



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



In the matter of:)
)
) ISCR Case No. 17-01062
)
Applicant for Security Clearance)

Appearances

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

02/16/2018

Decision

BENSON, Pamela C., 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 September 21, 2015, Applicant submitted a security clearance application (SCA). On May 9, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued 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 on or 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.

On August 4, 2017, Applicant responded to the SOR, and he requested a decision based on the written record in lieu of hearing. On August 22, 2017, Department Counsel submitted the Government's file of relevant material (FORM). The Government's evidence is identified as Items 1 through 7. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. He did not provide a response to the FORM, object to the Government's evidence, or submit documents. Government Exhibits (Items) 1 through 7 are admitted into the record. The case was assigned to me on December 18, 2017.

Findings of Fact

Having thoroughly considered the evidence, including Applicant's admissions, I make the following findings of fact: Applicant is 61 years old, and he was married in 1986 and divorced in 2005. He has a 30 year-old son, and a 36 year-old step-child. He completed some college courses, but did not earn a degree. Since August 2015, he has been employed by a federal contractor as a materials inventory coordinator. (Items 2 and 3)

The SOR alleges that Applicant failed to file federal and state income tax returns for tax year 2014. (SOR ¶¶ 1.a and 1.b.) He owes about \$4,000 in delinquent federal taxes for tax years 2013 and 2014. (SOR ¶ 1.c.) He also owes about \$3,449 for a state tax lien that was filed against him in 2017. (SOR ¶ 1.d.) Applicant admitted all of these tax allegations in his response to the SOR. He did not provide any explanation or any supporting documents with his SOR response. The remaining allegations (SOR ¶¶ 1.e through 1.j), allege consumer accounts that have either been charged off as bad debts or referred for collection. He admitted all of these allegations in his response as well. The combined amount of delinquent debt cited in the SOR totals approximately \$16,063. (Items 1 and 2)

Applicant listed in the September 2015 SCA that he did not have enough withheld from his pay for tax years 2013 and 2014. He disclosed that the unpaid taxes would be paid by funds withheld from his future tax refunds. He also listed two unpaid credit card accounts under the financial section of the SCA. The combined credit card amount totaled \$5,000. Applicant claimed that he tried unsuccessfully to make affordable payment arrangements with the creditors. He listed that his financial problems developed after he was unemployed and then subsequently employed with lower wages. Applicant was fired by his employer for cause in November 2013, after he had worked for this employer for nine years. He was unemployed for the next three months, and he started working for another employer in February 2014. He worked continuously until April 2015. He left this employment in April 2015 to work for his current employer, but he also listed a three month period of unemployment between jobs. (Items 3 and 5)

The DOD CAF sent Applicant Interrogatories in January 2017. He was asked to provide the current status of his unpaid federal taxes, state taxes, and consumer debts.

Applicant listed in his February 2017 response that the current status of all debts were that they were unpaid. He also listed that he was not making payments on any of his past due accounts. In addition, he disclosed a new adverse financial account in his response. Applicant completed a personal financial statement (PFS) that showed he was paying \$800 per month for the financial support of his fiancé and her son in the Philippines. His monthly remainder was \$50. He did not include any payment towards his delinquent debts on the PFS. (Item 4)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG 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.

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 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 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;
- (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 experienced financial difficulty beginning in November 2013 following his termination from employment. Thereafter, he claimed that his salary with other employers was significantly less than what he had been making with his previous employer. He filed his federal and state tax returns, but he did not pay the outstanding taxes. He did not correct his tax withholding for tax years 2013 and 2014. He has

accumulated delinquent tax and consumer debts, which are currently 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

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is compliance with those arrangements.

Applicant did not provide an explanation for his failure to pay or make arrangements to pay his outstanding federal and state taxes. There is no evidence that he has made contact with his creditors, or that he made any effort to repay even the smallest delinquent debt. Applicant's conduct casts doubt on his reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

There is no evidence that Applicant's financial problems were beyond his control, since his job loss was due to his conduct that resulted in the termination. There is no evidence he acted responsibly under the circumstances. Hence, AG ¶ 20(b) does not apply. There is no evidence Applicant received financial counseling. There is no evidence that Applicant has been paying his delinquent federal and state taxes. There is no evidence that Applicant has contacted his state to resolve his state lien, or that he has contacted any other creditor to make payment arrangements for his outstanding consumer debt. AG ¶ 20(c), (d), and (g) do 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 has been unable or unwilling to satisfy his financial obligations for several years due to loss of employment and lower wages. There is no showing by Applicant of any effort to pay, legitimately dispute, or otherwise resolve any of the financial security concerns. He has not articulated a plan of how he intends to repay these debts. Applicant chose not to submit any response or supporting documentation within 30 days after receipt of the FORM. Overall, the record evidence leaves me with doubts as to Applicant's good judgment, reliability as well as eligibility and suitability for a security clearance. Because protection of the national interest is the principle focus of these adjudications, any unresolved doubts must be resolved against the granting of eligibility to classified information.

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.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 national security eligibility. Eligibility for access to classified information is denied.

Pamela C. Benson
Administrative Judge