



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



In the matter of:)
)
) ISCR Case No. 16-03545
)
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

January 17, 2018

Decision

MOGUL, Martin H., Administrative Judge:

Statement of the Case

On December 27, 2016, in accordance with Department of Defense (DoD) Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline F.¹ The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant replied to the SOR on January 25, 2017, and requested a hearing before an administrative judge. (RSOR.) The case was assigned to me on March 13, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a first notice of

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

hearing on March 21, 2017, setting the hearing for May 4, 2017. Because of a conflict, a second notice of hearing was sent out on April 17, 2017, scheduling the hearing for May 3, 2017. The hearing was convened as scheduled.

At the hearing, the Government offered Exhibits 1 through 5, which were admitted without objection. Applicant testified on his own behalf and presented three documents, which were identified and entered into evidence without objection as Exhibits A through C. DOHA received the transcript of the hearing (TR) on May 12, 2017. Based upon a review of the pleadings, exhibits, and the testimony of Applicant, eligibility for access to classified information is denied.

Findings of Fact

After a complete and thorough review of the evidence in the record, as described above, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 46 years old. He was married two previous times, and he is currently engaged to be married again. He has five daughters. Applicant graduated high school and attended a technical college where he studied air conditioning. Applicant has been employed by a defense contractor since 2010 as a Lead Computer Numerical Machining Operator, and he seeks a DoD security clearance in connection with his employment in the defense sector.

Guideline F, Financial Considerations

The SOR lists eleven allegations (1.a. through 1.k.) regarding financial difficulties, specifically overdue debts, under Adjudicative Guideline F. All of the SOR allegations were established by Applicant's credit reports, (Exhibits 3 through 5), and/or Applicant's admissions in his RSOR. The debts will be discussed below in the order they were listed on the SOR:

1.a. This overdue debt is cited in the SOR for a medical account in the amount of \$4,322. Applicant admitted this debt in his RSOR. He wrote that this debt and all of the debts listed as medical debts (1.a. through 1.d.) were incurred as a result of his taking his daughter, who was sick at the time in 2011, to the emergency room of a hospital near him.

At the hearing, Applicant claimed that he had phoned the hospital shortly after answering the SOR, and he was informed that the hospital did not have a record of these debts. He also confirmed that he had not paid any of these four debts. (Tr at 25-30.) No evidence has been submitted to establish that this debt has been resolved or reduced.

1.b. This overdue debt is cited in the SOR for a medical account in the amount of \$625. Applicant admitted this debt in his RSOR. (See 1.a., above.) No evidence has been submitted to establish that this debt has been resolved or reduced.

1.c. This overdue debt is cited in the SOR for a medical account in the amount of \$330. Applicant admitted this debt in his RSOR. (See 1.a., above.) No evidence has been submitted to establish that this debt has been resolved or reduced.

1.d. This overdue debt is cited in the SOR for a medical account in the amount of \$258. Applicant admitted this debt in his RSOR. (See 1.a., above.) No evidence has been submitted to establish that this debt has been resolved or reduced.

1.e. This overdue debt is cited in the SOR for a tax lien entered in 2010, and owed to the Federal Government in the amount of \$14,380. Applicant admitted this debt in his RSOR, and wrote that he is currently on a five year plan with the Federal Government to pay \$700 a month.

At the hearing, Applicant testified that he had been making payments for past tax liens and on April 15, 2016, based on new arrangements, he started to pay \$700 a month for the two debts listed on the SOR, 1.e. and 1.f. He testified that he has made each payment since that date. (Tr at 26-34.) Exhibit B consists of two receipts from the Internal Revenue Service (IRS), which show that as of April 5, 2017, the total amount Applicant owes to the IRS is \$59,419.93, and he has an installment agreement requiring him to pay \$700 a month toward this debt. The debt is for tax years 2007, 2008, 2012, 2013, and 2014. Applicant testified that the debt will take five years to be paid in full, but my calculations show this debt will take approximately seven years to be resolved. (Tr at 34.)

