



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



In the matter of:)
)
) ISCR Case No. 16-03068
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A Nagel, Esq., Department Counsel
For Applicant: *Pro se*

07/16/2018

Decision

COACHER, Robert E., Administrative Judge:

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

Statement of the Case

On December 2, 2016, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The 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

Applicant answered the SOR on February 14, 2017, and he requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA)

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.

issued a notice of hearing on July 17, 2017, and the hearing was convened as scheduled on August 16, 2017. The Government offered exhibits (GE) 1 through 7, which were admitted into evidence without objection, except for GE 3 and that objection was overruled. The Government's exhibit list was identified as hearing exhibit (HE) I. Applicant testified, but did not offer any exhibits. The record remained open until October 20, 2017, to allow Applicant to submit documentary evidence. He did not submit any evidence within that timeframe. DOHA received the hearing transcript (Tr.) on August 24, 2017.

On January 25, 2018, I issued a decision denying Applicant's request for a security clearance. Applicant appealed that decision to the DOHA Appeal Board (Appeal Board) and on May 16, 2018, the Appeal Board issued a decision remanding the case back to me "to consider the evidence that Applicant attempted to submit prior to the close of the record." Pursuant to the Appeal Board's decision, on May 18, 2018, I emailed Applicant directly and asked him to submit all the additional evidence he submitted to the Appeal Board and also offered him the opportunity to submit any additional documentary evidence showing more recent activity by him. I established a 30-day deadline for submission (June 18, 2018). Applicant acknowledged receipt of my email on the same day.²

By the close of the deadline to submit additional material, I had not received anything from Applicant. I contacted Department Counsel and discovered he received Applicant's submissions on May 31, 2018. I did not receive the submission because Applicant used an incorrect email address for me. On June 20, 2018, Department Counsel forwarded the documents he received from Applicant, and I have admitted all those documents as Applicant's Remand Exhibits (ARE) 1-9, without objection.³

Findings of Fact

Findings Based upon Applicant's August 16, 2017 Hearing

Applicant admitted the SOR allegations and his admissions are incorporated into these findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 59-year-old employee of a defense contractor. He began working at his present job in March 2009. He served 20 years in the Army and honorably retired as a staff sergeant (E-6) in 1995. He has a high school diploma. He was married in 1981 and divorced in 1991. He remarried in 1997. He has four adult children.⁴

² Remand Exhibit (RE) I and II.

³ RE III, ARE 1-9.

⁴ Tr. at 6, 24-25; GE 1.

The SOR alleges a dismissed Chapter 13 bankruptcy in 2015; a federal tax lien filed in October 2010 in the amount of approximately \$25,709; and five delinquent debts totaling approximately \$25,337. The debts were listed in credit reports from September 2015, November 2015, October 2016, March 2017, and August 2017 (SOR ¶¶ 1.a – 1.h).⁵

Applicant explained that the federal tax lien arose after he failed to file his 2006 federal income tax return. He failed to file that year's return because he prematurely withdrew approximately \$15,000 from his 401(k) retirement account and did not pay the taxes. The tax lien was filed in 2010 and still appears on his latest credit report. Applicant claims he worked out a payment plan with the IRS, has been making payments, and has reduced the balance owed to approximately \$1,000. He was asked to supply documentation of his payment plan, payments that he has made, and any documents showing his current balance. He claimed to have such supporting documents, but he failed to provide them before the record closed. His federal tax lien is unresolved.⁶

Applicant decided to file for Chapter 13 bankruptcy protection in 2013 because he was periodically missing his mortgage payments and his work income was reduced. A plan was approved, and Applicant began making monthly payments to the trustee in the amount of \$1,100. He turned responsibility for making the monthly bankruptcy plan payments over to his wife. In June of 2015, he was notified by the bankruptcy court that he was approximately \$3,000 in arrears. Shortly thereafter, his Chapter 13 was dismissed for failure to make plan payments. Applicant discovered his wife was using the monthly payment amounts to help out their son's financial problems. Applicant told a defense investigator in January 2016 and testified that he was going to re-file his Chapter 13 bankruptcy. He did not provide supporting documentation showing that he pursued such action.⁷

Applicant claimed he was catching up on his mortgage payments (SOR ¶ 1.c), but his most recent credit report indicated otherwise. He failed to document any payments toward his mortgage. This debt is unresolved. He admitted that he has done nothing to resolve the remaining SOR debts (SOR ¶¶ 1.d - 1.h). He stated he would start making payments on the remaining debts in September 2017. He failed to provide documentation of such payments. These debts are unresolved.⁸

Applicant claimed that his family's take-home income was approximately \$6,000 monthly. He did not present a written budget. There is no evidence of financial counseling.⁹

⁵ GE 3-7.

