



Applicant for Security Clearance

Appearances

For Government: Ross Hyams, Esq., Department Counsel

For Applicant: *Pro se*

12/19/2017

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 3, 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 31, 2017, and requested a hearing before an administrative judge. The SOR was amended, and Applicant answered it on August 7, 2017. The case was assigned to me on October 3, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 20, 2017. I convened the hearing as scheduled on November 16, 2017. The Government offered exhibits (GE) 1 through 6. Applicant testified and offered Applicant Exhibits (AE) A through C. There were no objections to any exhibits offered and all were admitted into evidence.² DOHA received the hearing transcript on November 27, 2017.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a and 1.b. He denied the allegations in SOR ¶¶ 1.c through 1.j. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 38 years old. He is a high school graduate and attended college, but did not earn a degree. He married in 2008 and divorced in 2010. He has no children. He has worked for his current employer since January 2016.³

Applicant attributed his financial problems to periods of unemployment and medical issues. His employment history shows periods of unemployment as the result of the following: losing a job because he received inadequate training, and it was not a good fit for him; being laid off when the company was sold and his assignment ended; working in a temporary assignment and not being chosen for the permanent job; being terminated due to excessive telephone usage after being warned; and being terminated due to excessive absences and tardiness.⁴

Applicant filed Chapter 7 Bankruptcy in March 2010, and had approximately \$13,542 of liabilities discharged in July 2010. He attributed those financial problems to the loss of his job and medical issues.⁵

In September 2014, Applicant filed Chapter 13 bankruptcy because he was behind in paying bills and wanted to pay his creditors. He listed more than \$18,000 of debts. He was subsequently laid-off and unable to comply with the payment plan of the bankruptcy. It was dismissed in December 2014.⁶

² Hearing Exhibit I is the Government's discovery letter.

³ Tr. 14-16.

⁴ Tr. 15-18; GE 1, 2. I have not considered any derogatory information that was not alleged in the SOR for disqualifying purposes. I may consider information for the purposes of applying mitigating conditions, in making a credibility determination and in analyzing the whole person.

⁵ Tr. 24; GE 3.

⁶ Tr. 24-25, 27; GE 4.

Credit reports from June 2016 and February 2017, Applicant's admissions, and testimony substantiate the debts alleged in the SOR.⁷ The debt alleged in SOR ¶ 1.c (\$10,642) is a charged-off account for a repossessed vehicle Applicant purchased in approximately 2011. He testified he paid the monthly payments for two years but then could not afford it after he lost his job. He has not made any payments on this debt. It is unresolved.⁸

Applicant testified that the two debts alleged in SOR ¶¶ 1.d and 1.e (\$89; \$89) are owed to the same creditor. The debts have two different account numbers. During his background interview, Applicant verified the two debts and told the investigator they became delinquent when he was unemployed. He intended to pay the full balances with his next paycheck. He testified that he contacted the creditor and was told it had only one account. He said he paid one debt.⁹

The debt is SOR ¶ 1.f (\$3,091) is a judgment that was filed in 2014. Applicant testified he broke his lease because he was laid off in 2013 and was unable to pay the amount he owed. He contacted the creditor and updated them about his job situation, but he was unable to pay the debt. It remains unresolved.¹⁰

The debt in SOR ¶ 1.g (\$667) is for utility service for an apartment. He did not pay the utility bill after he moved. Applicant told the government investigator that he intended to pay the account, but could not pay the full amount. Applicant testified the debt is not paid. It remains unresolved.¹¹

Applicant testified that he did not recognize the debt in SOR ¶ 1.h (\$81). During his background interview, he was confronted with the debt and acknowledged it belonged to him, and it was incurred for medical services and became delinquent in 2011. He told the investigator he intended to pay it in full. Applicant testified that he contacted the creditor and was told the account was paid by his insurance. Applicant did not provide supporting documents. It is unresolved.¹²

Applicant testified that he researched the collection account in SOR ¶ 1.i (\$69). He thought it might be a medical bill, but had not received any mail from the creditor. During his background interview, Applicant acknowledged the medical debt and said it became delinquent in March 2012. He was unable to pay it because he had lost his job. He told

⁷ GE 2, 5, 6.

⁸ Tr. 25-27.

⁹ Tr. 27-30.

¹⁰ Tr. 30-31.

¹¹ Tr. 31-32.

