



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



In the matter of:)
)
) ISCR Case No. 15-06405
)
Applicant for Security Clearance)

Appearances

For Government: Bryan J. Olmos, Esq., Department Counsel
For Applicant: *Pro se*

10/30/2017

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant refuted the personal conduct security concerns, but he did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On January 6, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E (personal conduct) and F (financial considerations). Applicant responded to the SOR on March 1, 2016, and requested a hearing before an administrative judge.

The case was assigned to me on May 1, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 16, 2017, scheduling the hearing for June 27, 2017. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 6 were admitted in evidence without objection. Applicant testified, but he did not submit documentary evidence. The record was held open for Applicant to submit additional information. Nothing additional was submitted. DOHA received the hearing transcript (Tr.) on July 7, 2017.

Findings of Fact

Applicant is a 39-year-old employee of a defense contractor. He served on active duty in the U.S. military from 2001 until he was honorably discharged in 2014. He has worked for his current employer, or a predecessor contractor, since shortly after his discharge from the military. He seeks to retain a security clearance. He attended college for a period without earning a degree. He and his wife have two children, and he has two children from a previous relationship.¹

The SOR alleges a \$5,739 unpaid judgment (SOR ¶ 1.a); the underlying debt that resulted in the judgment (SOR ¶ 1.b); \$2,861 in child support arrearages (SOR ¶ 1.c); a debt that was \$203 past due (SOR ¶ 1.d); and a \$314 charged-off debt (SOR ¶ 1.e).

Applicant's car was voluntarily repossessed in about 2007. He stated that his wife lost her job when he was transferred to a new duty station. The finance company obtained a \$5,739 judgment against him in December 2010. Applicant testified that he settled the judgment for about \$3,000 in 2016.² He provided contradictory information in his March 2017 response to the SOR, in which he wrote:

Once we had the judgment we contacted [creditor] about taking care of this matter they were no longer in service[.] I contacted the courts and they had no info on how to take care of this matter. This matter is no longer on my credit report.

The judgment is reported by Equifax on the December 2014 combined credit report. It is not listed on the July 2016 and June 2017 Equifax credit reports.³

Applicant stated that his child support arrearages resulted from him paying money directly to the child's mother before the court order was issued. He has been consistently paying his monthly child support obligation, plus arrearages. The debt is reported by Equifax on the December 2014 combined credit report. It is not listed on the July 2016 and June 2017 Equifax credit report.⁴

The revolving credit debt alleged in SOR ¶ 1.d is listed on the December 2014 credit report as \$203 past due with a \$991 balance. It is listed on the July 2016 and June 2017 credit reports as a charged-off account that was transferred or sold. The balance is reported as \$0.⁵

¹ Tr. at 31-33, 39-40; GE 1, 2.

² Tr. at 18-22; Applicant's response to SOR; GE 2.

³ GE 4-6.

⁴ Tr. at 22-23, 31-32; Applicant's response to SOR; GE 2, 4-6.

⁵ GE 4-6.

The delinquent credit card debt alleged in SOR ¶ 1.e is listed on the December 2014 credit report as \$134 past due with a \$792 balance. It is listed on the July 2016 and June 2017 credit reports as a charged-off account that was \$314 past due, with an \$884 balance.⁶

Applicant testified that his wife told him that she paid the debts alleged in SOR ¶¶ 1.d and 1.e. He asserted that his finances are currently stable, and that he is able to pay his bills without accruing any additional delinquent debts. He has not received formal financial counseling. He was advised at the hearing of the importance of documenting his purported settlement of the judgment and payment of the debts alleged in SOR ¶¶ 1.d and 1.e.⁷ No documents were submitted.

Applicant submitted a Questionnaire for National Security Positions (SF 86) in December 2014. He did not report any issues under the financial questions. He denied intentionally falsifying the SF 86.⁸ After considering all the evidence, I find insufficient evidence for a determination that Applicant intentionally falsified the SF 86. I attribute the false statements to an inattention to detail and a disregard for the state of his finances.

Applicant served deployments to combat zones. He was injured, which resulted in his medical retirement from the military. He is rated by the Department of Veterans Affairs as 100% disabled.⁹

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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

⁶ GE 4-6.

⁷ Tr. at 23-24, 34-41; Applicant's response to SOR; GE 2.

⁸ Tr. at 24-27, 38-39; GE 1.

⁹ Tr. at 27-30; GE 1.

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 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 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;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has a history of financial problems including an unpaid judgment after a repossession, child support arrearages, and delinquent debts. The evidence is sufficient to raise the above disqualifying conditions.

SOR ¶ 1.b alleges the underlying debt that resulted in the judgment alleged in SOR ¶ 1.a. The same debt should not be alleged twice. SOR ¶ 1.b is concluded for Applicant.

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 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
- (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;

I am satisfied that Applicant has been paying his child support and arrearages. SOR ¶ 1.c is mitigated. Applicant stated that his wife lost her job when he was transferred to a new duty station. He asserted, without documentation, that he settled

the judgment and paid the two delinquent debts. Applicant was put on notice of the importance of documenting any payments. He did not provide any documents during the hearing or post-hearing. The Appeal Board has held that “it is reasonable for a Judge to expect applicants to present documentation about the satisfaction of specific debts.” See ISCR Case No. 09-07091 at 2 (App. Bd. Aug 11, 2010) (quoting ISCR Case No. 04-10671 at 3 (App. Bd. May 1, 2006)). I am also concerned about the inconsistent statements about the judgment. Applicant admitted in his March 2017 response to the SOR that the judgment had not been paid, but he testified that he settled it in 2016.

I am unable to find that Applicant acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(c), 20(d), and 20(e) are not applicable. AG ¶ 20(b) is partially applicable. I find that financial considerations concerns remain despite the presence of some mitigation.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

There is insufficient evidence for a determination that Applicant intentionally falsified the SF 86. AG ¶ 16(a) has not been established. SOR ¶¶ 2.a and 2.b are concluded for Applicant.

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 Guidelines E and F in my whole-person analysis.

I considered Applicant's honorable military service, and particularly his multiple combat deployments. However, he has unresolved financial problems.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant refuted the personal conduct security concerns, but he 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
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b-1.c:	For Applicant
Subparagraphs 1.d-1.e:	Against Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraphs 2.a-2.b:	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.

Edward W. Loughran
Administrative Judge