⁶ Tr. at 26, 30, 45-46; GE 2.

⁷ Tr. at 28-30, 36; AE 2.

⁸ Tr. at 34, 47.

⁹ Tr. at 48-49.

Findings Based upon Applicant's May 31, 2018, Remand Submissions

Applicant presented some evidence showing that he filed a Chapter 13 bankruptcy petition in October 2017. He did not include a copy of any schedules showing which debts were included in the bankruptcy. A letter from his bankruptcy attorney indicated Applicant had a creditors' meeting scheduled for December 2017. It also stated Applicant was to make his first payment under the bankruptcy payment plan of \$1,035 by November 15, 2017, and was to continue those payments every month thereafter. There is no documentary evidence showing that Applicant made these monthly plan payments. Applicant submitted a Minute Order signed by his bankruptcy judge, which indicated as of March 2018, Applicant was not current on his plan payments. The judge granted Applicant's motion to extend his time to file an amended Chapter 13 plan. The amended plan was to be filed by March 28, 2018. Applicant failed to produce evidence that he complied with the Order by submitting an amended plan.¹⁰

Applicant presented documentation showing that through involuntary levies by the IRS, negotiated payment plans, and the IRS capturing other tax years' refunds, Applicant completed paying the amount owed to the IRS on his 2006 tax return in September 2017. This debt is resolved.¹¹

Applicant presented documentation showing that he made three payments of \$1,300 in February 2018 that went to paying his mortgage. He did not provide a statement showing the current status of his mortgage. This debt is resolved.¹²

Applicant failed to present any additional evidence showing that he paid, settled, established payment plans, or contacted the creditors associated with SOR debts ¶¶ 1.d through 1.h. There is no evidence these debts were included in his Chapter 13 bankruptcy petition. These debts remain unresolved.¹³

Applicant presented evidence showing that in February 2018, he completed the financial counseling course required by the bankruptcy court. He submitted a written monthly budget showing that he has a \$357 monthly remainder after paying all expenses. He also provided a financial statement showing that he received a \$44,466 distribution from his employer in February 2018. There is no indication if this is from a retirement account or a severance payment. There is also no indication that these funds were used to pay any of Applicant's debts, SOR-related or not.¹⁴

¹⁰ ARE 1-3.

¹¹ ARE 4.

¹² ARE 5.

¹³ ARE 1.

¹⁴ ARE 1, 6, 8-9.

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 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;
- (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 delinquent debts that remain unpaid or unresolved. He had a federal lien filed against him for failing to pay his 2006 taxes. 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

(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's debts are recent and multiple and, although he made some payments under his Chapter 13 payment plan, he stopped making those payments and his bankruptcy was dismissed, which shows that recurrence of his financial problems is likely. He re-filed his Chapter 13 bankruptcy, but as of March 2018 was not making his plan payments. AG ¶ 20(a) is not applicable.

Applicant's wife's action to divert money from their bankruptcy payments to help their son can be considered circumstances beyond his control. Although he filed a follow-up Chapter 13 bankruptcy, that appears in jeopardy of dismissal because of nonpayment towards his plan. He failed to address the five consumer debts listed in the SOR. Overall, the record evidence does not support that Applicant acted responsibly under the circumstances. AG ¶ 20(b) is partially applicable.

Applicant presented evidence of financial counseling. Given the unpaid status of all his consumer debts and the uncertainty of his Chapter 13 bankruptcy, Applicant's financial problems are not under control and good-faith efforts to pay or resolve the remaining debts is lacking. SOR ¶ 20(c) partially applies. Documentary evidence supports that he resolved his tax lien issue and it appears he is current on his mortgage. AG ¶¶ 20(d), and 20(g) apply to SOR ¶¶ 1.b and 1.c.

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 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.

I considered Applicant's federal contractor service, his military service, and the circumstances surrounding his indebtedness. However, I also considered that he has made insufficient efforts to resolve his debts. 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 security concerns.¹⁵

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.h:	Against Applicant

¹⁵ I considered the exceptions under Security Executive Agent Directive (SEAD) 4, Appendix C, dated June 8, 2017, and determined they are not applicable in this case.

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