



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



In the matter of:)
)
) ISCR Case No: 17-00935
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esquire, Department Counsel
For Applicant: *Pro se*

06/13/2018

Decision

DAM, Shari, Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns. Based upon a review of the pleadings and exhibits, national security eligibility for access to classified information is denied.

Statement of Case

On April 26, 2017, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F (Financial Considerations). The action was taken under 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective within the DOD after 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 under either set of guidelines.

Applicant submitted a signed but undated response to the SOR (Answer). In it he requested that his case be decided by an administrative judge on the written record without a hearing. On June 29, 2017, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing five Items, was mailed to Applicant and received by him on July 19, 2017. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of her receipt of the FORM. Applicant did not submit a response to the FORM or object to the Government's Items. Items 1 through 5 are admitted into evidence without objection. The Defense Office of Hearings and Appeals (DOHA) assigned this case to me on December 18, 2017.

Findings of Fact

Applicant is 37 years old and divorced. He has four children. He served in the Navy from 2000 to 2006, when he received an honorable discharge. He held a security clearance while serving. He worked for defense contractors between 2007 and 2010. He began his current position with a defense contractor in October 2013. He earned a bachelor's degree in 2014. (Item 3)

In June 2016, Applicant submitted a security clearance application (SCA). In it, he disclosed that he had not filed his 2014 Federal and state income tax returns. He also noted that he had unpaid medical and consumer bills, and owed child support. (Item 3)

Based on credit bureau reports (CBR) from February 2017 and July 2016, the SOR alleged 21 debts that became delinquent between 2013 and 2016, and totaled over \$21,000. They included those debts that Applicant disclosed, and other debts, including judgments and an automobile loan. The SOR also alleged his failure to file 2014 Federal and state income tax returns. (Items 4, 5)

Applicant attributed his debts to the loss of income during a period of time and being a single father. He noted that he has worked as a contractor for the federal government for the past 14 of 17 years. However, from 2010 to 2013, he attended school full-time, and was unemployed during some of that time. (Items 2, 3)

In his Answer, Applicant neither admitted nor denied the debts, but addressed each one. He stated that he filed his 2014 income tax returns, but did not provide any proof. He indicated that several debts, including two judgments, were paid, one by a garnishment. He did not recognize a couple debts and stated some debts were being paid. He said he was working on payment plans for others. (Item 2)

Applicant did not provide evidence that he resolved or was resolving any of the alleged debts. There is no evidence that he participated in financial or credit counseling. (Item 4) He did not provide a budget or other information related to his financial obligations from which to determine his current financial reliability.

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the pertinent AG. In addition to brief introductory explanations of the security concern, the guidelines 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 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. 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, an "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 applying for national security eligibility seeks to enter 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.

Analysis

Guideline F: Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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 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.²

AG ¶ 19 describes four conditions that could raise security concerns and may be disqualifying in this case:

- (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 tax as required.

Applicant has a history of being unable or unwilling to meet financial obligations, which began in 2013 and continues to present. He also failed to timely file Federal and state income tax returns for 2014. The evidence raises security concerns under the above disqualifying conditions.

The guideline includes conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial problems. The following 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;

² See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

(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, or 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;

(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; 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.

Applicant's delinquent debts arose between 2013 and 2016, and continue to be unresolved. AG ¶ 20(a) does not apply. Applicant attributed his financial problems to being a single parent and the loss of income, which seems to be the result of attending school for three years. The financial burden of being a single parent may have been a circumstance beyond his control, although choosing to attend school full-time for three years, was a circumstance within his control. He did not provide evidence that he attempted to responsibly manage his financial obligations under those circumstances; thus, AG ¶ 20(b) provides limited mitigation.

There is no evidence that Applicant participated in credit or financial counseling, or that his delinquent debts and unfiled tax returns are being resolved and under control. AG ¶ 20(c) does not apply. Although he stated that he had resolved and was resolving many alleged debts, he did not provide evidence of good-faith efforts to do so. AG ¶ 20(d) does not apply. He stated that he did not recognize some alleged debts, but he did not submit evidence that he successfully disputed them. AG ¶ 20(e) does not apply. He did not submit documentary evidence to corroborate his assertion that he filed his Federal 2014 Federal and state income tax returns. AG ¶ 20(g) does not apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent 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 those guidelines, but some warrant additional comment.

Applicant is a mature individual who honorably served in the military for six years. He subsequently worked as a civilian for defense contractors. In the FORM, he was informed that the evidence he submitted in response to the SOR was insufficient to mitigate the financial considerations allegations. Despite that notice, he did not provide additional evidence pertinent to the delinquent debts or unfiled 2014 tax returns. The absence of mitigating evidence on these allegations compels a finding that he failed to meet his burden to mitigate the security concerns arising under the guideline for financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.v:	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 access to classified information. National security eligibility is denied.

SHARI DAM
Administrative Judge