



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



In the matter of:

-----

Applicant for Security Clearance

)  
)  
)  
)  
)

ISCR Case No. 16-03187

**Appearances**

For Government: Andre Gregorian, Esquire, Department Counsel

For Applicant: Rob Blecher, Esquire

03/19/2018

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

**Statement of the Case**

On November 25, 2016, the Department of Defense (DOD) Consolidated Adjudication Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations).<sup>1</sup> On January 11, 2017, Applicant responded to the SOR, admitting all allegations raised and requesting a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). I was assigned the case on March 16, 2017. The matter was initially scheduled on March 30, 2017, for an April 4, 2017, hearing. By mutual request of counsel, that hearing was cancelled and, on May 10, 2017, the matter was rescheduled for June 15, 2017. The hearing was convened as scheduled.

The Government offered four documents, which were accepted into the record without objection as Government exhibits (Exs.) 1-4. Applicant gave testimony and

---

<sup>1</sup> The action was taken under Executive Order 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 or after September 1, 2006. Since that time, the AG has been again amended. The present AG, applied here, is in effect for any adjudication on or after June 8, 2017.

offered eight documents, accepted without objection as Exs. A-H. The record was left open through July 5, 2017, to provide the parties with sufficient time to submit additional materials. In the interim, a transcript (Tr.) of the proceedings was received on June 23, 2017. On July 5, 2017, Applicant submitted four additional documents. After review by the Government, they were admitted without objection as Exs. I-L, and the record was closed. After review of the record as a whole, I find that Applicant mitigated financial considerations security concerns.

### **Findings of Fact**

Applicant is a 54-year-old applications engineer who has worked for the same entity for about three-and-a-half years. Before this position, he performed the same function at another company for three years. He has earned a high school diploma and a diploma from a technical institute. Applicant is married and has two adult children.

Unable to find work in his field at the time, Applicant was self-employed from October 2009 to October 2011 as a “matter of necessity.” (Tr. 14) As a result, his income was considerably diminished during this timeframe, a period he characterized as “unemployment” in his security clearance application.<sup>2</sup> (Tr. 32) Much of his debt was acquired during this time period. He has not received financial counseling. (Tr. 31)

At present, Applicant earns about \$78,000 a year, taking home about \$3,600 every month. His wife returned to the workforce after a lengthy period of unemployment about six weeks before the hearing, now adding a net amount of about \$2,400 a month to the family coffers. This additional sum will move Applicant beyond his present status, which is a little above living paycheck to paycheck. A couple of years ago, he returned a vehicle voluntarily, noted below at SOR allegation 1.a, when he realized they could no longer afford to make payments. Applicant and his wife live in a recreational vehicle, partly to economize. He hopes to complete making payments toward ownership of the home within the next two years. Applicant owns a weekend vacation house worth \$7,000, which was purchased several years ago to provide Applicant’s aged parents with their own home apart from Applicant. At the time of the hearing, he was about to spend a few thousand dollars he and his wife had saved and set aside over the years for their daughter’s wedding.

At issue are 12 delinquent debts, amounting to about \$27,000. They range in balance from \$30 to \$15,082. Applicant has a goal of satisfying all of his debts by around the end of 2018, aided with an increase in the family coffers from his wife’s return to the workforce. (Tr. 27) Those debts, as reflected in the SOR allegations, are:

1.a – Charged-off account (\$15,082) – This account is related to a recreational vehicle Applicant no longer owns. He voluntarily had it repossessed. (Tr. 37-38) Applicant has made no payments toward this

---

<sup>2</sup> During that two-year period, Applicant earned “very little [income], but a little bit, yes.” (Tr. 33) He guessed he earned less than \$20,000 per year.

debt because of his wife's precarious employment in recent times. (Tr. 38) He also is unsure whether this is the proper balance owed. He has asked the creditor to verify what the vehicle sold for at auction in order to confirm the amount allegedly outstanding.

1.b – Charged-off account (\$10,161) – This student loan account has been satisfied. (Tr. 22-23, 39; Ex. H)

1.c – Charged-off account (\$632) – Applicant showed a money order for this amount was purchased and he introduced a certified mail receipt for correspondence mailed to this creditor on the same day. This is sufficient to show this debt has been satisfied. (Ex. K)

1.d-1.i and 1.k-1.l – Medical debts (\$1,367) - Applicant has not yet taken action on these accounts, which were accumulated over the years. He is unsure of the conditions for which medical care was sought. (Tr. 39) Although most are under \$250, Applicant tarried in addressing them because he had been contemplating bankruptcy. (Tr. 40) Having abandoned that idea in favor of honoring all of his debts, he now takes responsibility for them.

1.j – Charged-off account (\$289) – Applicant provided evidence that this account balance was paid.<sup>3</sup> (Ex. K)

Going forward, Applicant plans to start addressing his medical debts one at a time, then make payment arrangements on his larger debts. With his wife's income, as noted, he can realistically satisfy the remaining debts by around the end of 2018 or early 2019.

For tax years (TY) 2012, 2013, and 2014, Applicant failed to timely file federal and state income tax returns.<sup>4</sup> Shortly before the hearing, Applicant filed federal and state tax returns for those years. (Tr. 17-18; Exs. D-F) He attributes his delay to anxiety and depression at the time, which led to his filing for extensions, then having them "snowballed year after year after year." He also cites to his more recent need to replace some of his wife's missing W2 forms from a former employer. (Tr. 17-19) He is now on medication for his anxiety and depression. He was able to prepare his own federal tax returns with commercial software. (Tr. 19) Applicant provided documentary evidence reflecting that the federal and state tax returns at issue in SOR allegations 1.m and 1.n

---

<sup>3</sup> In submitting his evidence, Applicant noted that the receipt also satisfied a delinquent account with a balance of \$172.81. However, inasmuch as there is no other debt shown on the SOR with this collections entity or with this balance, it is unclear whether the \$172.81 payment is related to this case or simply an example of another debt being honored.

<sup>4</sup> According to the SOR, tax returns were owed to two states. SOR allegation 1.n concerns returns due to State I (Applicant's residence) for TY 2012 and TY 2013, whereas SOR allegation 1.o references tax returns owed to State II (his workplace) for TY 2013 and TY 2014. Applicant testified that he did not live in State II during that time, and that all State I taxes were paid. (Tr. 30; see Exs. D, F, I-J) Taxes to a third state, State III, for TY 2014 have been addressed. (Tr. 42; Exs. F, I-J)

have been filed. (Exs. D-F, I, J) Applicant disputes any tax obligation for the state (State II) noted in SOR allegation 1.o, and his attorney is looking into the matter.

For TYs 2012-2016, Applicant hopes to receive a refund of about \$15,943, which he would use to satisfy any yet outstanding debt. He also believes an error in his software-based tax returns may lead to a refund of about \$5,000 for each TY between 2012 and 2016, but he has not yet filed appropriate amendments. (Tr. 23-24) Such sums, if realized, would also be used to satisfy any remaining debt.

Now with appropriate medication, Applicant is capable of timely filing his federal taxes. His most recent federal and states taxes were timely filed through his tax software. The only large purchase Applicant has made in the past five years was a used vehicle for his wife to get to work. Applicant has no other anticipated expenditures other than his savings for his daughter's impending wedding and his regular monthly obligations. To supplement his income, he has been working at a part-time position at about \$90 an hour. (Tr. 46) He has thus far worked 20-30 hours on that job.

### **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 the AG, 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 in making a decision.

The protection of the national security is the paramount consideration. Any 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 record evidence. Under the Directive, the Government must present evidence to establish controverted facts alleged in the SOR. Under the Directive, 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 seeking access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. This relationship transcends normal duty hours. The Government reposes a high degree of trust and

confidence in those to whom it grants access to classified information. Decisions include consideration of the possible risk an applicant may deliberately or inadvertently fail to safeguard classified information. Decisions are in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant.

### **Analysis**

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that failure or inability 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.

Here, the Government introduced credible evidence indicating that Applicant had acquired significant delinquent debt and that he had not timely filed federal and state income tax returns for multiple years. This is sufficient to invoke financial considerations disqualifying conditions:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the inability to do so;

AG ¶ 19(c): a history of not meeting financial obligations; and

AG ¶ 19(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.

Under these facts, four conditions could potentially mitigate the finance-related security concerns posed here:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit

counseling service, and there are clear indications that the problem is being resolved or is under control; and

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial issues arose from a combination of factors. These factors include two years of significant underemployment, while he struggled to generate an income as an independent entrepreneur when he could not find a position as an employee. Other matters, such as tax return filings, were deferred due to depression and anxiety he was feeling around the same timeframe. In addition, his wife experienced her own period of unemployment, a situation adding to their financial distress. While Applicant cannot point to a specific illness or condition, medical bills also became delinquent. To his credit, he filed requests for extensions to file his tax returns,<sup>5</sup> voluntarily returned an auto he realized he could not afford, moved into a recreational vehicle to economized on housing, and took a part-time position at one point in order to supplement his income. Under these circumstances, I find that AG ¶ 20(b) applies.

At this point, Applicant has satisfied a notable percentage of the delinquent debt at issue. By satisfying the debts at SOR allegations 1.b, 1.c, and 1.j, he has paid approximately \$11,000 of the total debt at issue. This is an impressive start given recent circumstances. Until recently, Applicant was barely covering all bills by himself. With his wife's return to the workforce bringing in an additional net amount of about \$2,400 a month, he will have sufficient income to satisfy the remaining amount of approximately \$16,000 on schedule.

Applicant's plan is to first satisfy his manageable medical debts, then work on payment schedules for the few remaining balances as he and his wife can jointly use their respective incomes to that end. Moreover, Applicant has filed his federal tax returns and states tax returns for his state of residence and a third state. In the interim, Applicant's counsel will look into the claim made by State II that a tax return is outstanding. While there is more to be done, Applicant has made solid strides toward addressing all of the outstanding issues, and he has the resources to continue his approach as described. Therefore, I find AG ¶ 20(d) applies.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of his conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d). Here, I have considered those factors. I

---

<sup>5</sup> Failure to file tax returns by itself can be a reason to deny a clearance, as it suggests that an applicant has a problem with complying with well-established rules and regulations. See, e.g., ISCR Case No. 16-01726 at 5 (App. Bd. Feb. 28, 2018) Here, Applicant was aware of his obligations and filed extensions. Further action was deferred only because of his temporary depression and anxiety, not oversight or disregard of IRS rules.

am also mindful that, under AG ¶ 2(a), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

Applicant is a 54-year-old applications engineer who has worked for the same entity for about three-and-a-half years, after performing a similar function for three years with another employer. This employment came after a two-year period of self-employment, brought on by necessity when no other jobs were available. During that period, he made under \$20,000 a year. Applicant is educated, having earned a high school diploma and a technical school diploma. He and his wife raised two children.

Applicant acquired considerable debt while underemployed for two years between late 2009 and late 2011. Compounded with issues related to anxiety and depression, various calls for medical attention within his household, and his wife's lengthy period of unemployment, delinquent debt was amassed and final tax returns went unfiled. Applicant has since been continually employed and able to stave off the acquisition of additional debt. He has taken some responsible measures to contain his finances, such as voluntarily returning a car he could not afford, taking on a part-time job, requesting extensions for tax return filing, downsizing into a recreational vehicle, and the like. Through such measures, he has addressed some of his debt and made substantial headway in addressing his tax returns. Now, with his wife bringing about \$2,400 extra into the household, he has the ability to make more progress on his debts.

Aside from demonstrating progress on his debts and taxes, Applicant has set forth a reasonable plan toward satisfying his remaining debts within a year. The addition of his wife's income and better organization should make his goal possible. At any rate, his present progress reflects that he is earnestly, and effectively, addressing his financial issues. In light of the above, I find Applicant has mitigated 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:

FOR APPLICANT

Subparagraphs 1.a-1.o:

For Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

---

Arthur E. Marshall, Jr.  
Administrative Judge