



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



In the matter of:)
)
) ISCR Case No. 17-00303
)
Applicant for Security Clearance)

Appearances

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

11/02/2017

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On May 8, 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. 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 May, 30, 2017, and requested a hearing before an administrative judge. The SOR was amended on July 6, 2017. Applicant answered it on July 21, 2017, but failed to sign the document at the time. He signed it on September 20, 2017. The case was assigned to me on July 25, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 21, 2017. I convened the hearing as scheduled on September 20, 2017. The Government offered exhibits (GE) 1 through 5. Applicant testified and offered Applicant Exhibits (AE) A through GG. There were no objections to any exhibits offered and all were admitted into evidence. Hearing Exhibit I is a demonstrative chart. DOHA received the hearing transcript on September 28, 2017.

Procedural Issues

SOR ¶¶ 1.c and d were withdrawn.

Findings of Fact

Applicant admitted all of the allegations in the SOR and in the amended SOR. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 48 years old. He earned a bachelor's degree in 1991 and a master's degree in 2016. He is currently attending school to earn another bachelor's degree. He was married from 1992 to 1994. He has no children. He has been employed by his current employer, a federal contractor, since October 2015.²

Applicant disclosed in his security clearance application (SCA) that he had been working for a retailer from September 2015. He does not list any periods of unemployment, but it appears with many of his jobs, he may have been underemployed, or had gaps in his employment. Applicant's admissions, credit reports from October 2015 and July 2017, and bankruptcy documents support the debts alleged in the SOR.³

Applicant filed Chapter 7 bankruptcy in 2003. He testified that he lost his job and filed so he could keep his car from being repossessed. He testified that the vehicle was eventually repossessed and the loan was paid through garnishment. He stated no other debts were discharged in this bankruptcy.⁴

Applicant attributed his past financial problems to periods of unemployment, underemployment, medical issues without insurance, and identity theft. In 2011, Applicant filed complaints and disputed debts on his credit reports with the three credit bureaus. He also filed complaints with his state's Attorney General's office disputing debts. The three

² Tr. 17-19.

³ Tr. 22; GE 1, 2, 3, 4, 5.

⁴ Tr. 47-51; GE 5.

credit bureaus confirmed certain debts and others were removed from the reports. He testified that since 2011, he has been paying debts that did not belong to him, but were attributed to identity theft. He estimated he has paid \$12,000. He explained he needed to obtain credit so he could rent an apartment.⁵ Applicant provided documents for past debts he paid that were not alleged in the SOR. He verified that all of the debts alleged in the SOR belong to him, except he is disputing SOR ¶ 1.l, indicating it is not his debt.⁶

Applicant testified that he was unemployed from February 2011 to May 2013. His SCA reflected he was employed.⁷ He testified that he received unemployment benefits and had part-time contract jobs for two-week periods. In June 2017, Applicant filed Chapter 7 bankruptcy. He testified that he included all of the debts alleged in the SOR and amended SOR in the bankruptcy. Applicant stated he did not have medical insurance from 2010 to 2014. He stated that he had to choose which debts to pay, such as his car payment and rent. In June 2017, one of his medical debts was being garnished from his wages. The amount of the debt was \$14,000 and was eight years old. His debts were daunting. He wanted to stop the garnishment, and he wanted a fresh start to get out of debt and on track financially.⁸

Applicant testified that the debt in SOR ¶ 1.e (\$470) has a zero balance from the collection agency. The document he provided to support his claim does not have the same account numbers to verify it is paid. Another document from the collection agency shows the balance owed is unpaid.⁹

Applicant provided an undated document to show the debt in SOR ¶ 1.f has a zero balance and was settled for less than the full amount owed.¹⁰

Applicant testified that in February 2017 he paid the medical debt alleged in SOR ¶ 1.g (\$223). He stated the debt was over five years old. He did not have proof of payment. He testified that the medical debts alleged in SOR ¶¶ 1.h (\$553), 1.i (\$514), 1.j (\$1,378) and 1.k (\$674) were all paid before he filed bankruptcy. He did not have proof they were paid.¹¹

The debt in SOR ¶ 1.m (\$3,245) is attributed to an apartment lease that Applicant broke when he moved. He could not pay the cell phone accounts in SOR ¶¶ 1.n (\$630)

⁵ AE K, L, M, N, O, P, Q.

⁶ Tr. 39-41, 55-61; AE A, E, F, R, S, T, W, Y, Z, AA, BB, CC.

⁷ GE 1.

⁸ Tr. 22-23, 52-64; GE 5; AE B.

⁹ Tr. 42-43; AE D, FF.

¹⁰ AE GG.

¹¹ Tr. 44-47; GE 5.

and 1.r (\$2,477). The debt in SOR ¶ 1.q (\$5,636) is owed to a university for a class Applicant did not complete. The debts in SOR ¶¶ 1.o (\$232) and 1.p (\$230) are medical debts. He stated that any debts prior to 2013 were from identity theft and the debts after 2013 belong to him.¹²

Applicant's bankruptcy documents shows under Schedule D: creditors who have claims secured by property, the total amount is \$28,526. The debts listed are judgments for debts incurred in 1999, 2000, 2003, and two in 2016. He stated the 1999 judgment was due to identity theft.¹³

Schedule E/F: creditors who have unsecured claims reflects the Internal Revenue Service (IRS) has a priority claim for \$60,000. Nonpriority claims reflect a student loan balance of \$24,804, and other nonpriority claims has a balance of \$35,426.¹⁴

Applicant was interviewed by a government investigator in August 2016. He previously disclosed on his SCA that he failed to pay his 2009 and 2014 federal income taxes. He stated on his SCA regarding his 2009 tax debt that the reason he did not pay his taxes was "financial hardship." He stated, "I have worked out a payment plan with a third party to satisfy my debt."¹⁵ He estimated he owed \$2,000. He did not provide a date on his SCA for when or if the debt was satisfied. Regarding Applicant's 2014 federal taxes, he stated on his SCA: "I was laid off and suffered major hardship." He disclosed he owed \$2,000, and it was satisfied in August 2015. He stated, "I set up payment plan with IRS."¹⁶ Applicant told the investigator that both tax debts were resolved and paid in full.¹⁷

Applicant testified that when his bankruptcy attorney retrieved his account information, it showed a \$60,000 debt to the IRS. Applicant acknowledged that his wages were garnished for a state tax debt that is now resolved. He hired a tax relief company for \$2,000 to be paid over 18 months. This company is dealing with the IRS on his behalf and has submitted an offer of compromise to pay \$24,000. Applicant is waiting to hear whether the offer has been accepted. Applicant testified that he did not pay all of his 2009 federal income taxes and believed he owed about \$3,700 for 2009 and \$1,900 for 2014. He attributed the IRS tax debt to tax years 2009 and 2014. He testified that he has made

¹² Tr. 22, 51-55.

¹³ Tr. 85; GE 5.

¹⁴ Tr. 86; GE 5.

¹⁵ GE 1.

¹⁶ GE 1.

¹⁷ Tr. 67-69; GE 1, 2.

28 payments of \$100 to the IRS over the past three years. He believed his bankruptcy discharge would be completed in October 2017.¹⁸

Around the end of 2014, Applicant co-signed a lease with his girlfriend at the time for a 2015 vehicle. She was to pay the \$609 monthly payments. She made eight timely payments. Applicant took over the lease after her last nine payments were late. He has made eight payments and the lease expires in November 2017.¹⁹

Applicant has not participated in financial counseling, but he plans to in the future. He stated he has a written budget. His health has been good over the past four year, except for some dental issues. He has less than \$5,000 in savings. He has no investments. In approximately November or December 2016, he loaned his current girlfriend \$6,000. She has paid him back about \$4,800 so far. He testified that he traveled to Australia in July 2014 for vacation, and his girlfriend paid for all of his expenses.²⁰

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 adjudicative guidelines 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 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.

¹⁸ Tr. 65-80, 88, 96. I have not considered any derogatory information or debts not alleged for disqualifying purposes. I may consider this information when making a credibility determination, in mitigation, and when analyzing the whole person.

¹⁹ Tr. 81-85.

²⁰ Tr. 88, 91-96.

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 applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 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.

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 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; and
- (c) a history of not meeting financial obligations.

Applicant's delinquent debts began accumulating in about 2013 and are unresolved. There is sufficient evidence to support the application of the above disqualifying conditions.

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, 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.

Applicant filed Chapter 7 bankruptcy in June 2017. At the time of his hearing, his debts had not been discharged. Applicant paid debts that were not alleged in the SOR. He was unable to pay his debts due to unemployment, underemployment, and medical issues. I have considered that some of his financial problems may be attributed to identity theft. Applicant provided evidence of his disputes with the credit bureaus. He did not provide evidence that he filed a police report. Some debts were affirmed and others were removed from his credit report. He admitted the debts incurred after 2013 belonged to him. Insufficient evidence was provided to conclude at this time that future financial problems are unlikely to recur. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to unemployment, underemployment and medical issues. He also attributed his problems to identity theft. Based on Applicant's information provided in his SCA, he did not disclose periods of unemployment, but I have considered he was likely underemployed. These conditions were beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. In 2011, he disputed some of his debts with the credit bureaus and some debts were removed. There is some evidence of identity theft, but Applicant did not provide evidence that he filed a police report. He admitted that the debts alleged were incurred after 2013 and belonged to him. Applicant paid debts that were not alleged and resolved one of the SOR debts. The remaining debts and others were included in his Chapter 7 bankruptcy. There is some evidence Applicant acted responsibly. AG ¶ 20(b) has some application.

Based on Applicant's testimony, he believes his debts will be discharged in Chapter 7 bankruptcy in the near future, but he has not participated in financial counseling. Significant tax debt and student loans remain. AG ¶ 20(c) does not apply. Applicant provided evidence that the debt in SOR ¶ 1.f was settled. AG ¶ 20(d) applies to this debt. There was insufficient documentary proof to conclude that other debts were paid. All of his debts were included in his Chapter 7 bankruptcy. Although, this is a legal means to resolve debt, it does not constitute a good-faith effort to repay overdue creditors. AG ¶ 20(d) does not apply to the other alleged debts.

Applicant disputed some debts, indicating he paid them. He did not provide sufficient documentary evidence to show they are paid or the disputes are being resolved. AG ¶ 20(e) 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 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 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. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is 48 years old. He is single and has no children. He filed Chapter 7 bankruptcy twice, once in 2003 and again in June 2017. His debts from his most recent bankruptcy are not discharged. Applicant attributed his financial problems to unemployment, underemployment, lack of medical insurance and identity theft. He admitted debts incurred after 2013 belonged to him. His bankruptcy documents reflect considerable unsecured debts. Applicant is looking to get a fresh start and not be inundated with debt. Chapter 7 bankruptcy will likely provide him that relief, but he has two large debts that are not dischargeable. Some of his financial decisions raise questions about his ability to manage his finances. Although there is some mitigation, it is insufficient to overcome the security concerns raised by his finances. He does not have a reliable financial track record. 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, 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, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant
Subparagraphs 1.c-1.d:	Withdrawn
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g-1.r:	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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge