



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



In the matter of:)
)
) ISCR Case No. 17-00220
)
Applicant for Security Clearance)

Appearances

For Government: Mary M. Foreman, Esquire, Department Counsel
For Applicant: *Pro se*

06/11/2018

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations and Guideline E, personal conduct. Applicant's eligibility for access to classified information is denied.

Statement of the Case

On February 15, 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 and Guideline E, personal conduct. 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. On June 8, 2017, new AG were implemented and are effective for decisions issued after that date.¹

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

Applicant answered the SOR on March 6, 2017, and requested a hearing before an administrative judge. The case was assigned to me on August 23, 2017. Due to a hurricane and delays associated with federal funding, the hearing was scheduled and canceled several times. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 29, 2018. I convened the hearing as scheduled on April 17, 2018. The Government offered exhibits (GE) 1 through 6, which were admitted into evidence without objection. Applicant testified and did not offer any exhibits. DOHA received the hearing transcript on April 25, 2018.

Findings of Fact

Applicant admitted the allegations in the SOR ¶¶ 1.a through 1.i. He did not respond to the allegations in the SOR ¶¶ 2.a and 2.b, and they will be considered denials. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 57 years old and a high school graduate. He was married from 1983 to 1994. He has three adult children. He has worked for 33 years for different federal contractors.²

When Applicant was divorced in 1994, his wife received their house in the settlement. Applicant testified he did not have court-ordered child support payments at that time. In 2004, he was ordered to pay \$544 a month in child support. He was unable to pay all of his bills because of child support payments. In 2008, the child support payment was \$523 a month. His child support obligations ceased in 2014.³

Applicant is paying his current monthly expenses. He testified that he paid or disputes the bills in SOR ¶¶ 1.a (a judgment-\$3,195), 1.e (\$509), 1.f (\$159), 1.g (\$56), 1.h (\$53), and 1.i (\$23), but did not provide corroborating documents. He acknowledged the debt in SOR ¶ 1.b (\$14,196) was for a repossessed vehicle, which he did not pay. He testified he originally disputed SOR ¶ 1.a with the creditor, but it was not resolved. He did not follow through when the case went to court. He said he did not pay the other debts alleged in the SOR because he believed they were barred by the statute of limitations.⁴

Applicant completed a security clearance application (SCA) in May 2016. He responded “no” to all of the financial questions under section 26. He stated he did not believe he had to disclose his delinquent debts because they had fallen off his credit report. He denied he deliberately failed to disclose his delinquent debts. He said he was unaware of the judgment. His June 2016 credit report lists the judgment in SOR ¶ 1.a and the delinquent debts in SOR ¶¶ 1.b through 1.i., as past due, charged off, or in

² Tr. 20-21.

³ Tr. 22-27.

⁴ Tr. 27-38, 54-57.

collection. The judgment in SOR ¶ 1.a is also documented by a court record. Applicant stated he did not check his credit report until after he completed his SCA.⁵

Applicant was interviewed by a government investigator in September 2016. He acknowledged he had medical bills and his accounts became delinquent when he was unable to pay the full amount. He was told by his doctor's receptionist to make a payment when he comes for a visit. No other information was provided to show he resolved the medical debts. He admitted his car was repossessed (SOR ¶ 1.b) because he was unable to make the monthly payments and the debt was charged off. He told the investigator he disagreed he owed the balance on the repossessed car and believed because it was charged off the debt was erased. He had no plans to take care of the account. He told the investigator he received a letter telling him the debt was forgiven. He did not provide this document. Regarding other debts that were alleged and brought to his attention by the investigator, he either disputed he owed them, or was unaware they were in collection.⁶

Applicant's girlfriend has lived with him for the past six years. He earns approximately \$2,000 from one job, and two years ago he began working a second job and earns \$1,000 a month. His mortgage payment is \$1,000, which is split with his girlfriend, who also pays the cable bill. Applicant pays the other household bills. Applicant lost his car in a hurricane. He purchased another car in September 2017 for \$30,000. His monthly payments are \$700.⁷

Applicant has not participated in financial counseling. He acknowledged that he received notices about debts being delinquent. He was aware of them, but he could not pay them. He testified he has not taken action to resolve his delinquent debts. He said that even when he had money to pay the debts, he thought they would fall off his credit report, so he did not pay them. A February 2005 credit report shows Applicant had several delinquent debts. Applicant testified that he is paying all of his current expenses and his finances are stable.⁸

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 used in evaluating an applicant's eligibility for access to classified information.

⁵ Tr. 38-41, 54-59; GE 3, 4.

⁶ GE 2.

⁷ Tr. 44-54.

⁸ Tr. 41-43, 53-56; GE 5 and 6. I have not considered for disqualifying purposes any derogatory matters that were not alleged in the SOR. I may consider the matters when making a credibility determination, in applying mitigating conditions, and when making a whole-person analysis.

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(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 access to classified information 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. Likewise, I have not drawn 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. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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 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. 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.⁹

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and the following are potentially applicable:

- (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 numerous delinquent debts and an unpaid judgment. He is unable or unwilling to pay his delinquent debts. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from 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,

⁹ See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

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 counseling for the problem from a legitimate and credible source, such as a non-profit credit counselling 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.

Applicant has a history of not paying his bills. He has not made payments or initiated payment plans to resolve his delinquent debts. There is insufficient evidence to conclude his financial problems are unlikely to recur. His failure to pay his delinquent debts casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to being ordered to pay child support in 2004. His required payments ceased in 2014. He failed to provide sufficient evidence that after 2014, he was unable to address his debts due to circumstances beyond his control. There is insufficient evidence to conclude that from 2014 to 2018, he acted responsibly toward his delinquent debts. AG ¶ 20(b) does not apply.

No evidence was presented that Applicant participated in financial counseling or that he has made good-faith efforts to resolve his delinquent debts. He failed to provide documentary evidence that he disputed any debts. The evidence is insufficient to conclude financial problems are under control. AG ¶¶ 20(c), 20(d) and 20(e) do not apply.

Guideline E: Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. The following will normally result in an unfavorable national security eligibility determination,

security clearance action, or cancellation of further processing for national security eligibility.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

I have considered all of the evidence and conclude it is insufficient to conclude Applicant was aware that he had a judgment entered against him and deliberately failed to disclose it as alleged in SOR ¶ 2.a. I find in his favor for this allegation.

There is insufficient evidence to conclude Applicant was aware that most of the debts alleged were turned over to a collection agency. I find the evidence is sufficient to conclude Applicant was aware that the repossessed vehicle debt alleged in SOR ¶ 1.b was charged off. I did not find his explanation credible that he did not have to disclose the debts because they it was no longer reported on his credit bureau report or was barred by the statute of limitations. I find he deliberately failed to disclose the charged off debt in SOR ¶ 1.b. Applicant's June 2016 credit bureau report lists all of the debts alleged in the SOR. The above disqualifying condition apply.

After the Government produced substantial evidence of those disqualifying condition, the burden shifted to Applicant prove mitigation. Two mitigating conditions under AG ¶ 17 are potentially applicable to the disqualifying security concerns based on the facts:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

There is insufficient evidence that Applicant made prompt, good-faith efforts to correct his omissions on his May 2016 SCA and before being confronted with the facts. AG ¶ 17(a) does not apply.

Applicant's omissions are not minor. His deliberately failed to disclose his delinquent debts, which casts doubt on his reliability, trustworthiness, and good judgment. AG ¶ 17(c) does 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 Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant is 57 years old. He attributed his financial problems to having to pay child support that ceased in 2014. He failed to provide corroborating evidence regarding debts he disputes. He has not taken action to resolve his debts believing they are barred by the statute of limitations. Applicant has not established a reliable financial track record. His actions raise questions about his reliability, trustworthiness, and good judgment. Overall, the record evidence leaves me with serious questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude he failed to mitigate the security concerns arising under Guideline F, financial considerations and Guideline E, personal conduct.

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.i:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT

Subparagraph 2.a:
Subparagraph 2.b:

For Applicant
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 security to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge