



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



In the matter of:)
)
) ISCR Case No. 17-00589
)
Applicant for Security Clearance)

Appearances

For Government: Allison Marie, Esquire, Department Counsel
For Applicant: Denise Endicott, Personal Representative

04/12/2018

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On April 5, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines 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 June 8, 2017.

Applicant answered the SOR on May 12, 2017, and requested a hearing before an administrative judge. The case was assigned to me on December 14, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 24, 2017. I convened the hearing as scheduled on March 20, 2018. The Government

offered exhibits (GE) 1 through 6, which were admitted into evidence without objection. Applicant testified and offered Applicant exhibits (AE) A through C, which were admitted into evidence without objection. DOHA received the hearing transcript on March 28, 2018.

Findings of Fact

Applicant admitted the allegations in the SOR ¶¶ 1.a, 1.b, 1.d through 1.f and 1.h through 1.j. Applicant denied SOR ¶ 1.c, and the Government withdrew ¶ 1.g. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 55 years old. He attended college, but did not earn a degree. He has been married four times and is presently engaged to be married. Applicant testified that he has four children from the marriages. Two of his children are minors, ages 16 and 11 years old. He served in the military from 1982 to 1988 and was honorably discharged.¹

Applicant filed Chapter 7 bankruptcy in 1990 and his debts were discharged. He filed Chapter 13 bankruptcy in August 2017 and refiled under Chapter 7. He explained the bankruptcy was refiled due to a miscommunication with his attorney. He explained his reason for filing bankruptcy was because some years his business did better than other years, and his income was reduced. He said that 2014 was a good year, but then he needed maintenance on his truck, required for his business, which was expensive. He also changed the company with whom he had contracts and there was a reduction in work. In 2016, Applicant sought assistance from his bankruptcy attorney regarding his delinquent debts. Because Applicant had moved to a new state, he had to establish residency for a year before he could file bankruptcy in that state, which he did. Except for his delinquent child support, student loans, and tax liabilities, his other debts, including those in the SOR, were discharged in January 2018. Documents dated October 2017 from his bankruptcy filings note he owed \$10,910 for domestic support, \$16,204 for delinquent taxes, and \$4,566 for delinquent student loans.² Other nonpriority unsecured claims amounted to \$173,959.³

Applicant testified that he cosigned a student loan for a friend. He admitted he is responsible for the debt. He no longer has contact with the friend. He is unaware if she is making payments. He has not contacted the creditor to resolve the debt.⁴

¹ Tr. 22-25; GE 1, 2. During Applicant's interview with a government investigator he disclosed two older children in addition to the four from his marriages. They are not minors.

² These amounts have increased since the SOR was issued. I have not considered for disqualification purposes any derogatory information that was not alleged. I may consider it when making a credibility determination, in the application of mitigating conditions, and in my whole-person analysis.

³ Tr. 29-33, 43-47, 50; AE A.

⁴ Tr. 33-34.

Applicant admitted he owes the Internal Revenue Service (IRS) for delinquent federal taxes. In his answer to the SOR, he stated he believed subsequent tax year refunds would pay for his tax liability, and the debts would be paid through his bankruptcy. He stated his tax liability is for tax years 2014, 2015 and 2016, and he has not paid it. He borrowed money from his mother so he could hire an attorney. He met with an attorney the day before his hearing to arrange a payment plan. He had not contacted the IRS and he did not know if his attorney had made contact. He intended to pay \$250 a month toward his delinquent taxes, but had not made any payments.⁵

Applicant testified that he is required to pay \$1,290 a month for child support. He stated he has not consistently made these payments and concurred he is about \$10,000 in arrears. He does make some payments, but oftentimes they are considerably less than what is ordered. He testified that when his income was reduced he paid what he could afford. He hoped to get a loan so he could pay the arrears. The amount of his child support was established in 2012 when his earnings were substantially more. His income was reduced in 2014. He stated that in 2016, when he contacted his bankruptcy attorney, it was to address all of his debts, including his delinquent child support. He received a letter from the agency advising him he could have his case reviewed. He signed the letter in July 2017 requesting a review. He testified that when he filed bankruptcy, the process for his review also stopped. In February 2018, he contacted the child support agency to have his child support modified. He is awaiting a response.⁶

Applicant attributed his financial problems to a reduction in income in 2015. He stated he did not have enough money to pay his bills. His income fluctuates considerably based on jobs he works. He is required to file taxes as a 1099 contractor. The amount he earns for each job could vary widely. Applicant testified that he loyal the United States and would never do anything to jeopardize it.

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.

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,

⁵ Tr. 34-40, 40, 61-62; AE B.

⁶ Tr. 40-43, 48-49, 57-59; AE C.

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.⁷

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;
- (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 taxes as required.

Applicant has unresolved student loans, income taxes, and child-support arrearages. He recently resolved his other delinquent debts through Chapter 7 bankruptcy. Applicant 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,

⁷ 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; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant had most of the debts alleged in the SOR and others discharged in bankruptcy in January 2018. His student loans, income tax liability, and child-support arrearages are not dischargeable in bankruptcy. He has not made payments or substantiated payment plans to resolve these 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 a reduction in income in 2015. This was beyond his control. For the full application of AG ¶ 20(b), Applicant must provide evidence he has acted responsibly under the circumstances. This is the second time Applicant had debts discharged in bankruptcy. He was aware he could request a reduction in his child support order, but did not act timely and then had to wait due to his bankruptcy filing. He did not provide evidence of why he failed to timely pay his 2014 federal income taxes. He has not contacted the student loan creditor. There is insufficient evidence Applicant acted responsibly. AG ¶ 20(b) partially applies.

No evidence was presented that Applicant participated in financial counseling, but he likely did as it is a requirement to file bankruptcy. Although he recently sent a letter to the child support agency requesting a reduction in his support and hired an attorney to help him resolve his tax issues, the evidence is insufficient to conclude his remaining financial problems are under control. AG ¶ 20(c) does not apply.

Bankruptcy is a legitimate and legal means to resolve debt, but it is not a good-faith effort to repay overdue creditors. Applicant's recent attempt to contact the child support agency to seek a reduction in his support order is insufficient to conclude he has initiated or is adhering to a good-faith effort to repay his delinquent child support. His meeting with an attorney the day before his hearing to resolve his tax liability is also insufficient to conclude he has a payment plan to resolve this debt. He has not made payments toward the child-support arrearages, a payment toward his delinquent tax debt, or a payment toward the delinquent student loan. AG ¶ 20(d) 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 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 55 years old. He is a military veteran. He attributed his financial problems to a reduction in income in 2015. He filed Chapter 7 bankruptcy twice and had his debts discharged, mostly recently in January 2018. He failed to pay his 2014, 2015, and 2016 federal income taxes. He owes more than \$10,000 in arrearages for child support and has a delinquent student loan. None of these debts are dischargeable in bankruptcy, and Applicant has not made any payment or executed repayment plans to resolve these debts. 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.

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.d:

For Applicant

Subparagraphs 1.e-1.f:	Against Applicant
Subparagraph 1.g:	Withdrawn
Subparagraphs 1.h-1.i:	For Applicant
Subparagraph 1.j:	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