



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



In the matter of:)
)
) ISCR Case No. 16-02935
)
Applicant for Security Clearance)

Appearances

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

11/02/2017

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On January 17, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on March 29, 2017, and requested a hearing before an administrative judge. The case was assigned to me on May 10, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 17, 2017, scheduling the hearing for June 28, 2017. The hearing was convened as scheduled. DOHA received the hearing transcript (Tr.) on July 7, 2017.

Procedural and Evidentiary Rulings

Evidence

Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through D, which were admitted without objection. The record was held open for Applicant to submit additional information. Nothing additional was submitted.

Motion to Amend the SOR

Department Counsel moved to amend the SOR by adding an allegation identified as SOR ¶ 1.h, as follows:

1.h. You failed to timely file your federal and state annual income tax returns as required for 2007 through 2013.

The motion was granted without objection.

Findings of Fact

Applicant is a 47-year-old employee of a defense contractor. He has worked for his current employer, or a predecessor contractor, since November 2014. He served on active duty in the U.S. military from 1989 until he was honorably discharged in 1996. He served in the National Guard from 1988 to 1989 and from 1996 to 2002. He is applying for a security clearance. He is a high school graduate. He is twice divorced, with his second marriage ending in 2007. He resides with a cohabitant. He has two children, ages 22 and 16.¹

Except for extended breaks for health reasons, Applicant has worked at a correctional center since 2006. He quit on two occasions because his health prevented him from working at the center. He was unemployed from about March 2010 to August 2010, and from December 2012 through July 2013. He was rehired by the correctional center on both occasions when his health improved. He is currently working for both the correctional center and for a defense contractor.²

The amended SOR alleges a \$14,364 charged-off auto loan for a repossessed car (SOR ¶ 1.a); \$66 in child support arrearages (SOR ¶ 1.b); three delinquent medical debts totaling \$18,280 (SOR ¶¶ 1.c-1.e); two collection accounts on behalf of an insurance company totaling \$407; (SOR ¶¶ 1.f-1.g); and Applicant's failure to file state and federal income tax returns when they were due for 2007 through 2013 (SOR ¶ 1.h).

¹ Tr. at 16, 18, 20-22, 31-32, 65-66; GE 1, 2.

² Tr. at 20-26; Applicant's response to SOR; GE 1, 2.

Applicant stated that he paid his child support arrearages. The debt is reported by all three credit reporting agencies on the January 2016 combined credit report. It is not listed on the September 2016 Equifax credit report.³

Applicant bought a used car in about December 2011. He stated that the car was a “lemon” with many mechanical problems. The car was repossessed in July 2013. The January 2016 and September 2016 credit reports list the debt as charged off in the amount of \$8,654, with a \$13,557 balance reflected on the January 2010 credit report and \$14,364 reflected on the September 2016 credit report.⁴

Applicant’s three medical debts were accrued when he was hospitalized without a job and medical insurance. He thought the two insurance debts were from auto insurance from years ago. He wrote in his response to the SOR that the five debts were in the process of being paid. Four of the five debts are reported by TransUnion on the January 2016 combined credit report. The \$359 medical debt alleged in SOR ¶ 1.d is reported by Equifax and Experian on the January 2016 combined credit report. None of the five debts are listed on the September 2016 Equifax credit report.⁵

Applicant did not file his state and federal tax returns for 2007 through 2013 when they were due. He stated that he did not file the returns because the state and federal government were withholding his refunds and not applying them to his child support arrearages. He stated that he did not know what they were doing with his refunds. He asserted that he filed all the returns in 2015 before he submitted his Questionnaire for National Security Positions (SF 86). He stated that he paid the IRS about \$12,000 for his past-due federal taxes and about \$2,500 for his past-due state taxes.⁶

Applicant retained a credit-repair company in July 2016 and pays them \$100 per month. He testified that he thought part of that amount was to be used to pay his creditors. The welcome letter from the credit-repair company discusses correcting credit reports and increasing his credit score, but it does not address paying any debts. Applicant asserted that he is willing to pay his debts, which is what he thought the credit-repair company was doing. He stated that his current finances are in good shape. His present vehicle is paid for and owned outright.⁷

³ Tr. at 18, 31-34, 66; Applicant’s response to SOR; GE 3, 4; AE C.

⁴ Tr. at 16, 26-31; Applicant’s response to SOR; GE 1-4; AE B.

⁵ Tr. at 18-20, 24, 34, 39; Applicant’s response to SOR; GE 2-4.

⁶ Tr. at 42-58.

⁷ Tr. at 16-18, 34-38, 41, 64; GE AE A, D.

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 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;
- (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 has a history of financial problems including a repossessed car, medical debts, and other delinquent debts. He did not file his state and federal tax returns for 2007 through 2013 when they were due. The evidence is sufficient to raise the above 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;

(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;

(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.

I am satisfied that Applicant paid his child support arrearages. SOR ¶ 1.b is mitigated. Applicant's finances were adversely affected by significant health problems that resulted in extensive medical bills and his quitting his job at the correctional center on two occasions.

Applicant has been steadily employed since July 2013 and working two jobs since November 2014. He retained a credit-repair company in July 2016 and pays them \$100 per month. He testified that he thought part of that amount was to be used to pay his creditors, but he submitted no documentation that any money is going to his creditors.

Of particular significance is Applicant's failure to file his state and federal tax returns for 2007 through 2013 when they were due. He stated that he did not file the returns because the state and federal government were withholding his refunds and not applying them to his child support arrearages. That is not a valid reason even if Applicant believed it to be true. Moreover, Applicant was not due refunds every year or he would not have owed the IRS \$12,000 and the state \$2,500 when he finally filed the returns.

Applicant's repeated failure to fulfil his tax obligations suggests that he does not possess the high degree of good judgment and reliability required of persons granted access to classified information and that he has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information. See ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016). This is true even though the returns have been filed. See ISCR Case No. 15-03481 at 5 (App. Bd. Sep. 27, 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, and AG ¶ 20(g) is applicable, but they do not completely mitigate the judgment issues raised by Applicant's many years of shirking his responsibility to file his tax returns. I find that financial considerations concerns remain despite the presence of some mitigation.

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 in my whole-person analysis.

I considered Applicant's honorable military service. However, he has unresolved financial problems, and for years he shirked his responsibility to file his tax returns and pay his taxes.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant 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
Subparagraphs 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c-1.h:	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.

Edward W. Loughran
Administrative Judge