1.f. This overdue debt is cited in the SOR for a tax lien entered in 2016, and owed to the Federal Government in the amount of \$47,063. Applicant admitted this debt in his RSOR, and wrote that he is currently on a five year plan with the Federal Government to pay \$700 a month. (See 1.e., above.)

1.g. This overdue debt is cited in the SOR for a collection account in the amount of \$601. Applicant admitted this debt in his RSOR, and he wrote that at the time the bill was incurred, he had recently lost his job, and moved to another state without employment. He further wrote that he was unable to pay the bill or make payments at that time.

At the hearing, Applicant testified that he has not paid this bill as his goal is to first satisfy the debt to the IRS. He plans to pay this debt, and the debts listed below, 1.h., 1.i., 1.j., and 1.k., after he has satisfied the IRS debt. (Tr at 34-36.) Based on the above stated calculations, this debt and the others listed below will not be paid for at least seven years.

1.h. This overdue debt is cited in the SOR for a collection account in the amount of \$585. This debt has not been resolved or reduced. (See 1.g., above.)

1.i. This overdue debt is cited in the SOR for a collection account in the amount of \$3,697. This debt has not been resolved or reduced. (See 1.g., above.)

1.j. This overdue debt is cited in the SOR for a collection account in the amount of \$61. This debt has not been resolved or reduced. (See 1.g., above.)

1.k. This overdue debt is cited in the SOR for a collection account in the amount of \$3,732. This debt has not been resolved or reduced. (See 1.g., above.)

Applicant explained that he had worked as a subcontractor for 10 years and after construction stopped in 2008, he became unemployed or underemployed in 2009. (Tr at 31-33.) He confirmed that he is currently living from paycheck to paycheck with \$50 in his checking account, \$0 in his savings account and no 401k or other savings plan. (Tr at 45-46.) While Applicant was unemployed during 2009, he has been employed full-time by his present employer since 2010.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 AG ¶ 2 describing 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 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, 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies for access to classified information seeks to enter 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 protect or safeguard classified information. 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 Executive Order (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 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19:

- (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;
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust;
- (e) consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant

negative cash flow, a history of late payments or of non-payment, or other negative financial indicators;

(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;

(g) unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that are inconsistent with known legal sources of income;

(h) borrowing money or engaging in significant financial transactions to fund gambling or pay gambling debts; and

(i) concealing gambling losses, family conflict, or other problems caused by gambling.

Applicant has had several delinquent debts for several years, which have not been resolved. Also, while he regularly filed his tax returns, he was not able to always pay his taxes in a timely manner, and he owes almost \$60,000 for past taxes. The evidence is sufficient to raise disqualifying conditions (a), (c), and (f) in this case.

AG ¶ 20 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 20 including:

(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;

(f) the affluence resulted from a legal source of income; 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 attributed his delinquencies to his loss of income in 2009. This is a circumstance beyond his control. However, I do not find that he has established that he acted reasonably or responsibly with respect to his debts. While he now has a payment plan to resolve his Federal tax debt of approximately \$60,000, that debt will not be satisfied for seven years. Based on Applicant's testimony, he has no intention of even attempting to resolve the other debts until he has resolved the tax debt. Therefore, I do not find he has demonstrated that he addressed his debts in a responsible or timely manner. Mitigation under AG ¶ 20(b) has not been established. I do find AG ¶ 20(g) for Applicant, because he has begun a payment plan with the IRS. However, since no other debts have been resolved or reduced, and it will be seven years before this significant debt is satisfied, Guideline F is found against Applicant.

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 or continue national security eligibility 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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis.

Overall, the record evidence leaves me with significant questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I

conclude Applicant has not mitigated the Financial Considerations security concerns under the whole-person concept.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	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. National Security eligibility for access to classified information is denied.

Martin H. Mogul
Administrative Judge