



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



In the matter of:)	
)	
)	ISCR Case No. 16-03486
)	
Applicant for Security Clearance)	

Appearances

For Government: Erin P. Thompson, Esq., Department Counsel
For Applicant: *Pro se*

03/05/2018

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Clearance is denied.

Statement of the Case

On December 21, 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 (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) implemented by the DOD on September 1, 2006.¹

Applicant responded to the SOR on January 23, 2017, and elected to have his case decided on the written record in lieu of a hearing. The Government's written case

¹ I decided this case using the AG implemented by DOD on June 8, 2017. However, I also considered this case under the previous AG implemented on September 1, 2006, and my conclusions are the same using either set of AG.

was submitted on April 28, 2017. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on May 10, 2017. He responded to the Government's FORM with documentation I marked as Applicant's Exhibit (AE) A, and admitted in evidence without objection. The Government's documents identified as Items 1 through 6 are admitted in evidence without objection. The case was assigned to me on November 20, 2017.

Findings of Fact

Applicant admitted the SOR allegations in ¶¶ 1.a to 1.c, 1.e, and 1.g. to 1.h, and denied ¶¶ 1.d, 1.f, and 1.i. He is 32 years old, married, and he has one minor child. He has been employed by a defense contractor since February 2015. He obtained his high school diploma in 2003. He served in the U.S. military from January 2004 to February 2012, when he was honorably discharged. He was first granted a security clearance when he served in the U.S. military.²

The SOR alleges nine delinquent consumer accounts totaling \$25,640. In addition to his admissions, credit reports from March 2016 and October 2016 verify the delinquent debts. Applicant also listed and discussed them in his security clearance application and during his subject interview.³

Applicant attributes his delinquent debts to a lack of income. He was a self-employed carpet technician from July 2000 to January 2004, and he was unemployed from February 2012 to April 2013 after he was discharged from the military. He also cited to his period of deployment, during which time his wife had a power of attorney over their affairs, as a factor that contributed to his delinquent debts.⁴

SOR ¶ 1.a is for an automobile account that Applicant cosigned for his wife. It became delinquent in 2013 after his wife wrecked the car, the damages were not covered by insurance, and his wife did not have the money to pay it. While Applicant indicated in his application that he was on a payment plan since January 2015, he stopped paying it by his subject interview due to a lack of income. He intended to contact the creditor to set up a payment plan when his wife obtained a better job. In his response to the FORM, he stated that the debt was paid. He did not provide documentation to corroborate his claim.⁵

² Items 2-4.

³ Items 1-6.

⁴ Items 2-4.

⁵ Items 2-4; AE A.

SOR ¶ 1.b is for a credit card Applicant used to purchase a game system before he deployed.⁶ After deployment, he learned that his payments did not go through because of an inactive debit card. He disputed the interest charges that accumulated on the original purchase and stated that he was willing to pay the debt if the interest charges were waived.⁷

SOR ¶ 1.c is for a charged-off credit card that belonged to his wife, as she was given a power of attorney when he deployed. The March 2015 credit report reflects that it is an individual account. Applicant intended to resolve the delinquent balance with his 2016 income tax refund.⁸

While he denied SOR ¶¶ 1.d and 1.f, he stated during his interview that they are duplicate accounts for another charged-off credit card that belonged to his wife, which he intended to resolve with his 2016 income tax refund. Both credit reports reflect that they are individual accounts with different account numbers. In his response to the FORM, he provided the confirmation numbers and stated that both debts were paid. His evidence was insufficient to show that he resolved these debts.⁹

SOR ¶¶ 1.e and 1.g are for unreturned cable boxes. He stated during his interview that he intended to resolve the delinquent balance with his 2016 income tax refund. In his response to the SOR, he stated that the accounts were disputed and removed from his credit report. SOR ¶ 1.e was reported on his October 2016 credit report, and both were reported on his March 2015 credit report. In his response to the FORM, he provided the confirmation number and stated that SOR ¶ 1.e was paid. His evidence was insufficient to show that he resolved these debts.¹⁰

SOR ¶ 1.h is for the outstanding balance on an internet and television bill at a prior residence, because Applicant failed to return the cable boxes. He stated during his interview that he paid it in 2016, but stated in his response to the SOR that he disputed the debt and it was removed from his credit report. This debt was not reported on the October 2016 credit report. He did not provide documentation to corroborate his claim that he either paid or disputed it.¹¹

Applicant was unaware of the medical bill in SOR ¶ 1.i. He intended to research and resolve it if he determined it was his debt.¹²

⁶ Other than Applicant's period of military service, the record does not contain information about Applicant's deployment.

⁷ Items 2, 4.

⁸ Items 2, 4, 6.

⁹ Items 2, 4-6; AE A.

¹⁰ Items 2, 4-6; AE A.

¹¹ Items 2, 4, 5.

¹² Item 2, 4.

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.

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. 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 under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant was unable to pay his debts. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) 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;
- (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

(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.

Applicant's lack of income and the manner in which his wife handled their affairs while he was deployed constitute conditions beyond his control that contributed to his delinquent debts. However, he failed to show that he acted responsibly under his circumstances. He did not provide documentation to corroborate his claims that he either paid, disputed, or otherwise resolved his delinquent debts. His provision of the confirmation numbers was insufficient to show that he paid SOR ¶¶ 1.d, 1.e, 1.f, and 1.g. There is no evidence that he received financial counseling. As such, there is insufficient evidence to conclude that his financial problems are unlikely to recur, and they continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(e) 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(a):

(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 this whole-person analysis. I considered Applicant's honorable military service.

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 did not 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
Subparagraphs 1.a-1.i:	Against Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Candace Le'i Garcia
Administrative Judge