



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



In the matter of:)
)
) ISCR Case No. 16-02688
)
Applicant for Security Clearance)

Appearances

For Government: Mary M. Foreman, Esq., Department Counsel
For Applicant: *Pro se*

02/12/2018

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On November 17, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. The action was taken 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) effective within the DOD on September 1, 2006. On June 8, 2017, new AG were implemented and are effective for decisions issued after that date.¹

¹ I considered the previous AG, effective September 1, 2006, as well as the new AG, effective June 8, 2017. My decision would be the same if the case was considered under the previous AG.

Applicant answered the SOR on December 19, 2016, and requested a hearing before an administrative judge. The case was assigned to me on August 23, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 20, 2017, and the hearing was scheduled for January 17, 2018. Due to unforeseen circumstances regarding the federal budget, the hearing was moved and held with the consent of Applicant on January 16, 2018. The Government offered exhibits (GE) 1 through 4. Applicant objected to GE 3 and 4, credit reports, as hearsay. His objection was overruled and all GE were admitted into evidence. Applicant testified and offered Applicant Exhibits (AE) A and B. There were no objections, and they were admitted into evidence. Hearing Exhibit (HE) I is a demonstrative exhibit. DOHA received the hearing transcript on January 23, 2018. The record was held open until January 30, 2018, to allow Applicant to submit additional documents. Applicant submitted AE C and D, and they were admitted without objection.²

Procedural Issues

Department Counsel moved to amend the SOR by withdrawing the Guideline E, personal conduct, allegation in ¶ 2.a. Applicant had no objection and the motion was granted.

Findings of Fact

Applicant admitted the SOR allegations in ¶¶ 1 through 1.n, and 1.p. He denied the SOR allegation in ¶ 1.o, and did not admit or deny the allegation in ¶ 1.q, which will be considered denied. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 52 years old. He earned an associate's degree in 2014. He served in the military from 1984 to 1990 and was honorably discharged. He married in 1984 and divorced in 2009. He has three adult children from the marriage. He remarried in 2009 and has no children from that marriage. Applicant has no periods of unemployment.³

Applicant attributed his financial problems to his 2009 divorce. He separated from his wife in 2006. They owned a house at the time. He lived in an apartment and was paying both the mortgage on the house and his rent. He used credit cards to help make his rent payments. In 2007, a hurricane caused damage to the roof of the house. Applicant obtained a second mortgage to pay for the repairs. In 2008, the house was sold by a short sale. Applicant was unable to pay his credit cards as he did not receive sufficient funds from the sale. Applicant testified that, "You're not supposed to lose money on real estate investments. I lost substantially and blame the banks."⁴

² HE II is Department Counsel's memorandum.

³ Tr. 19-21.

⁴ Tr.23-29.

Applicant attributed his federal tax debt, alleged in SOR ¶ 1.p, due to the sale of the house and receipt of proceeds, which was considered as income and was taxed. He testified he learned of the tax debt in 2010 and made \$84 payments from 2010 to 2016, and the tax debt is resolved. Applicant did not provide corroboration the debt is resolved.⁵

Regarding the state tax debt alleged in SOR ¶ 1.q, Applicant explained he was living in one state and working in another state. His employer only withheld state income taxes for one state. Applicant knew that state taxes were not being withheld for the other state, but he did not save money so he could pay the state taxes when due. This occurred in 2009 and again in 2012. Applicant stated he did not have the self-discipline to save money to pay the tax debt when due. He stated he arranged a payment plan, but had difficulty maintaining the payments. He stopped making payments in January 2017 because he did not have the money. He began a new payment plan in December 2017 and agreed to pay \$189 a month for 40 months. He said this covers state taxes for 2011, 2012, and 2013. He stated that he paid his 2014 and 2015 state taxes. He does not know how much he owes in delinquent state taxes.⁶ Post-hearing, Applicant provided a state tax form showing he received a refund in 2017 for his 2012 state taxes. The form does not detail when his 2012 state taxes were paid.⁷ His state income tax debt is resolved.

The debts alleged in the SOR are corroborated by Applicant's admissions and credit reports, dated June 2014 and May 2016.⁸ The debts in SOR ¶¶ 1.a (\$9,461) and 1.c (\$4,887) are credit card accounts that Applicant used to pay his rent. Both have been charged off. Applicant had no explanation for his failure to pay them, other than he lost money on the sale of his house. They are unresolved.⁹

The debt in SOR ¶ 1.b (\$5,486) is a car loan that Applicant cosigned with his daughter. The car was voluntarily repossessed. Applicant stated "there's is no reason I haven't paid it. I just don't - - I hadn't thought about it."¹⁰ The debt remains unresolved.

Applicant acknowledged that the debts in SOR ¶¶ 1.d (\$311), 1.e (\$242), 1.f (\$367), 1.g (\$1,137), 1.i (\$641), 1.j (\$610), 1.k (\$494) and 1.n (\$102) are consumer debts. He stated his wife is calling the creditors and trying to resolve the debts. He stated he has been working with one of the creditors on a payment plan, but it is still in the planning stages. He acknowledged he has had the SOR since November 2016 and has not taken

⁵ Tr. 29-33, 52-53.

⁶ Tr. 34-41, 53.

⁷ I have not considered delinquent tax debts not alleged or any other derogatory information not alleged except when making a credibility determination, in the application of mitigating conditions, and in the whole-person analysis.

