



Applicant for Security Clearance

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel

For Applicant: *Pro se*

March 12, 2018

Decision

GOLDSTEIN, Jennifer, Administrative Judge:

Applicant failed to mitigate the security concerns arising under Guideline F, Financial Considerations. His ongoing history of indebtedness and failure to timely file and pay Federal and state income tax obligations remain a concern. National security eligibility for access to classified information is denied.

Statement of the Case

On March 27, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) 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) effective within the DOD on September 1, 2006.

Applicant answered the SOR in writing (Answer) on May 6, 2017, and requested a hearing before an administrative judge. The case was assigned to me on July 5, 2017.

The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on August 7, 2017. I convened the hearing as scheduled on September 26, 2017. The Government offered Government Exhibits (GE) 1 through 5, which were admitted without objection. Applicant testified on his own behalf, called two witnesses, and presented Applicant Exhibits (AE) A through M, which were admitted.¹ DOHA received the transcript of the hearing (Tr.) on October 10, 2017. The record was left open for the receipt of additional evidence until January 22, 2018. On January 19, 2018, AE N through AE U, were submitted and received without objection.² The record closed as scheduled on January 22, 2018.

The SOR in this case was issued under the adjudicative guidelines that came into effect within the DoD on September 1, 2006. Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (December 10, 2016), implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions³ issued on or after June 8, 2017, are to be decided using the new *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), as implemented in Appendix A of SEAD 4. I considered the previous adjudicative guidelines, as well as the new AG, in adjudicating Applicant's national security eligibility. My decision would be the same under either set of guidelines, although this decision is issued pursuant to the new AG promulgated in SEAD 4.

Findings of Fact

Applicant admitted SOR allegations 1.a through 1.g, 1.s, 1.z, 1.dd, and 1.ee, with explanations. He denied SOR allegations 1.h through 1.r, 1.t through 1.y, 1.aa through 1.cc, and 1.ff through 1.hh. After a thorough and careful review of the testimony, pleadings, and exhibits, I make the following findings of fact:

Applicant is 46 years old, and is divorced. He has three daughters; one is 21 years old, and his twins are 14 years old. He is currently employed by a Government contractor, for whom he has worked since December 2014. However, he has been in the same position, employed by other contractors, since 2007. He served in the Marine Corps from April 1992 to 2006, and received an honorable discharge. He graduated with a bachelor's degree in 2007. (GE 1; Tr. 57-59, 82-87.)

Applicant attributes his financial delinquencies to his 2010 divorce. Leading up to his separation from his spouse in 2010, Applicant was a responsible homeowner with no delinquent debt. His divorce was contentious and he documented extensive harassment on the part of his ex-wife. He initially had to pay \$4,000 a month in child support. She also

¹ Department Counsel objected to AE G, because it lacked authentication. It was admitted over her objection. (Tr. 23-24.)

² Applicant marked his post-hearing exhibits A through G. They were remarked to avoid confusion.

³ SEAD 4 ¶ D.7 defines "National Security Eligibility" as, "Eligibility for access to classified information or eligibility to hold a sensitive position, to include access to sensitive compartmented information, restricted data, and controlled or special access program information."

withdrew \$10,000 from their joint account, leaving Applicant in immediate financial distress. Additionally, Applicant had significant expenses related to the legal fees for the divorce and unrelated dental services for his children. (AE A; AE B; AE D; AE E; AE F; AE L; Tr. 59-73, 88.)

In January 2018, Applicant hired a non-profit debt management company (DMC) to assist him in resolving his delinquent debt. (AE P.) His budget as of January 2018 showed \$3,288 in monthly income, with \$3,605 in living expenses. He has a net worth of negative \$10,304. (AE P.) The payment plan calls for monthly payments of \$180.36 to be automatically withdrawn from Applicant's bank account each month through April 2019. While the record includes a plan for automatic withdrawals from Applicant's account, the record shows no payments under this plan. Applicant indicated that he planned to pay more than the minimum payments to the DMC to expedite the resolution of his debts. He reduced his living expenses recently by moving in with his girlfriend thereby lowering his rent, and by successfully petitioning his state court to reduce his child support payments. He also works overtime to earn additional income. (AE J; AE L; AE N; AE P; AE T; AE U.)

Applicant is indebted on a delinquent student loan in the amount of \$17,349, as alleged in SOR subparagraph 1.a. Applicant's discussed this debt with his non-profit credit counselor with the DMC, who recommended he initiate a payment plan. He intends to follow this advice, but had not yet made any payment arrangements at the close of the record. It is unresolved. (AE O; Tr. 88-91.)

Applicant is indebted on a delinquent collection account in the amount of \$12,215, as alleged in SOR subparagraph 1.b. Applicant indicated, "this debt was ordered as community property from the divorce and with the help of [DMC], this debt has been disputed and deleted from [the] credit report." However, he failed to document that dispute. This debt is unresolved. (AE O; Tr. 91-92.)

Applicant is indebted on a charged-off account in the amount of \$8,343, as alleged in SOR subparagraph 1.c. Applicant indicated, "this debt was ordered as community property from the divorce and with the help of [DMC], this debt has been disputed and deleted from [the] credit report." However, he failed to document that dispute and resolution. This debt is unresolved. (AE O; Tr. 91-92.)

Applicant is indebted on a delinquent collection account in the amount of \$5,858, as alleged in SOR subparagraph 1.d. Applicant claimed that this debt "was incorrectly overcharged" from his first divorce attorney and "with the help of [DMC], this debt has been disputed and deleted from [the] credit report." However, he failed to document that dispute and resolution. This debt is unresolved. (AE O; Tr. 93.)

Applicant is indebted on a delinquent student loan in the amount of \$4,354, as alleged in SOR subparagraph 1.e. Applicant indicated he intended to consolidate his delinquent student loans into one debt. He intended to negotiate a payment arrangement.

However, he did not provide documentation that he took any action on this debt. It is unresolved. (AE O; Tr. 93.)

Applicant is indebted on a judgment in the amount of \$4,220, as alleged in SOR subparagraph 1.f. This judgment was filed in January 2013. Applicant indicated, “this debt was ordered as community property from the divorce and with the help of [DMC], this debt has been disputed and deleted from [the] credit report.” However, he failed to document that dispute and resolution. This debt is unresolved. (GE 5; AE O; Tr. 94.)

Applicant is indebted on another delinquent student loan in the amount of \$2,817, as alleged in SOR subparagraph 1.g. Applicant indicated he intended to consolidate his delinquent student loans, as discussed above. He intended to negotiate a payment arrangement with this creditor. However, he did not provide documentation that he took any action on this debt. It is unresolved. (AE O; Tr. 94-95.)

Applicant is indebted on a collection account in the amount of \$581, as alleged in SOR subparagraph 1.h. He denied this was his debt and claimed “with the help of [DMC], this item has been removed from [the] credit report.” However, he failed provide documentation to support this claim. This debt is unresolved. (AE O; Tr. 94-95.)

Applicant is alleged in SOR subparagraphs 1.i, 1.aa, and 1.bb, to be indebted to a creditor on three separate debts in the amounts of \$535, \$205, and \$147, respectively. These debts were medical bills for Applicant’s children. Applicant incorporated these debts into his plan with the DMC. These debts are unresolved. (AE O; AE P; Tr. 98.)

Applicant is alleged in SOR subparagraphs 1.j through 1.r, 1.t, and 1.u, to be indebted to the same collection agent for those 11 debts that total \$2,206. These debts were medical bills for Applicant’s children. Applicant incorporated these debts into his plan with the DMC. These debts are unresolved. (AE O; AE P; Tr. 96-97.)

Applicant is indebted to a telephone company in the amount of \$92, as alleged in SOR subparagraph 1.s. Applicant indicated he intended to resolve this debt, but provided no documentation to substantiate his claim. It is unresolved. (AE O; Tr. 96.)

Applicant is alleged in SOR subparagraphs 1.v through 1.y, to be indebted to the same collection agent for these four debts that total \$2,307. According to Applicant, his DMC “was not able to have any direct information about this account of Jan[uary] 2nd as this account did not show up on their system.” Applicant has contacted the creditor and asked for documentation on each of these debts. He plans to incorporate them into his debt management plan with DMC. These debts are not resolved. (AE O; Tr. 96-97.)

Applicant is indebted to his state taxation authority in the approximate amount of \$11,415, as alleged in SOR subparagraph 1.z. A tax lien was filed against him for that amount in January 2017. Applicant indicated that this debt was “based off of not filing/fraudulent filing/incorrect filing of taxes.” He further indicated that the amount owed had been reduced after amended returns were filed. He requested a “tax abatement for

financial hardship” from his state taxation authority, but did not provide evidence of the abatement being granted. This debt is unresolved. (GE 5; AE O; AE K; Tr. 97-98.)

Applicant is indebted to a collection agent for a city in the approximate amount of \$529, as alleged in SOR subparagraph 1.cc. Applicant disputes this debt as it was incurred at Applicant’s former residence in 2014, and he has not lived there since 2010. He indicated the debt belonged solely to his ex-wife and that he would address the issue in court. He provided a statement from this creditor showing the debt was incurred in 2014 to substantiate this dispute. (AE O; AE S; Tr. 98.)

Applicant is indebted to a collection agent in the approximate amount of \$525, as alleged in SOR subparagraph 1.dd. This is a medical debt that has been included in his DMC debt management plan. However, no payments have been documented under that plan. It is unresolved. (AE O; AE P; Tr. 98.)

Applicant is indebted to a collection agent in the approximate amount of \$95, as alleged in SOR subparagraph 1.ee. Applicant indicated his intent was to pay this debt in full at the end of January 2018. He presented no documentation to show it is resolved. (AE O; Tr. 100-101.)

Applicant is indebted to a collection agent in the approximate amount of \$71 and \$25, respectively, as alleged in SOR subparagraphs 1.ff and 1.gg. These are medical debts that have been included in his DMC debt management plan. However, no payments have documented under that plan. They are unresolved. (AE O; AE P.)

Applicant failed to timely file his Federal and state tax returns as required for tax years 2010 through 2014. He disclosed his failure to file Federal and state income taxes for tax years 2010 through 2014 on his June 2015 security clearance application. (GE 1.) During his June 2016 security clearance interview, he expanded the years to include failure to file for tax year 2015. (GE 2.) However, he denied this allegation in his Answer. He claimed that “all tax years have been filed” and that he was “currently working with [his] tax accountant to correct all submitted/filed tax returns.” (AE O.) He documented that his ex-wife used an invalid power of attorney to file their 2009 Federal and state tax returns, and she cashed the refund checks without his approval. (AE C.) He documented he has been diligently working on his tax issues since they started in 2010, but selected a tax service that went out of business after taking \$5,000, but failing to file his returns. (AE G; AE H.) Applicant presented a letter from his current tax accountant, emailed to him on January 17, 2018, which reflects:

I have been working with [Applicant] for the past two years on his tax issues. At this point in time, [Applicant] has filed all tax years up to 2016, and has submitted an extension for the tax year 2016. Two amended tax filings for 2014 and 2015 have been submitted and I currently have [Applicant’s] 2016 tax year file ready to submit. I anticipate that we will be filing the 2016 tax return before the end of the week.

My knowledge of [Applicant's] tax issues are as follows:

In 2012 [Applicant] was victim of identity theft and someone fraudulently filed his 2011 tax return and electronically received the refund without [Applicant's] knowledge. This action flagged [Applicant] with the IRS.

According to [Applicant], in 2013 he hired a company to help him resolve his issue and was unsuccessful in its resolution.

I am hoping that with the new amendment request and 2016 tax form filing that [Applicant] will be able to have a final tax estimate in which we can negotiate a repayment plan. (AE R.)

Applicant had previously been granted an extension to file his 2016 Federal and state income tax returns. Applicant does not know how much he owes in Federal taxes. (AE G; Tr. 74-77, 101-104.)

Two witnesses spoke on Applicant's behalf. Both testified about Applicant's contentious divorce and indicated Applicant is hardworking and trustworthy. (Tr. 26-56.) Applicant presented a letter from his site lead that indicated Applicant has kept his company informed of his financial problems and is actively attempting to manage his delinquencies. (AE Q.) Applicant is considered to be a "great asset" to his company. In another letter, his director indicated "his handling of classified material has been above reproach" (AE M.)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG 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 AG ¶ 2 describing 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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an “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 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 as to potential, rather than actual, risk of compromise of classified information.

Finally, 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 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.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (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 a history of not meeting his financial obligations. He failed to timely file his Federal and state income tax returns, as required by law, for years 2010 through 2014. He also had 33 unresolved delinquent debts, including his delinquent state tax debt, which total over \$73,000. There is sufficient evidence to raise substantial security concerns under the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from Applicant's financial difficulties. The following mitigating conditions under AG ¶ 20 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;
- (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; 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 history of financial delinquencies is demonstrated by his current and old unresolved debts. He admits he failed to timely file and pay Federal and state income tax obligations. He has numerous SOR-alleged unresolved delinquent accounts. While he has a plan to resolve some of them, he has not documented any payments under that plan. His debt is ongoing and casts doubt on his reliability and judgment. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to a series of events, including his divorce, legal fees, identity theft, and dental bills. These were conditions beyond his control. However, the record lacks documentation to show he reasonably and responsibly addressed his delinquencies while they were accumulating. He did not have the funds available to make payments on them, so he ignored the debts he knew about. Full mitigation under AG ¶ 20(b) is not established.

Applicant provided documentation that he has contracted with a DMC to attempt to resolve some of his debts. They provided him financial counseling on how to best manage and resolve his delinquent debts, given his budget. They also counseled him on how to negotiate with his creditors and establish repayment plans. His credit counseling offers partial mitigation, however because no payments have been documented to the DMC or to the creditors, there is insufficient evidence to conclude that his problem is under control or that he is making a good-faith effort to repay his remaining creditors. The evidence does not establish full mitigation under AG ¶¶ 20(c) or 20(d) concerning his overall financial situation.

Applicant provided documentary evidence of a reasonable basis to dispute his debt in SOR ¶ 1.cc. AG ¶ 20(e) applies to this debt. However, he failed to establish mitigation with respect to the other debts he claimed to have disputed, because he did not document the basis of his dispute.

Applicant provided a letter from his accountant, which claimed that Applicant had filed "all tax years up to 2016." However, the documentation provided does not prove that Applicant's Federal and state taxes are being paid or otherwise resolved. He did not fully mitigate the Government's concern under AG ¶ 20(g).

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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 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 pertinent facts and circumstances surrounding this case. Applicant is 46 years old. He served honorably in the Marine Corps for 14 years. He is respected by his employer for his hard work and is considered trustworthy. His financial problems occurred largely due to his contentious divorce. Since 2010, he has been unable to recover from the turmoil that divorce caused in his financial life. While he has made significant strides in filing his delinquent taxes, and has hired a DMC to help him with his consumer and medical debts, he has not established a track record of responsibly managing and resolving delinquent debts or repairing his credit. Applicant has not provided sufficient evidence about his overall financial stability from which to determine that further tax problems or financial delinquencies are unlikely. 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 failed to mitigate the security concerns arising under Guideline F.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.bb:	Against Applicant
Subparagraph 1.cc:	For Applicant
Subparagraphs 1.dd through 1.hh:	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 access to classified information. National security eligibility is denied.

Jennifer I. Goldstein
Administrative Judge