



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



In the matter of:)
)
) ISCR Case No. 16-04006
)
Applicant for Security Clearance)

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

03/06/2018

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On March 24, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on April 12, 2017, and requested a hearing before an administrative judge.

The case was assigned to me on September 12, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 7, 2017, scheduling the hearing for December 6, 2017. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A and B, which were admitted without objection. DOHA received the hearing transcript (Tr.) on December 14, 2017.

Findings of Fact

Applicant is a 44-year-old prospective employee of a defense contractor. His employment is contingent upon him receiving a security clearance. He has a bachelor's degree, which was awarded in 2004. He is married with three children.¹

The SOR alleges 20 delinquent medical debts totaling \$7,989 and 5 delinquent consumer debts totaling \$3,227. The medical debts range from \$60 to \$2,922; and the consumer debts range from \$421 to \$1,058. Applicant admitted owing all the debts. They are also each listed on at least one credit report.

Applicant owned a home in State A. He bought another house to live in and kept the first house as an investment property. His renters did not pay the rent and damaged the property. He lost the rental property to foreclosure, but was able to maintain the house he lived in.²

Applicant took regular vacations to foreign countries. He reported foreign trips for tourism in 2010, 2011, 2012, and 2014. He stated that his mother-in-law paid for the trips.³

Applicant reported financial issues on his April 2016 Questionnaire for National Security Positions, and he discussed his finances during his background interview in July 2016. He stated that he will pay his debts when he has the resources to do so.⁴

Applicant moved to his current state of residence (State B) in about October 2016. He sold his home in State A, and earned about \$217,000 from the sale. He bought a house in State B for \$235,000. He used the \$217,000 from the house sale plus some funds from his in-laws to buy the house for "cash," without a mortgage loan. He stated that, with the foreclosure, he could not get a mortgage loan. He wanted a house with more land for his children. In about July 2017, he sold the first house in State B and bought another one at a short sale for about \$195,000. After paying for some repairs on the second home, he essentially broke even on the sale of the first home and the purchase of the second. The second house is also unencumbered by a mortgage loan.⁵

Applicant stated that the medical debts were mostly copayments. He has not paid any of the debts alleged in the SOR. He stated that he is attempting to arrange payment plans for his debts. He has not received financial counseling. He has a full-

¹ Tr. at 26-29, 43; GE 1, 2.

² Tr. at 20-21. The SOR did not allege the foreclosure. Any matter that was not alleged in the SOR will not be used for disqualification purposes. It may be considered when assessing Applicant's overall financial situation, in the application of mitigating conditions, and during the whole-person analysis.

³ Tr. at 41; GE 1.

⁴ GE 1, 2.

⁵ Tr. at 8, 21-25.

time job with a company that is not related to his security clearance. He has more than \$100,000 in deferred student loans. He noted that his credit score has increased; he paid a furniture store debt; and he is current on the \$562 monthly payments on the loan for his wife's 2016 car. His wife does not work outside the home, but he hopes that she will find a part-time job to help with the finances. He also stated that he may use his income tax refund to pay some of the debts.⁶

Applicant submitted a letter attesting to his excellent job performance. He is praised for his reliability, leadership, technical proficiency, and trustworthiness.⁷

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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.

⁶ Tr. at 29-32, 37-46, 49; AE A.

⁷ AE B.

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;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has a history of financial problems. He has not paid his debts despite an apparent ability to do so. The evidence is sufficient to raise the above 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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant lost his rental property to foreclosure after his renters did not pay the rent and damaged the property. That accounts for the foreclosure, which was not alleged in the SOR, but it does not appear to be the major factor behind the debts alleged in the SOR. He took several trips to foreign countries; he bought two houses without mortgage loans; and he is paying the \$562 monthly payments on the loan for his wife's 2016 car. However, he has made no payments on any of the debts alleged in the SOR, and he has more than \$100,000 in deferred student loans, which will have to be paid at some point.

Applicant stated that he intended to pay his debts. Intentions to pay debts in the future are not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013). I am unable to find that Applicant acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. There are no applicable mitigating conditions.

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 my whole-person analysis. I also considered Applicant's favorable character evidence.

Overall, the record evidence leaves me with questions and doubts about 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.y:	Against Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge