



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 15-05259
)	
)	
Applicant for Security Clearance)	

Appearances

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

01/16/2018

Decision

HOGAN, Erin C., Administrative Judge:

On December 29, 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 (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense after September 1, 2006. On June 8, 2017, the AGs were updated and the AGs effective September 1, 2006 were cancelled. This decision will be decided based on the new AGs effective on June 8, 2017. If I were to consider this case under the AGs effective September 1, 2006, it would result in the same outcome.

On March 1, 2017, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on March 22, 2017. The case was assigned to another administrative judge on September 26, 2017, and transferred to me on November 9, 2017. A Notice of Hearing was issued on November 9, 2017, scheduling the hearing for November 20, 2017. The hearing was held as scheduled. During the hearing, the Government offered six exhibits which were

admitted as Government Exhibits (Gov) 1 – 6. Applicant testified and offered two exhibits which were admitted as Applicant Exhibits (AE) A – B. The transcript (Tr.) was received on November 30, 2017. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

Applicant is a 40-year-old employee of a Department of Defense contractor seeking a security clearance. He has worked for his current employer for three years. He left high school after completing 10th grade. He is previously divorced. Two children were born during the marriage, currently ages 16 and 19. He has an eight-year-old child from another relationship. He remarried. His second wife's child lives with him and they have a child who is about three months old. (Tr. 19 – 22, 25, 30-32, 46; Gov 1)

Guideline F, Financial Considerations:

Applicant's security clearance background investigation revealed 12 delinquent debts, an approximate total of \$30,508. The delinquent debts include: a \$5,977 charged-off credit card account (SOR ¶ 1.a: Gov 2 at 2; Gov 3 at 1; Gov 4 at 6); a \$4,521 charged-off credit union account (SOR ¶ 1.b: Gov 2 at 3; Gov 3 at 2; Gov 4 at 10); a \$5,288 charge-off credit union account (SOR ¶ 1.c: Gov 2 at 3; Gov 3 at 2; Gov 4 at 4); a \$129 charged-off credit union account (SOR ¶ 1.d: Gov 2 at 3; Gov 3 at 2; Gov 4 at 8); and a \$2067 debt owed to an apartment that was placed for collection. (SOR ¶ 1.e: Gov 3 at 2; Gov 4 at 5-6).

Additional delinquent accounts include: a \$5,739 judgment entered in January 2011 on behalf of a credit union; (SOR ¶ 1.f: Gov 4 at 3; Gov 5); a \$5,693 judgment entered in February 2011 on behalf of a credit union (SOR ¶ 1.g: Gov 6); a \$200 cell phone account placed for collection (SOR ¶ 1.h: Gov 4 at 5); a \$100 account placed for collection by a municipality (SOR ¶ 1.i: Gov 4 at 10); a \$205 traffic/speeding ticket placed for collection (SOR ¶ 1.j: Gov 4 at 10); a \$505 traffic/speeding ticket placed for collection (SOR ¶ 1.k: Gov 4 at 10); and an \$80 speeding ticket placed for collection. (SOR ¶ 1.l: Gov 4 at 10)

Applicant admits the SOR debts alleged in SOR ¶¶ 1.a – 1.c, 1.h, 1.j, and 1.k. He denies the SOR debts alleged in SOR ¶¶ 1.d, 1.f, 1.g, 1.i, and 1.l. He believes the debts alleged in SOR ¶¶ 1.c, 1.f, and 1.g are all the same account. I find for Applicant with respect to the debt alleged in SOR ¶ 1.c because it is the underlying debt for one of the judgments alleged in SOR ¶¶ 1.f and 1.g. He denies the debts alleged in SOR ¶¶ 1.d, 1.i, and 1.l because he does not recognize them. (Response to SOR)

Applicant was fired from a previous employer because of alcohol abuse in October 2011. He was unemployed for 18 months until March 2013. He attended treatment for his alcohol abuse and has been sober for seven years. Applicant occasionally works as a bouncer at a nightclub. Applicant's hours at his current job were recently reduced to part-time pending the outcome of the security clearance

investigation. Applicant attributes his financial problems to unemployment and under-employment. (Tr. 22-30; Gov 1, section 13A).

During the hearing Applicant submitted a debt negotiation agreement he entered into with a debt repayment company on November 9, 2017. The debts alleged in SOR ¶¶ 1.a and 1.b are included in the agreement. Applicant made his first payment towards the agreement in December 2017. He agreed to a monthly payment of \$299. (AE B; Tr. 33, 42) Applicant also looked into another debt repayment company, but did not enter into an agreement with them. (AE A; Tr. 43)

Applicant's budget is listed in his debt repayment agreement. His monthly take home pay is \$2,000. His monthly expenses are \$1,700. After the payment towards the repayment agreement, he will have \$1 left over each month. The budget did not take into account Applicant's \$1,000 monthly child support obligation. (Tr. 42-43; AE B)

During the hearing, Applicant testified that he intends to enter his remaining debts into the debt repayment agreement. (Tr. 35-43) At the close of the record none of the debts were resolved.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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(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 access 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.

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 applicant or proven by Department Counsel. . . ." The

applicant 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 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 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).

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 notes several disqualifying conditions that could raise security concerns. The disqualifying conditions that are relevant to Applicant's case include:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has a long history of financial problems. He currently has over \$30,000 in unresolved delinquent debt. AG ¶¶ 19(a) and 19(c) apply.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

AG ¶ 20 includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply:

- (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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(a) does not apply because Applicant's financial problems are ongoing. He has had a history of not meeting his financial obligations since at least 2011 when the first judgments were filed against him. Applicant's financial issues continue to raise questions about his reliability, trustworthiness, and good judgment.

AG ¶ 20(b) partially applies, because Applicant encountered several periods of unemployment. However, I cannot conclude Applicant acted responsibly under the circumstances because of his lack of attention towards his delinquent debts while he was employed. Several of the debts were less than \$200 (SOR ¶¶ 1.d, 1.h, 1.j, 1.l). Applicant did not attempt to resolve any of these debts to demonstrate that he was

doing what he can to resolve his financial situation. For this reason, AG ¶ 20(b) is given less weight.

AG ¶ 20(d) does not apply. I cannot conclude that Applicant made a good-faith effort to resolve his delinquent debts. In November 2017, he entered into a debt negotiation agreement to resolve the debts alleged in SOR ¶¶ 1.a and 1.b. He did not begin making payments on the plan at the time of the hearing. I cannot conclude that he is adhering to the terms of the payment plan. He intends to include the remaining delinquent accounts in this agreement, however, a promise to pay in the future does not indicate a good-faith initiative to resolve one's debts. I do note that Applicant's recent reduced work status to part-time has further hindered his ability to pay his debts. His financial situation prevents him from resolving his debts, even if he was employed full-time.

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 considered Applicant's periods of unemployment. I considered Applicant's seven years of sobriety. I considered that Applicant is the father of four children and one stepchild. I also considered Applicant's current budget and child support obligations prevent him from making payments towards his delinquent accounts. At some time in the future, Applicant may be capable of paying his debts. At present, Applicant's financial situation is unstable and it is unlikely to improve in the near future. Questions remain about Applicant's trustworthiness and reliability. Security concerns under financial considerations are not mitigated.

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.b, 1.d -1.l:	Against Applicant
Subparagraph 1.c:	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 security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

ERIN C. HOGAN
Administrative Judge