



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



In the matter of:)
)
) ISCR Case No. 16-01170
)
Applicant for Security Clearance)

Appearances

For Government: Andrew Henderson, Esq., Department Counsel
For Applicant: *Pro se*

11/22/2017

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations or personal conduct security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On October 12, 2016, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. DOD acted 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).¹

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

Applicant's first answer to the SOR was undated, but he requested a hearing before an administrative judge. His second answer was dated November 19, 2016. The case was assigned to me on February 15, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 28, 2017, and the hearing was convened as scheduled on June 22, 2017. The Government offered exhibits (GE) 1 through 5, which were admitted into evidence without objection. Applicant testified and offered one exhibit (AE A), which was admitted without objection. The record was held open to allow the Government to offer a more recent credit report (GE 6). Applicant was served with a copy of GE 6 and posed no objections. It was admitted into the record. DOHA received the hearing transcript (Tr.) on July 6, 2017.

Findings of Fact

Applicant denied all the allegations. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 52-year-old former employee of a defense contractor. He is currently being sponsored for a security clearance by his former employer. He worked for this employer beginning in November 2014 through October 2106. Before this job he was unemployed from May to June 2014. He has a bachelor's degree. He married in 1987 and divorced in 2014. He has three children.²

The SOR alleges one unpaid judgment and 24 delinquent debts totaling approximately \$21,162. The judgment and debts were listed in credit reports from January 2015, March 2016, December 2016, and June 2017. It also alleged Applicant deliberately failed to list any defaulted loans, debts turned over to a collection agency, and debts over 120 days delinquent within the past seven years on his security clearance application (SCA).³

Applicant's unemployment and divorce contributed to his financial problems. He also claimed that the majority of the debts were not his. He admitted knowing about the vehicle repossession debt (SOR ¶ 1.a) when he completed his SCA, but thought his ex-wife took care of the debt. He also admitted knowing about the collection debt listed in SOR ¶ 1.b when he completed his SCA. He also admitted that he was not open and honest when interviewed by a defense investigator about his delinquent debts. He stated the remaining debts were paid or he denied them. He failed to produce documentation supporting either payment of the debts, or supporting his denial that he incurred the debts. He claimed he hired a debt-relief company (DRC) to examine the debts on his credit reports and determine if any debts were erroneous. He failed to provide documentation showing the agreement he entered with the DRC. He provided a document showing the removal of 33 entries from his credit reports. No explanation was given in the report for the removals and, except for one debt (SOR ¶ 1.h), no correlation was shown between the SOR debts and the removed entries. There is no

² Tr. at 6, 19-20; GE 1-2.

³ GE 1-6.

correspondence supporting Applicant's claimed attempt to contact any creditors. Applicant's outstanding obligations remain unresolved.⁴

Appellant is current on his student loan payments. His current take home pay is approximately \$2,000 monthly. Other than his involvement with the DRC, there is no evidence of financial counseling.⁵

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 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(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." 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, 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 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible

⁴ Tr. at 31-49, 53; AE A.

⁵ Tr. at 51.

extrapolation about 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

AG ¶ 18 expresses the security concern for financial considerations:

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.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (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 delinquent debts that remain unpaid or unresolved. I find all the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following 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;

(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.

Applicant's debts are recent and multiple, and his inaction in addressing any of his debts shows a lack of reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

Applicant's divorce and period of unemployment are circumstances beyond his control. Other than hiring a DRC, which achieved little practical results, Applicant has done nothing to address his debts and the judgment. Overall, the record evidence does not support that Applicant's actions were responsible under the circumstances. AG ¶ 20(b) is partially applicable.

There is no evidence Applicant received financial counseling. Given the unpaid status of all the debts, Applicant's financial problems are not under control. Evidence of good-faith efforts to pay or resolve the remaining debts is lacking. AG ¶¶ 20(c) and 20(d) do not apply. Other than showing that SOR ¶ 1.h was removed from his credit report, Applicant failed to document disputes for the remaining debts. AG ¶ 20(e) does not apply, except to SOR ¶ 1.h.

Guideline E, Personal Conduct

AG ¶ 15 expresses the personal conduct security concern:

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 or sensitive information. Of special interest is any failure to

cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying in this case. 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 national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant admitted the he was aware of at least two of his delinquent debts when he completed his SCA. I conclude that he intentionally withheld this information when he completed his SCA. AG ¶ 16(a) applies.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered all of the mitigating conditions under AG ¶ 17 and found the following relevant:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Honestly completing an SCA is the initial crucial step in gaining access to classified information. The Government expects, and must rely on, the honesty of applicants during this process. Therefore, providing false information at this stage is not a minor offense. Such deliberate action casts doubt on Applicant's reliability, trustworthiness, and good judgment. AG ¶ 17(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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

I considered Applicant's federal contractor service and the circumstances surrounding his indebtedness. I considered his period of unemployment and his divorce. However, I also considered that he has made no effort to resolve his debts. He also deliberately failed to list his debts on his SCA. He has not established a meaningful track record of debt management, which causes me to question his ability to resolve his debts.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the financial considerations or the personal conduct 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.g:	Against Applicant
Subparagraph: 1.h:	For Applicant
Subparagraphs: 1.i – 1.y:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph: 2.a:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge