



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



In the matter of:)
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) ISCR Case No.17-01079
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 Applicant for Security Clearance)

Appearances

For Government: Erin P. Thompson, Esq., Department Counsel
For Applicant: *Pro se*

05/30/2018

Decision

LYNCH, Noreen, A., Administrative Judge:

The Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant alleging security concerns arising under Guideline F (Financial Considerations). The SOR was dated June 27, 2017. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) issued on December 10, 2016, and effective on June 8, 2017.

Applicant timely answered the SOR and requested a hearing. The case was assigned to me on January 17, 2018. A notice of hearing was issued on March 15, 2018, scheduling the hearing for April 19, 2018. Government Exhibits (GX) 1-4 were admitted into evidence without objection. Applicant testified and submitted Applicant Exhibits (AX) A-B. I held the record open until May 3, 2018, for additional submissions. Applicant provided a packet of documents, which were collectively marked as AX C, and admitted into the record without objection. The transcript was received on May 1,

2018. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his answer to the SOR, Applicant admitted all allegations in SOR ¶¶ 1a through 1.q. He provided explanations for the allegations under Guideline F (Financial Considerations).

Applicant is a 48-year-old employee for a defense contractor. He is single and has no children. He obtained his undergraduate degree in international business in 2001. He has worked for his current employer for one year. Applicant completed his security clearance application (SCA) in November 2015. (GX 1)

Financial Considerations

The SOR alleges that Applicant has Federal delinquent taxes (\$2,315) for tax year 2014; delinquent Federal taxes (\$38,968) for tax year 2015; a \$10,500 state tax lien; and other delinquent debts totaling more than \$100,000. (GX 3)

In his answer to the SOR, Applicant stated that his financial problems were due to two periods of unemployment. When he lost his job, he used savings and retirement to pay bills, but he exhausted his savings. In 2014, Applicant withdrew \$93,000 from an IRA. This, of course, increased his taxes. He stated that he was in a payment plan for the 2014 delinquent taxes and that he is working on arrangements for the 2015 tax debt with an attorney. He is trying to sell his house. He is working toward resolving his delinquent debts.

Applicant acknowledged that he took a year off before looking for more employment. He has show dogs and while unemployed, he traveled and took his show dogs to various shows. (Tr. 19) Applicant also noted that he was depressed and purchased many items on his credit cards. He called this his “recreational shopping.” He did not have health insurance and so he did not seek mental health counseling for his depression. (Tr. 21)

As to SOR 1.a, Applicant submitted an IRS tax transcript, which confirmed his payment plan for the 2014 delinquent taxes. The plan began in April 2015 and the last payment was made recently. (AX A) It appears that a \$6,000 refund was credited toward the 2014 taxes. (Tr. 23)

As to SOR 1.b, Applicant still has not resolved the 2015 tax issue. The delinquent debt is \$38,968. He stated that he filed his 2015 tax return, but the IRS has no documentation of any filing. (Tr. 24) Applicant worked with a tax relief agency, but he did not like their work and so he stopped dealing with them. He is trying to find an attorney to help him. He has no payment plan for the 2015 delinquent taxes.

As to SOR 1.c, a state tax lien in the amount of \$10,516, Applicant stated that the lien is for past-due 2014 income taxes. He has not contacted the state because he was paying on another state tax lien. He plans to address this lien soon. (Tr. 27)

As to SOR 1.d, there was a mortgage in the amount of \$2787,323 for Applicant's home. It was foreclosed in 2018. (Tr. 28) Applicant is not sure if the bank sold the house nor the status of the mortgage. (Tr. 28)

SOR allegations 1.e through 1.q involve credit card debt. Applicant claims that he is trying to settle five or six of them. At the hearing, Applicant could not recall exactly which creditors he was working with or how much he has paid. (Tr. 29)

As post-hearing submissions, Applicant provided a 2018 credit bureau report and a chart that showed some of the SOR debts. He provided some information showing one-time, recent payments on various accounts, but does not clearly show SOR debts he partially paid. His 2018 credit bureau report shows some non-SOR accounts are current. He has a large car payment of \$597, which is current. Applicant earns about \$190,00 a year. He has not sought financial counseling. It appears that he has paid a total of about \$600 to various accounts. He stated that a large part of his expenses are the upkeep of his show dogs and his car payment. (Tr.33) His plan is to pay one debt at a time until they are all resolved. He does not want to file for bankruptcy.

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The Government must present evidence to establish controverted facts alleged in the SOR. 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. . . .”¹ The burden of proof is something less than a preponderance of evidence.² The ultimate burden of persuasion is on the applicant.³

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 protect 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 Executive Order 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.”⁴ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁶ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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

¹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

² *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁴ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ *Id.*

health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially over-extended is at a 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 describes conditions that could raise a security concern and may be disqualifying:

- (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.

The Government produced credible evidence to establish the SOR delinquent debts and the delinquent federal taxes for two years, in addition to a state tax lien and other credit card delinquent debt. Consequently, the evidence is sufficient to raise disqualifying conditions ¶¶ 19(a), 19(c) and 19(f).

AG ¶ 20 provides conditions that could mitigate the security concerns:

- (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, 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 person has received or is receiving 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 arrangement with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant was unemployed for over a year in 2014, which explains some of his financial difficulties. However, he has been working and earning a six-figure salary for a year. He did not seek financial counseling. He did not present a budget. He has recently paid his 2014 federal taxes through his payment plan. He has not begun a plan for the 2015 delinquent federal tax. He did not inquire about the house foreclosure and if he owes any deficiency. He spent money on his show dogs, but was not proactive with contacting creditors and making payment plans. He has a substantial amount of credit card debt, as well as taxes. He used his savings to pay bills, but he then seemed to stop being responsible for his debts. He could not remember who he was making payments to and how much. He just recently made a few payments which he included in his post-hearing submissions. His financial problems are not under control at this time. AG ¶ 20(b) applies in part. None of the other mitigating conditions 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 an 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors.

Applicant is 48 years old. He was unemployed for over a year. He is single and has no children. His hobby of show dogs is an expensive one. He maintained that hobby at the expense of not paying his taxes and other financial obligations. He admitted to using his credit cards for "recreational shopping" until 2015. He admits he was depressed but did not seek help.

Applicant has not paid his federal and state taxes for two years. He has filed his 2016-2017 tax returns. He intends to pay his debts and pay his taxes but he needs help. He still has unresolved debt despite his good intentions. He recently made some small payments to various creditors. However, he does not have a solid track record.

After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the record evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns under Guideline F. Accordingly, I conclude that he 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

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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1q:	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 a security clearance. Clearance is denied.

NOREEN A. LYNCH
Administrative Judge