



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



In the matter of:)
)
) ISCR Case No. 16-01305
)
Applicant for Security Clearance)

Appearances

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

11/20/2017

Decision

GARCIA, Candace Le'i, Administrative Judge:

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

Statement of the Case

On October 6, 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) implemented by DOD on June 8, 2017.

Applicant responded to the SOR on October 30, 2016, and requested a hearing before an administrative judge. The case was assigned to me on July 20, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 7, 2017, scheduling the hearing for September 1, 2017. I convened the hearing as scheduled.

The Government amended the SOR, pursuant to ¶ E3.1.17 of the Directive, to add an allegation numbered SOR ¶ 2.a under Guideline J (criminal conduct). The Government's discovery letter, letter notifying Applicant of its amendment to the SOR, amendment to the SOR, exhibit list, and file of relevant material were appended to the record as Hearing Exhibits (HE) 1-5, respectively. Government Exhibits (GE) 1 through 7 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through G, which were admitted in evidence without objection.

At Applicant's request and with no objection from the Government, I left the record open until September 22, 2017, for Applicant to submit additional documentation. Applicant timely provided additional evidence, which I marked collectively as AE H and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on September 12, 2017.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a to 1.j and denied SOR ¶ 2.a. He is 51 years old. He was born in Afghanistan, immigrated to the United States in April 1989, and became a naturalized U.S. citizen in September 1996. He received his high-school diploma and attended two years of college, but did not earn a degree. He has received numerous vendor certificates. He is married, and he has four children, ages 18, 16, 15, and 14.¹

Applicant has worked in various positions with the same defense contractor since 2003. He has worked in his current position as a linguist recruiter since May 2017. He was deployed overseas with his company from September 2008 to September 2013, June 2015 to December 2016, and November 2016 to April 2017. He has held a DOD security clearance since 2007.²

The SOR alleges a judgment entered against Applicant in 2015 for \$1,067; a federal tax lien entered against Applicant in 2015 for \$8,571; and eight delinquent consumer accounts totaling \$85,775. It also alleges that Applicant was arrested and charged in July 2017 with felony domestic assault and two counts of misdemeanor domestic assault; and that the charges were pending as of the date of the SOR.

The financial SOR allegations are established by Applicant's admissions and credit reports from June 2015, November 2015, July 2016, and December 2016. Applicant also disclosed his debts on his May 2015 security clearance application and discussed them in his March 2016 response to interrogatories. The criminal allegation is established by a Joint Personnel Adjudication System (JPAS) incident history report, in

¹ Response to the SOR; Tr. at 7-8, 15-18, 33-45, 75-76; GE 1.

² Response to the SOR; Tr. at 7-8, 15-18, 33-45, 75-76; GE 1.

which Applicant self-reported his arrest to his security office in July 2017, documentation provided by Applicant, and Applicant's testimony.³

Applicant attributes his debts to his family's involvement in a serious car accident in September 2013 while he was deployed overseas, a result of which he left his job on emergency status, returned to the United States, and was unemployed for three months. His wife, who worked as a county bus attendant prior to the accident, was consequently unemployed for nine months. Though most of the medical expenses incurred as a result of the injuries sustained by his wife and children from the accident were covered by health insurance, Applicant was responsible for and paid \$11,000 in medical costs. Applicant worked as a recruiter from December 2013 to February 2015, but he earned a limited income of \$60,000 annually, having previously earned \$11,000 to \$16,000 monthly while he was deployed between 2003 and 2013. He supplemented his income with minimal earnings he made from working as an Uber driver. As a result, from September 2013 to February 2015, Applicant supported himself and his family primarily with credit cards and income he had earned prior to the accident.⁴

