



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



In the matter of:)
)
) ISCR Case No. 17-00936
)
Applicant for Security Clearance)

Appearances

For Government: Andrea Corrales, Esq., Department Counsel
For Applicant: Tokay T. Hackett, Esq.

07/26/2018

Decision

LYNCH, Noreen A., Administrative Judge:

This case alleges security concerns raised under Guideline F (Financial Considerations). Applicant did not present sufficient evidence to mitigate the financial security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On April 27, 2017, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline F.¹ The SOR further informed Applicant that, based on information available to the Government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant timely answered the SOR, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on December 4, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 15, 2018, scheduling the hearing for April 17, 2018. The hearing was postponed at Applicant's

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

request. An amended notice of hearing, dated April 11, 2018 was issued with a hearing date of May 17, 2018. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 5, which were admitted. Applicant testified on his own behalf, presented one witness, and presented Exhibits (AE) A through U. I held the record open until June 18, 2018 for additional documentation. Applicant presented two packets of documents, which I marked Applicant's Exhibits (AE) V and W, and admitted into the record without objection. DOHA received the transcript of the hearing (Tr.) on June 5, 2018.

Findings of Fact

Applicant, age 53, is single and has one son who is 20 years old. Applicant graduated from college in 1993. He has been employed as a contractor for the United States government for about 22 years. He served abroad including hostile areas. He started his own consulting business in 2006. Applicant completed a security clearance application on January 27, 2016. He has held a security clearance since 1999. (GE 1) He has worked for his current employer since 2016. (Tr. 75)

The SOR alleges that Applicant filed for Chapter 13 bankruptcy twice and both were dismissed; that he has a 2014 Federal tax lien in the amount of \$101,027; that his home was foreclosed in 2016; and that he has other delinquent debt in the amount of approximately \$42,000, which include parking tickets, medical accounts and, credit accounts. Applicant admitted the majority of the allegations, but explained some medical accounts were paid and he disputes the amount of the tax lien. He also disputed the second bankruptcy.

Applicant acknowledged his financial hardship. He takes responsibility, but attributes it to having difficulty when his consulting business lasted only four years and his income was greatly reduced. In 2010, he decided to work again as a contractor and go to Afghanistan to earn more money. He was abroad for about three years and his salary was approximately \$275,000 a year, which included hazard pay and overtime. (Tr. 36) He left Afghanistan due to a termination in November 2012. (Tr. 42) He attempted his consultancy work again, but found it difficult to find employment. As a contractor, he also had difficulty due to the nature of contract positions contingent on the company actually getting the Government contract. He took various lower paying jobs, but did not find steady employment until April 2016. (Tr. 42)

As to SOR 1.a, Applicant admits that in May 2014, he filed Chapter 13 Bankruptcy claiming approximately \$426,073 in liabilities. This bankruptcy was dismissed in 2015 for his failure to file the required paperwork. (GX 3) He filed the bankruptcy on the advice of an attorney friend. Applicant had missed several payments on his home due to a lack of resources and steady income. He was advised that perhaps he could avoid a foreclosure of his home if he filed. (Tr. 43) Unfortunately, he admits that he missed a filing deadline and the bankruptcy was dismissed. (Tr. 43)

As to SOR 1.b, Applicant filed in June 2015, for Chapter 13 Bankruptcy claiming \$349,528 in liabilities. This bankruptcy was dismissed in 2016 for failure to make required

payments. Applicant stated that this was again his fault. He took a job abroad for two months to make more money. However, he only made payments for seven or eight weeks. (Tr. 44) He submitted emails showing that he asked how soon he could refile to avoid foreclosure of his home. (AX V)

As to SOR 1.c, Applicant has a Federal tax lien from 2014, in the amount of \$101,027. He explained that he did not file taxes while he was working abroad. No income tax was withheld for tax years 2010, 2011, and 2012 (Tr. 46). Applicant explained that he did not know how to file his taxes while living abroad. (Tr. 48) Applicant now disputes the amount he owes the IRS. He believes he owes about \$35,000 for the tax year 2010, due to the \$97,000 in exemptions on earnings for living and working abroad. However, he is not certain as to the amount he owes. As a post-hearing submission, he submitted a 2018 client agreement with a tax relief service. To this point he has not addressed the issue with the IRS. (Tr.92)

SOR 1.d is the mortgage account for the house that went to foreclosure in 2016. Since the two bankruptcies were dismissed, he could not keep the house from going to foreclosure. He does not know if he owes a deficiency from the sale of the home. (Tr.90)

