



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



In the matter of:)
)
) ISCR Case No. 16-03573
)
Applicant for Security Clearance)

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

01/05/2018

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On December 9, 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 7, 2017, and elected to have the 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 March 7, 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 11, 2017, and responded with documents I have marked collectively as Applicant's Exhibit (AE) A. The case was assigned to me on October 1, 2017. The Government exhibits included in the FORM are admitted in evidence without objection.

Findings of Fact

Applicant admitted the SOR allegations. He is 48 years old. He obtained a high-school diploma in 1987 and a bachelor's degree in 1992. He has worked as an engineer for his current defense contractor since October 2015. He worked for a previous defense contractor from June 1991 to June 2006. He was first granted a DOD security clearance in 1991.²

Applicant married in 1992, divorced in 1997; married in 2002, divorced in 2006; and married in 2009. He has a minor child and an adult stepchild.³

The SOR alleges a \$21,326 judgment from 2014 and four charged-off accounts totaling \$53,394. Applicant discussed his delinquent debts in his September 2015 security clearance application, April 2016 subject interview, and August 2016 response to interrogatories. Credit reports from October 2015, August 2016, November 2016, March 2017, and April 2017 also verify the delinquent debts.⁴

Applicant attributes his delinquent debts to his failed business, unemployment, and spouse's cancer diagnosis. In April 2010, he opened a restaurant with his life savings. He borrowed money from family, friends, and banks to attempt to sustain it. He closed it at the end of 2012. He contacted his creditors to inform them that he could not afford to pay them, and the creditors charged off his debts. Since his debt exceeded the money he received from the restaurant's liquidation, he prioritized the order in which he repaid his creditors. He immediately paid his suppliers. He used the remaining liquidation money to proportionally repay his family and friends, and finished repaying them between 2013 and 2015, with income he earned from various contract jobs.⁵

In 2015, he began to save money to resolve his debts to bank creditors. He was unexpectedly laid off in August 2015 for two months before he was rehired full time. He continued to save money until August 2016, when his wife stopped working after she was diagnosed with cancer. He expected that her medical treatment would continue

² Items 2-3, 7.

³ Items 3, 7.

⁴ Items 1-7; AE A.

⁵ Items 2-3, 7; AE A. While Applicant was also unemployed from July to October 2007 and July to September 2008, the latter period of which also occurred after a layoff, he did not attribute his delinquent debts to these periods of unemployment. Items 2-3, 7.

until June 2017, and she would resume working in July 2017. In May 2017, his employer approved his request for intermittent family medical leave for a serious health condition affecting his spouse, for which he was needed to provide care, from October 2016 through April 2017.⁶

Applicant indicated that he paid the \$21,326 judgment in SOR ¶ 1.b with the money he saved between 2015 and 2016. He settled the judgment for \$10,663 in January 2017. His 2017 credit reports reflect that he settled and paid the judgment.⁷

The 2017 credit reports reflect that while Applicant disputed the debts in SOR ¶¶ 1.a, 1.c, 1.d, 1.e, the information he disputed was verified as accurate. In addition, while the 2017 credit reports reflect that the accounts in SOR ¶¶ 1.a, 1.d, and 1.e carry zero balances, they also reflect that these accounts were charged off for \$25,099, \$10,000, and \$20,000, respectively. The charged-off amounts were scheduled to continue on record until 2019.⁸

Applicant retained the services of SOS Credit Inc. in November 2016 to assist him with resolving the debts in SOR ¶¶ 1.a, 1.c, 1.d, and 1.e. He stated that resolution of SOR ¶ 1.a was imminent, and he was attempting to reach a reasonable payment plan with the creditors for SOR ¶¶ 1.c., 1.d, and 1.e. He did not provide documentary evidence to support his claims.⁹

Applicant does not have any other outstanding debts. Prior to his failed business venture, he did not have any outstanding debts. He indicated that he made changes to reduce his household expenses. He plans to resolve his remaining outstanding debts.¹⁰

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

⁶ Items 2-3; AE A. While Applicant was also unemployed from July to October 2007 and July to September 2008, the latter period of which also occurred after a layoff, he did not attribute his delinquent debts to these periods of unemployment. Items 2-3.

⁷ Items 2, 4-6; AE A.

⁸ AE A.

⁹ Item 2.

¹⁰ Items 2, 4-6; AE A.

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; 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.

Conditions beyond Applicant's control contributed to his financial problems. When his restaurant failed, he contacted his creditors to inform them that he could not afford to pay them. He used the money from his restaurant's liquidation to repay his family and friends. He saved money from various contract jobs so that he could begin to repay his creditors. He retained the services of SOS Credit Inc. to assist him with resolving his delinquent debts. His wife's cancer diagnosis and consequent unemployment affected his ability to do so.

Applicant settled and paid the judgment in SOR ¶ 1.b. The 2017 credit reports reflect that while he disputed the remaining SOR debts, the information he disputed was

verified as accurate. While the reports reflect zero balances for the accounts in SOR ¶¶ 1.a, 1.d, and 1.e, they also reflect that these accounts were charged off for \$25,099, \$10,000, and \$20,000, respectively, and were scheduled to continue on record until 2019. Merely waiting for a debt to drop off a credit report by the passage of time is not a factor in an applicant's favor. See, e.g., ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001).

Applicant's remaining charged-off debts, for SOR ¶¶ 1.a, 1.c, 1.d, and 1.e, total \$58,394. While he stated that resolution of SOR ¶ 1.a was imminent, and he was attempting to reach a reasonable payment plan with the creditors for SOR ¶¶ 1.c., 1.d, and 1.e, he did not provide documentary evidence to support his claims. As such, I conclude that Applicant's financial problems are still ongoing. AG ¶ 20(b) applies. AG ¶¶ 20(a), 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(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 this whole-person analysis.

Overall, the record evidence leaves me with questions and doubts as to 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, 1.c, 1.d, 1.e: Against Applicant

Subparagraph 1.b: For 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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Candace Le'i Garcia
Administrative Judge