¹² Tr. 32-33.

the investigator that he would pay it as soon as he received his next paycheck. Applicant did not provide evidence this debt is paid.¹³

The delinquent debt in SOR ¶ 1.j (\$16,219) is an unpaid loan for a vehicle that Applicant purchased in 2014. He has been unable to pay the debt. He testified that it was included in his 2014 Chapter 13 bankruptcy that was dismissed. He understands he still owes the debt. It remains unresolved.¹⁴

Applicant testified that in January 2017 he hired a credit repair service. He paid them for a period of time and certain debts were removed from his credit report. At some point, he discontinued their service. He provided a letter from his attorney who filed the previous two bankruptcies for him. The letter reiterated that Applicant had worked with a credit repair company, and the attorney stated: "I do not believe his credit and/or financial situation was improved." He recommended Applicant discontinue his agreement with the credit repair company and file a Chapter 7 bankruptcy. Applicant testified he is following his attorney's advice to file for bankruptcy. The attorney's fees for filing are about \$1,100. Applicant is making installment payments. He had \$250 left to pay on the agreement.¹⁵

Applicant has had financial counseling as a prerequisite to filing bankruptcy. Applicant lives with his sister and pays rent. He has tried to save some money. He testified that he does not have any new unpaid debts. He has medical issues that require him to pay copays. He wants to pay his bills, but his unemployment has impacted his ability.¹⁶

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.

¹³ Tr. 33-34.

¹⁴ Tr. 34-38.

¹⁵ Tr. 19-24, 38-39; AE A, B, C.

¹⁶ Tr. 40-41.

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.

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

In 2010, Applicant discharged debts in Chapter 7 bankruptcy. In 2014, he again had financial problems and filed Chapter 13 bankruptcy. It was dismissed several months later for failure to comply with the payment plan. Applicant's delinquent debts began accumulating in 2011 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 had debts that were discharged through bankruptcy in 2010. He subsequently fell behind in paying his debts again after periods of unemployment. He filed Chapter 13 bankruptcy in 2014, which was dismissed because he failed to comply

with the payment plan. He was again unemployed and unable to pay his debts. He began working for his current employer in January 2016. In September 2016, he was interviewed by a government investigator. He acknowledged many of his delinquent debts, and said he would pay some of the small ones when he received his next paycheck. At his hearing, more than a year later, he did not offer evidence that he paid the smaller delinquent debts, except as noted below. Instead, he stated that he intends to file Chapter 7 bankruptcy to resolve them. I am unable to conclude that future financial problems are unlikely to recur. AG ¶ 20(a) does not apply.

Some periods of Applicant's unemployment were beyond his control, other periods were not. His medical issues were beyond his control. For the full application of AG ¶ 20(b) he must have acted responsible under the circumstances. After his debts were discharged in 2010, he again experienced financial problems due to unemployment. He has been working since January 2016, but did not provide sufficient evidence to show that since becoming employed he began resolving some smaller debts, except as noted below. He indicated to the investigator that he intended to do so, but did not. I find AG ¶ 20(b) partially applies.

Applicant received financial counseling as required to file bankruptcy, but there are not clear indications that his financial issues are under control. I have given Applicant the benefit of the doubt that the debts in SOR ¶¶ 1.d and 1.e are the same debt and he paid the debt. AG ¶ 20(d) applies to these debts. There is no evidence that he has made good-faith efforts to repay his other overdue creditors or otherwise resolve his remaining delinquent debts. Although, it is his intention to have his debts discharged in bankruptcy, which is a legal means to address his debts, it does not constitute a good-faith effort to repay his overdue creditors. AG ¶¶ 20(c) and 20(d) do not apply.

During his background interview, Applicant acknowledged that the debt in SOR ¶ 1.h belonged to him, and he intended to pay it. He later disputed it stating it was paid by his insurer. He did not provide documentary evidence the debt was disputed, paid, and 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 38 years old. He has had significant periods of unemployment and medical issues that required him to make copayments. He is single and has no children. Applicant's debts were discharged in Chapter 7 bankruptcy in 2010, and he intends to resolve his current debts the same way. Applicant has been steadily employed for 22 months, during which time he resolved one small debt. He did not resolve any of the remaining debts in the SOR, despite indicating he intended to do so. Applicant's lack of a reliable financial track record, even when employed, is a concern. Although there is some mitigation, it is insufficient to overcome the security concerns raised by his finances. 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.c:	Against Applicant
Subparagraphs 1.d-1.e:	For Applicant
Subparagraphs 1.f-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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge