



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



In the matter of:)
)
) ISCR Case No. 17-01080
)
Applicant for Security Clearance)

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

02/01/2018

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense's (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. Applicant has made no effort to repay more than \$66,000 in delinquent obligations, which remain unpaid. He has failed to mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for access to classified information is denied.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on August 23, 2017, the DoD Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) detailing financial considerations security concerns. On September 6, 2017, Applicant answered the SOR and elected to have the matter decided without a hearing.

¹ 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 adjudicative guidelines (Sept. 1, 2006 AG) effective within the DoD on September 1, 2006, and as amended on June 8, 2017.

On September 20, 2017, Defense Office of Hearings and Appeals (DOHA) Department Counsel (DC) submitted the Government's case in a File of Relevant Material (FORM). The FORM contained seven attachments (Items 1-7), which were admitted into evidence. On September 29, 2017, Applicant received a copy of the FORM, along with notice of his opportunity to object to the Government's evidence and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. He had 30 days from his receipt of the FORM to submit any additional information in response to the FORM. The response was due on October 29, 2017. No additional information was received from Applicant. On January 16, 2018, I was assigned the case.

Findings of Fact

In Applicant's answer to the SOR, he admitted the 12 delinquent obligations set forth in the SOR. He asserted his financial problems were due to unemployment or low income. (SOR Answer) He also asserted he was currently working to resolve his five educational loans placed for collection and intended to start making regular payments in October 2017. He asserted, but failed to provide documentation showing that his 2015 tax issues had been resolved. I incorporate Applicant's admissions to the delinquencies as facts. After a thorough review of the pleadings and exhibits, I make the following additional findings of fact.

Applicant is a 54-year-old contractor who has worked for a defense contractor since August 2016, and he seeks to obtain a security clearance. (Item 2) He is married and has two adult children ages 28 and 33. (Item 2) He served honorably in the U.S. army from August 1983 through December 2003, when he retired. (Item 2)

Applicant had three periods of unemployment: for eight months from April 2010 through December 2010; six months from June 2011 through December 2011; and, four months May 2016 through August 2016. (Item 2) He asserted his financial problems were also contributed to by his wife's unemployment due to illness. He failed to indicate when his wife's unemployment started, how long it lasted, and what impact it had on the household's income.

In 2009, the state tax authority filed a \$4,761 tax lien (SOR 1.i) against Applicant which remained unpaid until 2015. (Items 3 and 4) In 2011, the state tax authority filed an \$843 tax lien (SOR 1.j) against Applicant. (Items 2, 3, 6) The tax lien was paid in July 2011, and the tax lien released. (Item 4) Applicant failed to timely file his Federal and state tax returns for tax year 2015. His 2015 federal income tax return indicates approximately \$40,000 in wages and salaries plus \$19,565 in U.S. Army pension. (Item 6) He owed approximately \$500 in federal tax for tax year 2015. The record contains no information that he has paid his 2015 Federal income tax obligation or that he has filed his state tax return for 2015.

In October 2011, Applicant filed for Chapter 13, Wage Earner's Plan, bankruptcy protection. (Items 4 and 7) The bankruptcy listed \$144,000 in obligations. The bankruptcy was involuntarily dismissed on February 14, 2012, when Applicant failed to make the required plan payments. (Item 7) In Applicant's August 2016 Electronic Questionnaires

for Investigations Processing (e-QIP), he indicated he was making monthly fee payments to a law firm to help him address and correct his financial problems. (Item 2) He failed to provide any documentation as to how much he paid the law firm, when he employed the services of the firm, how long he received services, what services the firm provided, or how the firm's services affected his delinquent obligations.

Applicant had a voluntary repossession of a vehicle, which resulted in \$42,823 (SOR 1.a) being charged off. (Item 2) He had purchased the vehicle in July 2007 for \$59,719. (Item 4) He has provided no document showing he has made payment on the delinquent obligation. In June 2012, the same lender obtained a \$19,908 judgment (SOR 1.g²) against Applicant. (Items 3 and 4)

Applicant owes \$2,293 on a credit card account (SOR 1.h) in collection. (Items 2 and 4) Applicant failed to provide documentation showing payment on this delinquent obligation. He is delinquent on five student loans, which total \$44,743. (Item 4) In his SOR answer (Item 1) he stated he was currently working to resolve his student loans and "should begin making regular payments beginning October 2017." (Item 1) He provided no documentation showing he has made any payments on these loans or has arranged a repayment agreement with the lender. The loans were obtained between October 2010 and October 2013. (Item 4)

The FORM put Applicant on notice that his SOR answer had failed to provide information as to why he fell into debt and that he had provided no evidence of extenuation or mitigation. Despite this notice, Applicant did not respond to the FORM. He provided no documentation showing what efforts he undertook to pay, contact creditors, or otherwise resolve his delinquent debts. He did not provide any documentation showing the current status of his delinquent debts.

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 list potentially disqualifying conditions and mitigating conditions, which must be considered 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(a), the adjudication process is an examination of a sufficient period and a careful weight of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is known as the whole-person concept.

² The charged-off debt listed in SOR 1.a (\$42,823) and the judgment listed in SOR 1.g (\$19,908) owed the same creditor may be the same obligations. However, Applicant provided no documentation establishing these two delinquent obligations are the same debt.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for the 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.

Under Directive ¶ E3.1.14, the Government must 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain 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 the applicant may deliberately or inadvertently fail to safeguard 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 of 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

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

AG ¶ 19 includes three disqualifying conditions that could raise a security concern any may be disqualifying in this case: "(a) inability to satisfy debts," "(c) a history of not meeting financial obligations," and AG ¶ 19(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," apply.

The Government's substantial evidence and Applicant's own admissions raise security concerns under AG ¶ 19(a) and ¶19(c). The SOR alleged more than \$66,000 owed on delinquent obligations. Additionally, although asserting he had resolved his 2015 tax issues, he provided no documentation showing his 2015 taxes were current or that his 2015 state tax return had been filed. He provided no documentation refuting the delinquent obligations that were listed in his September 2016 and May 2017 credit reports and admitted to in his SOR answer.

The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. September 22, 2005))

Six of the seven Financial Considerations 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 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;

(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.

In Applicant's SOR answer, he stated he was working to resolve his delinquent obligations and intended to start making payments on his student loan obligations in October 2017. He provided no information as to payment on his delinquent obligations or repayment arrangement with his creditors.

Applicant's debts remain unpaid. Accumulating the delinquent obligations did not occur under unusual conditions. The failure to timely pay those obligations is not an unusual condition unlikely to recur. He failed to present documentation showing the effect of his and his wife's unemployment on his finances. He was unemployed for eight months in 2010, six months in 2011, four months in 2016, and, at some period, his wife was also unemployed due to illness. He provided no information as to the impact on his current finances caused by the unemployment. It is also noted the 2010 unemployment was seven years ago and the 2011 unemployment ended six years ago. He provided insufficient evidence to conclude that his financial problems are unlikely to recur. His delinquencies continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant has been full-time employed since August 2016. He provided no evidence of what responsible steps, if any, he took to pay or resolve his debts. The second prong of AG ¶ 20(b) does not apply.

There is no evidence of financial counseling or clear indications that Applicant's financial problems are being resolved or are under control. He asserts he engaged the services of a law firm to assist him in addressing and correcting his financial problems, but provided no documentation as to what services were provided or any improvement in his financial problems as a result of those services. AG ¶ 20(c) does not apply. There is no showing of Applicant having made good-faith payments towards his delinquent obligations or evidence to establish that he is executing a reasonable ongoing plan to pay or resolve his debts. AG ¶ 20(d) does not apply.

Applicant indicated his 2015 tax issues (SOR 1.k and 1.l) were resolved. AG ¶ 20(e) does not apply because he has not provided documented proof to substantiate the tax delinquency issues for 2015 were resolved or that his 2015 state income tax return was filed.

Applicant provided no information as to why he had to file for bankruptcy protection in 2011. It is noted he had periods of unemployment in 2010 and 2011 that may have contributed to him seeking bankruptcy protection. In February 2012, the bankruptcy was involuntarily dismissed for his failure to make the required plan payments. I do not find against him for seeking bankruptcy protection or that the bankruptcy was dismissed.

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 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.

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 have considered Applicant's honorable active duty service in the U.S. Army. His military service merits considerable respect.

Applicant has been aware of the Government's security concern about his delinquent debts since his August 2017 SOR and September 2017 FORM put him on notice of the Government's concern about his delinquent accounts. There is no evidence he has contacted his creditors. He provided no information regarding his past efforts to address his delinquent debts and has failed to show documentation he has established repayment agreements to address the delinquent debts.

In requesting a decision without a hearing, Applicant chose to rely on the written record. In so doing, however, he failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding his circumstances, articulate his position, and mitigate the financial security concerns. He failed to offer evidence of financial counseling or provide documentation regarding his past efforts to

address his delinquent debt. By failing to provide such information, and in relying on only the very limited response in his SOR Answer, financial considerations security concerns remain.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). At the same time, security clearance decisions are not intended as punishment for past wrongdoing, but rather involve an assessment of future risk that one may not properly handle or safeguard classified information.

The issue is not simply whether all the delinquent obligations have been paid—it is whether an applicant's financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(e)) Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from his 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, Financial Considerations: AGAINST APPLICANT

Subparagraphs 1.a - h: Against Applicant

Subparagraphs 1.i and j: For Applicant

Subparagraphs 1.k and l: 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. Eligibility for access to classified information is denied.

CLAUDE R. HEINY II
Administrative Judge