out-of-pocket costs. In his response to the SOR, he stated that he was in the process of trying to determine the origin of these debts. At hearing, he testified that he contacted his medical creditors in 2016 and confirmed that they were valid debts, but some were more than seven years old. He paid a total of \$250 towards multiple medical debts for a hospital he frequented in 2011, but he could not say which ones. He did not provide documentation to corroborate his claims.¹²

SOR ¶¶ 1.o, 1.s, and 1.bb are for the deficiency balances of three different cars that were involuntarily repossessed in September 2014, the fall of 2013, and April 2017, respectively. Applicant was in contact with the creditor for SOR ¶ 1.bb prior to the repossession, in an attempt to bring his account current, but he was unsuccessful. Applicant contacted the creditor for SOR ¶ 1.o in 2016 and almost settled the debt, but took a step back after he had suspicions as to whether he was communicating with the proper third party. He contacted the creditors for SOR ¶¶ 1.s and 1.bb. He had not made any payments towards any of these debts.¹³

SOR ¶ 1.p is for a credit card that became delinquent in 2010. Applicant testified that he made some payments towards it and was in contact with the creditor in 2012, but decided to place it at a low priority since it was an old debt that would potentially fall

¹⁰ Tr. at 23-39, 55-78; GE 1.

¹¹ Tr. at 23-39, 55-78; GE 1.

¹² Tr. at 39-44, 53, 55-58, 68-71.

¹³ Tr. at 44-47, 51-54, 71-74.

off his credit report. He did not provide documentation to corroborate his claim of payment.¹⁴

SOR ¶ 1.t was for a student loan Applicant obtained in 2009. He initially disputed the amount but then decided to pay it. He provided documentation to show that he resolved it in July 2015. It was no longer reported on his 2016 and 2017 credit reports.¹⁵

SOR ¶ 1.u is for a delinquent cable bill that was unresolved.¹⁶

SOR ¶ 1.v is for delinquent car insurance. Applicant spoke to the creditor four months prior to the hearing. He intended to resolve this debt so that he could obtain insurance and another car.¹⁷

SOR ¶¶ 1.w to 1.aa are for out-of-pocket medical costs associated with two surgeries from 2015 to repair a scar. The costs were not covered by Applicant's VA or supplemental insurance. He was unhappy with the level of care he received. He has not resolved or disputed these debts.¹⁸

Applicant believed he had other delinquent debts, some for which he made good-faith payments, but he could not recall the specifics. He was careful whom he paid because he wanted to avoid identity theft. He has not received financial counseling because he did not believe his obligations were insurmountable. He prioritized his debts so that he could first pay his day-to-day expenses, then address his more recent debts, and finally address his older debts. He intended to resolve his debts as soon as he had stable employment.¹⁹

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, 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

¹⁴ Tr. at 46-47.

¹⁵ Tr. at 47-48, 53, 72-73; GE 4, 5; AE A.

¹⁶ Tr. at 48.

¹⁷ Tr. at 48-49.

¹⁸ Tr. at 26-28, 49-53, 56-58, 70-71.

¹⁹ Tr. at 52-54, 61-68, 72-78; GE 1.

overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 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 Exec. Or. 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* Exec. Or. 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 greater risk of having to engage in illegal or otherwise questionable 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; and
- (c) a history of not meeting financial obligations.

Applicant was unable to pay his debts. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as disqualifying conditions.

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;
- (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.

As Applicant resolved SOR ¶ 1.t, AG ¶ 20(b) applies to that debt. The remainder of Applicant's SOR debts, however, are unresolved. He has known since February 2016 that the Government had concerns with his delinquent debts. He did not provide corroborating documentation to show that he made a good-faith effort to resolve them or that he disputed any of them. His finances are not under control. There is insufficient evidence to conclude that his financial problems are unlikely to recur. His failure to address his delinquent debts casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(d), and 20(e) do not apply to his remaining debts.

Conditions beyond his control, as previously discussed, contributed to Applicant's financial problems. For the full application of AG ¶ 20(b), Applicant must provide evidence that he acted responsibly under the circumstances. Again, Applicant has not provided corroborating documentation of his efforts to resolve his remaining SOR debts. There is insufficient evidence to conclude Applicant acted responsibly under his circumstances. AG ¶ 20(b) is only partially applicable.

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 in my whole-person analysis.

I have considered Applicant's honorable military service, prior work for the federal government, and his work for various defense contractors since 2005. I have considered that he has not had any security infractions or violations since he was first granted a security clearance. I have also considered the circumstances that contributed to his financial delinquencies.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. 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.f, 1.o – 1.p, 1.s, 1.u – 1.bb:	Against Applicant
Subparagraphs 1.g - 1.n, 1.q, 1.r:	Withdrawn
Subparagraph 1.t:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Candace Le'i Garcia
Administrative Judge