



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



In the matter of:)
)
) ISCR Case No. 17-00382
)
Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

03/26/2018

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 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 March 22, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) detailing Guideline F, financial considerations security concerns. On April 7, 2017, Applicant answered the SOR and elected to have the matter decided without a hearing. On April 25, 2017, Defense Office of Hearings and Appeals (DOHA) Department Counsel (DC) submitted the Government's case in a File of Relevant

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.

Material (FORM). The FORM contained six attachments (Items). 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. On July 20, 2017, Applicant submitted six documents, which were admitted without objection, as Exs. A through F. 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 owing \$17,113 on 13 medical bills plus owing two state tax liens of \$39,095 and \$70,791. His SOR answer provided no additional information about his medical bills or state tax liens. 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 47-year-old technical writer who has worked for a defense contractor since August 2010, and he seeks to obtain a security clearance. (Item 3) He has been married since July 1992 and has two children ages 18 and 14. He has not served in the military.

In 2003, Applicant started opening fast-casual restaurants. In the following two years, he opened four restaurants and began investing in real estate and speculation ("spec") homes. (Ex. A) He asserts a downturn in the economy caused his businesses to fail. His liabilities were more than \$1,500,000 when he filed for bankruptcy protection in 2009. (Item A) He asserts his bankruptcy attorney told him to ignore his state taxes resulting in the state placing liens on his home. (Item A)

In Applicant's February 3, 2016 Electronic Questionnaires for Investigations Processing (e-QIP), he omitted his financial delinquencies. (Item 3) He did not list his Chapter 7 bankruptcy filed on February 1 or 2, 2009 because it was one day outside the seven-year scope of the financial questions. (Item 4) It is noted, the debts were not discharged until May 2009, which were within the scope of the financial questions. (Item 4). He did not list the state tax liens because he thought they were not within the seven-

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.

year scope of the question. The liens were filed in 2008, which is beyond the scope of the question.

In August 2016, during Applicant's enhanced subject interview, he was questioned about the SOR delinquent obligations. He asserts a downturn in the economy caused his business to fail resulting in him filing for Chapter 7 bankruptcy protection in 2007. No bankruptcy documents were submitted into the record. He asserts the majority of the liability was business related. (Item 4) His home mortgage is delinquent due to a house fire and the loss of insurance, which resulted in a \$300 additional amount being added to his monthly mortgage payment. (Item 4) He does not know the amount of the delinquency because his wife handles the household's finances. However, his credit report indicates he was \$4,819 past due. (Item 5)

On Applicant's e-QIP, he did not list his medical bills for emergency room treatment of kidney stones due to an "oversight." (Item 4) His February 2016 credit report indicates the 11 medical collection debts (SOR 1 a. – m.) were incurred in July and August 2013. (Item 5) During his August 2016 personal subject interview, he acknowledged the debts were turned over to a collection agency, and he was making \$25 monthly payments. He did not indicate if he was paying \$25 on each medical debt or was paying \$25 monthly on all the medical debts in total. (Item 4) He stated his spouse had knowledge of the debts, but he had no additional pertinent information regarding the debts. (Item 4)

Applicant has provided no documentation showing the two state tax liens (SOR 1.o, \$39,095 and SOR 1.p, \$70,791) have been paid or released. Applicant admitted in his SOR answer that he was indebted on the two liens. (Item 2) On six occasions between May 2009 and July 2014, various amounts of the tax liens were released. These amounts totaled \$4,309. (Item 4) In his August 2018 enhanced subject interview, Applicant acknowledged he still owed the money for the tax liens. He was attempting to establish a repayment plan with the state so that he could start making payments. (Item 4)

In Applicant's response to the FORM, he states he has contacted most of the collection companies and has set up repayment schedules or was in the process of arranging repayment agreements. (Item A) He intended to pay down the smaller debts first and then start to address his tax liens. (Item A)

Character Information

The deputy public works officer has known Applicant for five years and states Applicant is a very friendly, cheerful, sincere, enthusiastic, loyal, trustworthy, honest, and hardworking person with a positive attitude. (Item B) He believes Applicant is a valued employee and his character is above reproach. (Item B) The chief engineer has worked with Applicant since January 2011 and states Applicant has a good work ethic, is trusted, and supports the goals and priorities of the logistics base. (Item C) The facility security officer has known Applicant for three years and states Applicant is an outstanding worker and has an outstanding character. (Item D)

In June 2013, Applicant received a letter of appreciation thanking him for his work on restoring the parade field. (Ex. E and Ex. F) The command's executive deputy stated Applicant's expertise, knowledge, and abilities rendered superb results. (Ex. F)

Department Counsel expressed concerns in the FORM about Applicant's failure to provide evidence of efforts to resolve the debts, as follows:

He has not provided evidence showing he acted responsibly under the circumstances leading to each of his delinquent accounts or unpaid tax liens, or showing that he contemporaneously contacted each of his creditors as he began to experience financial problems. He has not provided any documentary evidence showing that he has paid, is on a current payment plan for, or has otherwise resolved any of the delinquent accounts or unpaid tax liens alleged in the SOR. (FORM page 2)

In Applicant's response to the FORM, he states he has contacted most of the collection companies and has set up repayment schedules or was in the process of arranging repayment agreements. (Item A) He intended to pay down the smaller debts first and then start to address his tax liens. (Item A) Applicant's response to the FORM contained no documentation showing payment of any of his delinquent obligations. He asserted he has contacted the creditors, but provided no documentation as to payment on or the 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 national security eligibility 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.

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 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 . . . An individual who is financially overextended is at greater risk of having to engage in illegal acts or other questionable acts to generate funds.

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 security concerns and may be disqualifying in this case: “(a) inability to satisfy debts,” “(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.” The SOR alleged approximately \$127,000 in delinquent obligations, which he admitted owing in his SOR answer. Applicant has two unpaid state tax liens totaling \$109,886 and 13 delinquent medical debts totaling more than \$17,000. The Government’s substantial evidence and Applicant’s own admissions raise security concerns under AG ¶¶ 19(a), 19(c), and (f).

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))

None of the seven Financial Considerations Mitigating Conditions under AG ¶ 20 apply. Those potentially mitigating conditions are:

(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;

(f) the affluence resulted from a legal source of income; 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.

In 2003, Applicant started opening restaurants and investing in real estate and spec homes. The economy changed and he lost his investments. His liabilities were more than \$1.5 million. In 2009, he filed for bankruptcy protection and the majority of his debts were discharged. The state tax liens were not discharged, and a lien was placed on Applicant's home. In July 2013, he had emergency treatment for kidney stones resulting in the remaining 13 SOR delinquent medical accounts.

Applicant has known of the Government's concern about his finances since his August 2016 personal interview. During that interview in which each of the delinquent accounts were discussed, Applicant stated that his wife took care of the bills, and he had no additional pertinent information about the medical debts. He did acknowledge owing the two state liens and had made six payments on the tax debt between May 2009 and July 2014. Those payments totaled approximately \$4,300. He acknowledged he still owed the money for the tax liens and was attempting to establish a repayment plan with the state so that he could start making payments.

Applicant provided no documentation showing a repayment plan or any payments on his state tax liens after July 2014. Nor was there any showing he had recent contact with the state taxing authorities or with the medical account creditors. The FORM specifically put him on notice that he had failed to provide any documentary evidence showing that he has paid, is on a current payment plan for, or has otherwise resolved any of the delinquent accounts or unpaid tax liens alleged in the SOR. He asserted he has contacted the creditors, but provided no documentation that he has done so.

The unpaid medical obligations are numerous and occurred in 2013. The tax liens and medical debts remain unpaid. Medical bills and state taxes are the type of debts that are likely to recur. AG ¶ 20(a) does not apply. Under AG ¶ 20(b), a business down turn contributed to his state tax lien and the emergency treatment for kidney stones was an unexpected medical emergency. However, 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.

The mitigating condition listed in AG ¶ 20(e) does not apply since Applicant admits the delinquent obligations. AG ¶ 20(f) does not since affluence is not a security concern in this case. Applicant asserted he was trying to reach a repayment agreement with the state. However, he failed to document an agreement has been reached or payments been made in accord with such an arrangement. AG ¶ 20(g) 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.

Applicant's duty performance resulted in a letter of appreciation and the deputy public works officer, chief engineer, command's executive deputy, and facility security officer are all favorable as to Applicant's character and work performance.

Applicant has been employed full time since August 2010. He has been aware of the Government's security concern about his delinquent debts since his August 2016 interview when he was specifically confronted about his delinquent accounts. Additionally, the March 2017 SOR and April 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 little information regarding his past efforts to address his delinquent debt and has failed to present documentation to show he has established repayment agreements to address the delinquent debts. Even the six smallest medical debts of \$300, or less each, remain unpaid.

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 information in his SOR Answer and in his response to the FORM, financial considerations security concerns remain.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to be eligible for a security clearance. The determination of an individual's eligibility and suitability for a

clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under Applicant's current circumstances, a security clearance is not warranted. In the future, if Applicant has paid his delinquent obligations, established compliance with a repayment plan with the medical creditors and the state tax authority, or otherwise substantially addressed his past-due obligations, he may well demonstrate persuasive evidence of his worthiness for security clearance.

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

Subparagraphs 1.a – 1.p: 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