Between February and March 2015, Applicant was again unable to work due to health issues, though he occasionally also drove an Uber during this period. Between June 2015 and April 2017, Applicant deployed overseas with his employer and earned \$11,000 monthly. He intended to use the \$18,000 in settlement money given to his wife in her suit against the other driver who was determined to be at fault for the accident, but his wife spent the money before he returned from deployment. In April 2017, Applicant suffered a heart attack while on duty during deployment, and he was consequently medevacked to a location where he was hospitalized for seven days before he was sent home. Applicant was responsible for and paid \$3,500 in medical costs as a result of his heart attack. He was unemployed from April to May 2017. Since May 2017, he has worked as a recruiter but again earns a limited income of \$60,000 annually; his wife earned \$1,900 monthly, a \$200 raise from her monthly income prior to the accident.⁵

SOR ¶ 1.a is a \$1,607 judgment to a hotel and casino entered against Applicant in October 2015. During his visits home for vacation from deployment between 2008 and 2013, Applicant accompanied his uncle on various occasions to a hotel and casino so that his uncle could gamble. Applicant also gambled on occasion. In 2014, Applicant opened a \$1,500 line of credit at his uncle's request. Applicant expected his uncle to pay the debt. When he learned of the judgment in 2016, Applicant testified that he sent the related documentation to his uncle so that his uncle could pay the judgment. He last spoke to his uncle three weeks prior to the hearing, and his uncle told him that he would pay the judgment as soon as he is recovered from a medical emergency.⁶

³ Response to the SOR; Tr. at 32-33, 67-76, 86-88; GEs 1-7; AE F at 1; AE H at 7-11.

⁴ Tr. at 29-31, 33-45, 76-78, 82; GEs 1, 2, 7; AE A.

⁵ Tr. at 29-31, 33-45, 76-82, 85; GEs 1, 2, 7; AE A.

⁶ Response to the SOR; Tr. at 45-49, 51-53, 82; GEs 2, 3, 4, 6.

SOR ¶ 1.b is a federal tax lien of \$8,561 filed against Applicant in 2015 for unpaid 2012 federal taxes. Applicant stated he is responsible for paying his taxes as a contractor, and in 2012, his family spent the money he allocated to pay his taxes. The IRS letter concerning the debt that was sent to his house while he was deployed was neglected by his wife and children. Upon receiving an email from the IRS, he made a payment arrangement of \$250 monthly in October 2015. He made payments in accordance with the plan until April 2017, and the IRS also applied his tax refunds from 2015 and 2016 towards the lien. Applicant provided an August 2016 letter from the IRS reflecting Applicant's installment agreement of \$250 monthly, and an outstanding balance of \$4,208 for his 2012 taxes. He also provided a June 2017 notice from the IRS indicating that he had a \$3,072 overpayment from his 2016 federal taxes, of which \$1,579 was applied to his outstanding 2012 taxes, and \$1,492 of which was due to him as a refund. I find that Applicant resolved SOR ¶ 1.b.⁷

SOR ¶ 1.c is for a contract termination fee when Applicant switched from one telephone provider to another. He telephonically disputed the amount owed because he thought the new provider would pay the termination fee, but he was unaware of the result of his dispute because he was deployed. He acknowledged that he received correspondence from a collection agency, and he intended to verify the debt. As of the hearing date, he had not contacted the telephone provider, nor had he communicated with the collection agency.⁸

SOR ¶ 1.d is for a debt incurred with another telephone provider for a phone line Applicant obtained in 2014. Applicant's family incurred this debt while he was deployed. He sent letters to the telephone provider in late 2016, but he was unaware whether the provider responded because he was deployed.⁹

SOR ¶ 1.e is for a credit card Applicant used during his periods of unemployment. It became delinquent because he did not have the money to pay it. As of the hearing date, Applicant was negotiating with a third party who held the account.¹⁰

SOR ¶ 1.f is for a credit card debt that was sold to an attorney for a collection agency. Applicant believed that the collection agency obtained a judgment against him while he was deployed between 2015 and 2016, as it garnished \$2,700 from his bank account. His wife reached a payment arrangement with the creditor, and he believed this debt was paid. He provided a March 2016 payment receipt and a December 2016 letter from the attorney for the collection agency, reflecting that Applicant made payments of \$100 and \$300, respectively. Applicant noted on the December 2016 letter

⁷ Response to the SOR; Tr. at 31, 49-51, 82-83; GEs 2, 3, 4, 6; AE B; AE H at 6.

