



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



In the matter of:)
)
) ISCR Case No. 16-03761
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

01/29/92018

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense's (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. Applicant has more than \$33,000 in delinquent obligations, which remain unpaid. He has failed to mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for access to classified information is denied.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on January 20, 2017, the DoD Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) detailing financial considerations security concerns. On March 29, 2017, Applicant answered the SOR and elected to have the matter decided without a hearing. On May

¹ 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 (Sept. 1, 2006 AG) effective within the DoD on September 1, 2006, and as amended on June 8, 2017.

14, 2017, Defense Office of Hearings and Appeals (DOHA) Department Counsel (DC) submitted the Government's case in a File of Relevant Material (FORM). The FORM contained five attachments (Items 1-5), which were admitted into evidence. On May 22, 2017, Applicant received a copy of the FORM, along with notice of his opportunity to object to the Government's evidence and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. He had 30 days from his receipt of the FORM to submit any additional information in response to the FORM. The response was due on June 21, 2017. No additional information was received from Applicant. On October 1, 2017, I was assigned the case.

While this case was pending a decision, the Director of National Intelligence issued Security Executive Agent Directive 4, establishing the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), which he made applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The new AGs supersede the Sept. 1, 2006 AGs and are effective "for all covered individuals" on or after June 8, 2017. Accordingly, I have evaluated Applicant's security clearance eligibility under the new AGs.²

Findings of Fact

In Applicant's answer to the SOR, he admitted the 2007 bankruptcy filing and seven delinquent obligations set forth in the SOR totaling more than \$33,000. He denies the \$8,000 Federal tax obligation (SOR 1.i) stating the debt was "Paid in Full." The delinquent obligations are shown in Applicant's credit reports of January 2016 (Item 4) and May 2017 (Item 5). His SOR answer provided no additional information on the debts other than the claim his taxes were paid, which he failed to present documentation supporting that assertion. I incorporate Applicant's admissions as facts. After a thorough review of the pleadings and exhibits, I make the following additional findings of fact.

Applicant is a 37-year-old heating, ventilation, and air conditioning (HVAC) lead who has worked for a defense contractor since June 2014³, and he seeks to obtain a security clearance. (Item 3) In September 2014, he separated from his wife and was divorced in April 2016. (Items 2 and 3) He has not served in the military.

In Applicant's December 2015 Electronic Questionnaires for Investigations Processing (e-QIP), he listed owing approximately \$8,000 in Federal and state taxes. (Item 2) In Applicant's July 2016 personal subject interview, he stated he failed to pay his income tax from 2012 through 2014. He did not have taxes withheld from his wages as he needed money to meet his living expenses and other financial obligations. At the time of his interview, he stated he was current on a repayment plan with the Internal Revenue Service whereby he paid \$100 per month. (Item 3) No documentation of the repayment

² Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case. The new AGs are available at http://ogc.osd.mil/doha/5220-6_R20170608.pdf.

³ Applicant previously worked in the same position for a different government contractor. (Items 2 and 3) There was no break in his employment when the contracts changed. (Item 3)

plan was presented. In his SOR answer, he asserted he had paid his taxes, but provided no documentation supporting that assertion.

Applicant acknowledged he owes money for three repossessed automobiles⁴ (SOR 1.h), two repossessed motorcycles (SOR 1.d and 1.e), and credit card accounts. (Item 3). He stated he had originally been careless and irresponsible with his money. (Item 3) He indicated his financial problems started in 2011 when his then wife became unemployed and his financial difficulties continued during his separation and divorce. (Item 3) He stated he intended to pay off all his accounts. He was fixing up the home where he lived and hoped to sell the house by the end of 2016. (Item 3) He asserts the home is worth \$100,000, on which nothing is owed.

During Applicant's interview, he agreed he had filed for bankruptcy protection in January 2007 and his debts were discharged in May 2007. (Item 3) He provided no information as to why he had to file for bankruptcy protection or any information concerning his finances leading up to the filing. He provided no information as to how much debt was discharged.

The FORM put Applicant on notice that his SOR answer had failed to provide information as to why he fell into debt and no evidence of extenuation or mitigation. Despite this notice, Applicant did not respond to the FORM. He provided no documentation showing what efforts he undertook to pay, contact creditors, or otherwise resolve his delinquent debts, nor did he provide any documentation as to payment on or current status of his delinquent debts.

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 must be considered 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 AG ¶ 2(a), the adjudication process is an examination of a sufficient period and a careful weight of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is known as the whole-person concept.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for the national security eligibility will be resolved in favor of the national security." In reaching this decision, I have

⁴ The SOR lists only one delinquent account for vehicle repossession.

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 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 Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination of 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

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding

classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

AG ¶ 19 includes three disqualifying conditions that could raise a security concern any may be disqualifying in this case: "(a) inability to satisfy debts," "(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," apply.

The Government's substantial evidence and Applicant's own admissions raise security concerns under AG ¶¶ 19(a) and 19(c). The SOR alleged more than \$33,000 owed on seven delinquent obligations. Additionally, although asserting he had paid his \$8,000 tax obligation, he provided no documentation showing his taxes were current. He provided no documentation refuting the delinquent obligations that were listed in his January 2016 and May 2017 credit reports and admitted to in his subject interview and SOR answer.

The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. September 22, 2005))

Six of the seven Financial Considerations 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 person has received or is receiving 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.

During Applicant's July 2016 interview, all of Applicant's delinquent obligations were discussed. At that time, he stated he was fixing up his home and hoped to sell it by the end of 2016, at which time he would pay his delinquent obligations. He provided no information as to any sale of his home or payment on his delinquent debts.

Applicant's debts remain unpaid, accumulating the delinquent obligation did not occur under unusual conditions, and the failure to timely pay those obligations is not an unusual condition unlikely to recur. In September 2014, he separated from his wife and was divorced in April 2016. Other than stating his ex-wife's loss of income in 2011 and his separation and divorce led to his financial problems, he failed to present documentation showing the effect of the unemployment, separation, or divorce on his finances. He provided insufficient evidence to conclude that his financial problems are unlikely to recur. His delinquencies continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant has been full-time employed since May 2010, and the divorce occurred a year and a half ago. He provided no evidence of what responsible steps he took to pay or resolve his debts. The second prong of AG ¶ 20(b) does not apply.

There is no evidence of financial counseling or clear indications that Applicant's financial problems are being resolved or are under control. AG ¶ 20(c) does not apply. There is no showing of Applicant having made good-faith payments towards his delinquent obligations or evidence to establish that he is executing a reasonable ongoing plan to pay or resolve his debts. AG ¶ 20(d) does not apply.

Applicant indicated his tax obligation (SOR 1.h) was "Paid in Full." AG ¶ 20(e) does not apply because he has not provided documented proof to substantiate the basis of the dispute over this debt.

Applicant provided no information as to why he had to file for bankruptcy protection in 2007. However, the filing and discharge of his debts occurred more than ten years ago. I do not find against him as to SOR 1.a.

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.

Applicant has been aware of the Government's security concern about his delinquent debts since his July 2016 interview when he was specifically confronted about his delinquent accounts. Additionally, the January 2017 SOR and May 2017 FORM put him on notice of the Government's concern about his delinquent accounts. There is no evidence he has contacted his creditors. He provided no information regarding his past efforts to address his delinquent debt and has failed to show documentation he has established repayment agreements to address the delinquent debts.

In requesting a decision without a hearing, Applicant chose to rely on the written record. In so doing, however, he failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding his circumstances, articulate his position, and mitigate the financial security concerns. He failed to offer evidence of financial counseling or provide documentation regarding his past efforts to address his delinquent debt. By failing to provide such information, and in relying on only the very limited response in his SOR Answer, financial considerations security concerns remain.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). At the same time, security clearance decisions are not intended as punishment for past wrongdoing, but rather involve an assessment of future risk that one may not properly handle or safeguard classified information.

The issue is not simply whether all the delinquent obligations have been paid—it is whether his financial circumstances raise concerns about his fitness to hold a security

clearance. (See AG ¶ 2(e)) Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from his 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, Financial Considerations: AGAINST APPLICANT

Subparagraph 1.a: For Applicant

Subparagraphs 1.b - i: 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 a security clearance. Eligibility for access to classified information is denied.

CLAUDE R. HEINY II
Administrative Judge