As to SOR 1.e, a charged-off account in the amount of \$9,258, Applicant admitted the delinquent debt. This was a home equity loan on his home and when the house was sold, there was a deficiency. This debt is still outstanding. (Tr. 49)

As to SOR 1.f, a charged-off credit card account for \$7,199. This debt had been included in the bankruptcy, but since the bankruptcy was dismissed, it is still not resolved. (Tr. 50)

As to SOR 1.g, an account that was past due in the amount of \$2,112, Applicant denied this debt. He stated that it was a timeshare that he bought in the early 2000's. He was told that the timeshare would be given back, and would not be allowed in the bankruptcy. He has not done anything to resolve the debt. (Tr. 51)

As to SOR 1.h, a collection account for \$1,641, Applicant's furnace broke and he could not pay for the account. (Tr. 52)

As to SOR 1.i, this is a medical account for \$236. This is a charge for his son. Applicant had no health insurance and could not pay the amount. It is not resolved. (Tr. 54)

As to SOR 1.j, 1.k, 1.l for medical accounts totaling about \$20,600, Applicant has not paid them. He had no insurance at the time. He was attacked in 2014. He was in the hospital for about two months. He stated that he needs a police report to show that the attack occurred and that the debt may be mitigated. He recently contacted the police to obtain the report. (Tr. 57, 103)

Applicant explained that SOR 1.m through 1.s are parking tickets. (Tr. 58) The total amount of the tickets are about \$700. Applicant paid five tickets for a total of \$275. (AX

S) There are two remaining tickets at SOR 1.m and SOR 1.n are for larger amounts and he did not pay for them. He just paid the smaller ones totaling \$275 a couple of days before hearing.

Applicant earns about \$98,000 a year. He supports his son who is in college by giving him about \$6,000 a year. (Tr. 60). Applicant paid for his son to attend a boarding school while he was abroad. He has a savings account and a retirement account. He stated that he has no idea how much is in the accounts. (Tr.116) He tries to follow a budget.

Applicant submitted 12 character letters from colleagues and friends who have known him for more than 20 years. Each attests to his extraordinary dedication to his work both in the United States and abroad. He is a consistently motivated professional who is trustworthy. He has served in dangerous missions as a civilian in Afghanistan and was remarkable for his coordinated movement of diplomatic personnel through a combat zone. (AX B-M).

Applicant has several certificates and letters of recommendation. (AX O-Q) His witness, a former military officer, testified that Applicant worked with him in Afghanistan in 2009. (Tr. 22) The witness stated that Applicant could do anything that was requested of him. He was his supervisor and believes that Applicant dedicated himself in a very stressful and challenging position in Afghanistan. He recommends him and knows of the financial issues.

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 (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of EO 10865, “Any determination under this order adverse to an applicant shall be a determination 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 concern under this guideline 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

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions, corroborated by his credit reports, and bankruptcy filings, establish three disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"), AG ¶ 19(c) ("a history of not meeting financial obligations") and 19(f) (....."failure to pay annual Federal ..income tax as required."

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20 (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.

Applicant's debts are the result of unemployment and underemployment after termination of employment and contracts that did not materialize. He has been gainfully employed for two years. He did not file his tax returns while he was working abroad. He filed for bankruptcy twice, but the petitions were dismissed due to his lack of payments or missing a filing deadline. He disputes his tax lien but has just hired a service to investigate what he might owe. He had some counseling through the bankruptcy process. He paid a few parking tickets. He supports his son. AG ¶ 20(a) is not fully established. Applicant's delinquent debts remain unresolved. The other mitigating conditions do not fully apply.

AG ¶ 20(b) is not established. While Applicant's unemployment was a condition beyond his control, he has not acted responsibly to address the resulting debts.

AG ¶ 20(c) and 20(d) are not fully established. Applicant received financial counseling as a result of his bankruptcy petition. He admitted that he has not done anything with regard to the majority of the debts. He recently paid some parking tickets. He utilized bankruptcy, which is legitimate, but they were dismissed. He is now about to

investigate the tax lien. There are no clear indications that his financial situation is under control. He does not have a track record of payments and he has no approved IRS payment plan. He provided insufficient documentation to support the claim. He has not shown good-faith efforts.

Applicant has not met his burden to mitigate the financial concerns set out in the SOR. For these reasons, I find SOR ¶¶ 1.a through 1.s. against Applicant.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the applicable guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, including his many years of service as a dedicated contractor, letters of recommendation, and various certificates and excellent work history, I conclude that Applicant has not mitigated the security concerns raised by his financial indebtedness. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraphs 1.a – 1.s:

Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for access to classified information. Clearance is denied.

Noreen A. Lynch
Administrative Judge