⁸ Tr. at 53-56, 83-84; GEs 1, 3, 4.

⁹ Tr. at 56-57, 84-85; GEs 3, 4, 6.

¹⁰ Response to the SOR; Tr. at 32, 57-58; GEs 1-6.

that he made installment payments in accordance with the payment arrangement, and the debt was paid. He did not provide documentation to show that this debt was paid.¹¹

SOR ¶ 1.g is for a credit card Applicant used to support his family after the accident. Applicant testified that it was sold to a third party, who then sold it to another party. He was in the process of trying to reach the creditor that currently holds the debt so that he can settle it.¹²

SOR ¶ 1.h is a store account. Applicant testified that he paid this account before he deployed. He corresponded with the store in 2016. He testified that he needs to investigate further to determine who incurred the charges and to verify the debt.¹³

SOR ¶ 1.i is the mortgage account for the home Applicant purchased in October 2011. He became delinquent on his mortgage after the accident. He obtained a loan modification at the end of 2014, the terms of which were remodified in late June 2015. Since then, he paid \$2,600 monthly in compliance with the modified loan. As of the hearing date, he was one month delinquent on his mortgage because he incurred legal fees after his arrest in July 2017; he expected to bring his mortgage current by October 2017. Applicant provided documentation reflecting that he requested a loan modification due to hardship in July 2015, and the creditor approved his request in June 2016; the total delinquent amount of \$49,016 was added to his loan balance; and the new modified principal balance was \$348,846. The December 2016 credit report reflects that this account is current. I find that Applicant resolved SOR ¶ 1.i.¹⁴

SOR ¶ 1.j is for a credit card. Applicant testified that he neglected this debt and intended to pay it.¹⁵

Applicant testified that his wife previously managed their finances because of his deployments, but he has taken on the responsibility of paying their bills. He opened a separate bank account from his wife in 2017 from which to do so. He has not received financial counseling. As of the hearing, his monthly net remainder after he paid their bills was minimal. He also had minimal savings, as he used the money he earned while he was deployed to pay personal loans. He testified that they have \$50,000 in assets, consisting of hand-made rugs, carpets, and furniture, and his attempts to sell these assets so that he could use the money to resolve his delinquent debts had been unsuccessful.¹⁶

¹¹ Response to the SOR; Tr. at 31-32, 58-60; GEs 1-6; AE H at 4.

¹² Response to the SOR; Tr. at 32, 62; GEs 1-6.

¹³ Response to the SOR; Tr. at 60-63; GEs 2-6.

¹⁴ Response to the SOR; Tr. at 31, 63-66, 85-86; GEs 1-7; AEs C, D, E.

¹⁵ Response to the SOR; Tr. at 66-67; GEs 2-6.

¹⁶ Tr. at 29-31, 33-45, 76-82, 85; GEs 1, 2, 7; AE A.

In July 2017, Applicant was arrested and charged with felony domestic assault and two counts of misdemeanor domestic assault. Applicant testified that he had received bad news about his mother and he was consequently unable to eat for two to three days, but he consumed alcohol and got drunk. He argued with his wife after she poured out his alcohol, because she felt he should not be drinking. He did not recall the specifics, but he denied the claims made by his wife and one son, and testified that he did not strangle his wife nor was he a direct threat to either of them. He testified that the police arrested him, and he spent six days in jail. As of the hearing, he was offered a plea agreement and he expected to take it at his next court hearing, upon the advice from his public defender that a trial would be lengthy.¹⁷

Applicant provided documentation to show that on September 11, 2017, he pled *nolo contendere* to one count of assault and battery on his wife, and the remaining charges were dismissed. He received a deferred finding of guilt for 24 months; he was placed on supervised probation; he was ordered to undergo domestic violence and substance abuse assessments; he was fined; he was ordered to not have assaultive and harassing contact with his wife for 24 months; and he was scheduled to return to court in December 2017. Aside from this incident, Applicant was convicted in 2007 of DWI, and he was arrested in 2011 for drunk in public, but the charge was subsequently dismissed.¹⁸

Applicant provided letters of support from individuals who attest to his outstanding work, professionalism, trustworthiness, integrity, and good judgment. A September 2017 letter from a friend and colleague who worked closely with Applicant since 2002, indicated that Applicant was the site manager for the defense contracting company overseas from 2004 to 2007 and 2015 to 2017. The individual further indicated that he worked closely with Applicant under very difficult and dangerous conditions, in various war zones, and trusted Applicant's integrity and judgment without hesitation. Applicant also provided a December 2009 certificate of appreciation for his professionalism, dedication, and commitment to excellence, and a 2011 commendation for his work as an interpreter overseas.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.

¹⁷ Tr. at 32-33, 67-76, 86-88; GEs 1, 7; AE F at 1; AE H at 7-11.

¹⁸ Tr. at 32-33, 67-76, 86-88; GEs 1, 7; AE F at 1; AE H at 7-11.

¹⁹ AE F at 2; AE H at 1-3, 5, 12-17.

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 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;
- (c) a history of not meeting financial obligations; and
- (f) 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 was unable to pay his debts, to include his delinquent federal taxes. The evidence is sufficient to raise AG ¶¶ 19(a), 19(c), and 19(f) 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;
- (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 resolved the debts in SOR ¶¶ 1.b and 1.i. The remainder of Applicant's SOR debts, however, are unresolved. He did not provide corroborating documentation

to show that he made a good-faith effort to resolve 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(d) applies to SOR ¶ 1.i, but not to SOR ¶¶ 1.a, 1.c to 1.h, and 1.j. AG ¶ 20(g) applies to SOR ¶ 1.b. AG ¶¶ 20(a) and 20(e) do not apply.

Conditions beyond his control 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. 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 the circumstances. AG ¶ 20(b) is partially applicable.

Guideline J, Criminal Conduct

AG ¶ 30 expresses the security concern pertaining to criminal conduct:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant:

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

Applicant was arrested and charged in July 2017 with felony domestic assault and two counts of misdemeanor domestic assault. He pled *nolo contendere* in September 2017 to one count of misdemeanor domestic assault and the remaining charges were dismissed. He received a deferred finding of guilt for 24 months; he was placed on supervised probation; he was ordered to undergo domestic violence and substance abuse assessments; he was fined; he was ordered to not have assaultive and harassing contact with his wife for 24 months; and he was scheduled to return to court in December 2017. AG ¶ 31(b) applies.

I have considered all of the mitigating conditions under AG ¶ 32 and considered the following relevant:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Applicant testified that his arrest and charges in July 2017 occurred because he consumed alcohol, got drunk, and argued with his wife after he received bad news about his mother. He provided court records from September 2017 reflecting that he is on court-ordered supervised probation for 24 months. In light of the recency of his criminal conduct, I am unable to find evidence of successful rehabilitation or that so much time has elapsed and that it does not cast doubt on his reliability, trustworthiness, or good judgment. AG ¶¶ 32(a) and 32(d) do 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 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 and Guideline J in my whole-person analysis.

I have considered Applicant's work for his current defense contractor in various positions since 2003. I have considered his deployments overseas from September 2008 to September 2013, June 2015 to December 2016, and November 2016 to April 2017, in which he worked under difficult and dangerous conditions, and in various war zones. I have considered his December 2009 certificate of appreciation for his professionalism, dedication, and commitment to excellence, and his 2011 commendation for his work as an interpreter overseas. I have considered that he has held a DOD security clearance since 2007.

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 and criminal 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.c-1.h, 1.j: | Against Applicant |
| Subparagraphs 1.b, 1.i: | For Applicant |
| Paragraph 2, Guideline J: | 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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Candace Le'i Garcia
Administrative Judge