⁸ GE 3, 4.

⁹ Tr. 27-29.

¹⁰ Tr. 45-46.

action to resolve the delinquent debts that are alleged.¹¹ None of these debts are resolved.

Applicant testified that the debt in SOR ¶ 1.k (\$494) is paid, and he would provide proof. He did not. The debt is unresolved.¹²

The debts in SOR ¶¶ 1.h (\$685), 1.i (\$491) and 1.m (\$175) are medical expenses incurred between 2010 and 2015. Applicant believes his insurance company should have paid these debts because he pays his copays, but he has not contacted the insurance company to dispute the debts or resolve them.¹³ They remain unresolved.

The judgment in SOR ¶ 1.o (\$1,870) was filed in 2010. Applicant testified he was unaware of the judgment until 2014. He provided a document with his answer to show he settled the judgment in 2015. He is having difficulty getting the judgment released from his record. The debt was incurred when Applicant broke his lease.¹⁴

Applicant testified that his wife owes federal income taxes due from before they were married. The IRS is withholding refunds owed to Applicant to pay his wife's federal income tax debt.¹⁵

In 2010, Applicant considered filing bankruptcy and sought advice from an attorney. He was told he earned too much, and he could not afford to make payments over five years. He has not received any financial counseling. Applicant's annual income is approximately \$96,000. He does not have a budget and has no idea where he spends his money. He intends to work his way out of debt.¹⁶

Applicant was interviewed by a government investigator in October 2015. During the interview many of the delinquent debts in the SOR were addressed. He told the investigator that his ex-wife was supposed to pay many of the delinquent debts in accordance with their divorce decree. Applicant did not provide evidence to corroborate this statement.¹⁷

Applicant's wife provided a letter in the answer to the SOR. She took responsibility for using credit cards and admitted having a compulsive personality. Applicant was aware

¹¹ Tr. 47-50.

¹² Tr. 50-51.

¹³ Tr. 51-52.

¹⁴ Tr. 42-45.

¹⁵ Tr. 56-57.

¹⁶ Tr. 57-63.

¹⁷ GE 2.

of her actions regarding the credit cards and her disorder. Applicant paid for two inpatient treatment programs for her.¹⁸

Applicant provided a copy of his military discharge papers and a performance evaluation, which rates him in many categories as “above target” or “target.”¹⁹

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. 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(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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states 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 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 an applicant may deliberately or inadvertently fail to safeguard classified information.

¹⁸ Answer to SOR.

¹⁹ AE A, B.

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).

Analysis

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 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (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 taxes as required.

Applicant has numerous delinquent debts he began accumulating several years ago that are unresolved. He failed to timely pay his 2009 federal income taxes and his 2009 and 2012 state income taxes. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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
- (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 provided proof that the debt in SOR ¶ 1.o is resolved. He did not provide evidence that the remaining debts are resolved or being resolved. His financial problems are ongoing, and there is insufficient evidence to conclude future financial problems are unlikely to recur. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to his 2009 divorce, and his failure to make a profit when he sold the marital home. Applicant's divorce was beyond his control. The fact he lost money when he sold the marital home was beyond his control. In his wife's letter, she attributed some of their financial problems to her compulsive spending. According to his wife, Applicant was aware that she was using credit cards and of her compulsive habits. His failure to address this problem that adversely affected his finances was within his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant was aware that he owed states taxes, but admitted he did not have the self-discipline to pay them timely. Applicant provided some evidence his state income tax debt are now resolved. He stated he resolved the federal tax debt, but did not provide proof despite the record remaining open for submission of proof. He did not provide evidence that any of the remaining debts are being resolved. Applicant has not provided sufficient evidence for the full application of AG ¶ 20(b) that he acted responsibly in resolving his delinquent debts. AG ¶ 20(b) partially applies.

Applicant did not provide evidence that he has received or is receiving financial counseling for his financial problems and there are clear indications his problems are being resolved. AG ¶ 20(c) does not apply.

Applicant resolved the debt in SOR ¶ 1.o. He provided documentation to show his state income tax debt is resolved (SOR ¶ 1.q). AG ¶ 20(d) applies to these debts. There is insufficient evidence to conclude Applicant has initiated or is adhering to a good-faith effort to repay the remaining overdue creditors or otherwise resolve his delinquent debts, including his federal income tax debt. AG ¶ 20(d) does not apply to the remaining allegations in the SOR.

Applicant stated he resolved his delinquent 2009 federal tax debt as alleged in SOR ¶ 1.p, but did not provide supporting evidence. AG ¶ 20(g) does not apply to his federal tax debt.

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 have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is 52 years old. He owes approximately \$33,380 for 15 delinquent accounts, including federal income taxes. Applicant was interviewed by a government investigator in October 2015 and was put on notice his debts were a security concern. Applicant received the SOR in November 2016, again highlighting that his debts raised security concerns. Applicant provided insufficient evidence to conclude his finances are under control, and he has established a reliable financial track record. The record

evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

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
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Subparagraphs 1.a-1.n:	Against Applicant
Subparagraph 1.o:	For Applicant
Subparagraphs 1.p:	Against Applicant
Subparagraph 1.q:	For Applicant

Paragraph 2, Guideline E:	WITHDRAWN
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Subparagraph 2.a:	Withdrawn
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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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge