



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



In the matter of:)
)
) ISCR Case No. 17-01193
)
Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: Allison R. Weber, Esq.

10/25/2018

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant refuted the personal conduct security concerns, but he did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

History of the Case

On May 19, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E (personal conduct) and F (financial considerations). Applicant responded to the SOR on June 21, 2017, and requested a hearing before an administrative judge.

The case was assigned to another administrative judge on March 20, 2018, and reassigned to me on June 18, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 16, 2018, scheduling the hearing for June 19, 2018. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 3 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) 1 through 11, which were admitted without objection. The

record was held open for Applicant to submit additional information. He submitted documents that I have marked AE 12 through 25 and admitted without objection.

Findings of Fact

Applicant is a 49-year-old employee of a defense contractor. He worked for another defense contractor from 2000 to 2008, and for his current employer since 2008. He served on active duty in the U.S. military from 1987 until he was honorably discharged in 1991. He served an additional year in the National Guard and was honorably discharged. He attended a technical trade school. He married in 1987 and divorced in 2014. He has three adult children.¹

Applicant has a history of financial problems, which include a bankruptcy case, delinquent debts, and unpaid taxes. While they were married, his ex-wife had significant personal problems, including substance abuse. Applicant paid for counseling and medical treatment for his ex-wife, and he had hired a lawyer to address child protective services issues generated by her actions. He was unable to pay all his bills, and he filed a Chapter 7 bankruptcy case in 2007. His debts were discharged in 2008.²

Applicant's tax returns for 2010, 2011, and 2012 were audited by the IRS in about 2013. The IRS determined that he owed about \$7,000 for those tax years. He testified that he had a \$158-per-month payment plan with the IRS that was interrupted when his credit union closed his account in about January 2018. He stated that he was unable to arrange another payment plan because he was on hold with the IRS for extremely long periods. He documented that he has been paying the IRS \$158 every two weeks since July 24, 2018. That constitutes seven payments totaling \$1,106. He did not provide anything from the IRS establishing how much, if anything, he previously paid, and how much he still owes. He filed his 2017 state and federal income tax returns with extensions after the record closed. His federal income tax return indicates that he owed the IRS \$881. He did not document that he paid the IRS for tax year 2017.³

Applicant stated that, except for his unexpected tax issues, his finances stabilized after his bankruptcy, and he was doing fine until 2016. His ex-wife relapsed and was evicted from her home. She moved in with Applicant's daughter who had her own family problems. His two other children had employment and medical problems and special-needs children. Applicant provided financial assistance to his children and their families at the expense of paying his own debts.⁴

¹ Tr. at 37, 81; GE 1; AE 1.

² Tr. at 34-37; Applicant's response to SOR; GE 2, 3.

³ Tr. at 16, 50-51, 56-59; Applicant's response to SOR; AE 2, 12-14, 21, 25.

⁴ Tr. at 37-41; Applicant's response to SOR.

The SOR alleges the Chapter 7 bankruptcy case; the unpaid federal taxes from 2010, 2011, and 2012; and 41 delinquent debts. Applicant admitted owing all the debts, but he correctly asserted that the debt alleged in SOR ¶ 1.nn is a duplicate account of the debt alleged in SOR ¶ 1.n. The debts alleged in SOR ¶¶ 1.i, 1.k, 1.l, 1.z, 1.aa, 1.dd, 1.gg, and 1.ii are either duplicate accounts or unsubstantiated. The balances of the non-duplicate substantiated delinquent debts total about \$50,000.

Applicant's finances began to stabilize in 2017, and he started repaying his delinquent debts. He received financial counseling and adopted a plan advocated by a noted financial advisor. He used the "snowball" plan in which the smallest debts are paid first.⁵

Applicant established through documentation that the \$400 credit union debt alleged in SOR ¶ 1.d was paid in full as of July 2018. From June 2017 through April 2018, he paid \$60 every two weeks toward the \$1,406 debt alleged in SOR ¶ 1.p. He paid the debt in full with a final \$50 payment in May 2018. The \$452 debt alleged in SOR ¶ 1.v was paid in full with a final payment of \$217 in April 2018.⁶

Applicant stated that he was current on the \$3,050 credit union debt alleged in SOR ¶ 1.x. The debt is reported as delinquent on the April 2017 credit report, which is the most recent credit report in evidence. He did not submit any supporting documentation. He established through documentation that the \$161 debt alleged in SOR ¶ 1.y was paid before May 2018. He submitted documentation that he paid other debts, but it is unclear from the documentation whether those debts were alleged in the SOR.⁷

Applicant contracted with a company in May 2018 to negotiate and settle his debts. He enrolled debts totaling \$48,174 in a debt-resolution plan. He agreed to pay \$722 per month into the plan for an estimated 48 months. He has been making his monthly payments, and the company has been disbursing funds to his creditors.⁸

Applicant stated that his finances are better. He has a second and a third job. His ex-wife is healthy and working. His children no longer require as much assistance. He has a budget, and he is setting aside funds for emergencies. Costly car repairs, attorney's fees, and medical bills stalled his plans for a period, but he stated that he has a handle on his finances, and he plans to pay all his debts.⁹

⁵ Tr. at 80-81; Applicant's response to SOR; AE 1.

⁶ Tr. at 34, 43-44, 50-51; Applicant's response to SOR; GE 3; AE 10, 11, 20.

⁷ Tr. at 54; Applicant's response to SOR; GE 3; AE 16, 18, 19, 22-24.

⁸ Tr. at 11-14, 69; Applicant's response to SOR; AE 1, 6, 7, 12-15, 17.

⁹ Tr. at 41-42, 60-64; AE 1, 4, 5, 8, 9.

Applicant submitted a Questionnaire for National Security Positions (SF 86) in December 2015. He reported his bankruptcy case even though it was outside the seven-year window of the question. He also reported his tax problems. He wrote that he owed the IRS about \$7,000, and he was on a payment plan. He did not report additional financial issues, primarily because most of his debts did not become delinquent until after the SF 86 was submitted. He did not intend to falsify the SF 86 or mislead about the state of his finances.¹⁰

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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 are to be 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, administrative judges apply the guidelines 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."

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 the 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

¹⁰ Tr. at 59-60; Applicant's response to SOR; GE 1.

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 EO 10865 provides that adverse 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts;
- (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 financial problems, including a bankruptcy case, delinquent debts, and unpaid federal income taxes. The evidence is sufficient to raise the above disqualifying conditions.

The debts alleged in SOR ¶¶ 1.i, 1.k, 1.l, 1.z, 1.aa, 1.dd, 1.gg, 1.ii, and 1.nn are either duplicate accounts or unsubstantiated. Those allegations are concluded for Applicant.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. 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;

(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;

(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 family issues, unexpected car repairs, and medical expenses constitute conditions that were largely beyond his control. His failure to pay his taxes was not beyond his control. Failure to comply with tax laws suggests that an applicant has a problem with abiding by well-established government rules and systems. Voluntary compliance with rules and systems is essential for protecting classified information. See, e.g., ISCR Case No. 16-01726 at 5 (App. Bd. Feb. 28, 2018). A person who fails repeatedly to fulfill his or her legal obligations, such as paying taxes when due, does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 17-01382 at 4 (App. Bd. May 16, 2018).

Applicant is credited with paying the debts alleged in SOR ¶¶ 1.d, 1.p, 1.v, and 1.y. Those allegations are mitigated. He submitted documentation that he paid other debts, but it is unclear whether those debts were alleged in the SOR. He is credited in mitigation for the effort even if they were not SOR debts. He stated that he was current on the \$3,050 credit union debt alleged in SOR ¶ 1.x, but he did not submit supporting

documentation. The Appeal Board has held that “it is reasonable for a Judge to expect applicants to present documentation about the satisfaction of specific debts.” See ISCR Case No. 09-07091 at 2 (App. Bd. Aug. 11, 2010) (quoting ISCR Case No. 04-10671 at 3 (App. Bd. May 1, 2006)). Finally, he receives credit in mitigation for his participation in the debt-resolution plan. It shows he intends to address his delinquent debts. However, intentions to pay debts in the future are not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013).

Applicant’s taxes remain problematic. For whatever reason, Applicant has left me in the dark about his taxes. He asserted he learned about his tax problems after the IRS audited him in about 2013, and he reported on his 2015 SF 86 that he was in a payment plan. He did not provide proof of any payments made to the IRS before July 24, 2018. He documented seven payments totaling \$1,106. He did not provide anything from the IRS establishing exactly how much, if anything, he previously paid, and how much he still owes. He filed his 2017 state and federal income tax returns with extensions after the record closed, but he did not document that he paid the \$881 he owed in federal taxes for tax year 2017.

There is insufficient evidence for a determination that Applicant’s financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. I believe Applicant is sincere, and he may reach a point where his finances are sufficiently in order to warrant a security clearance, but he is not there at this time. I find that financial considerations security concerns remain despite the presence of some mitigation.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant did not intentionally provide false information about his finances on his 2015 SF 86. AG ¶ 16(a) has not been established. SOR ¶ 2.a is concluded for Applicant.

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 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. I also considered Applicant's honorable military service.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant refuted the personal conduct security concerns, but he did not mitigate the financial considerations security concerns.

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
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e-1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	Against Applicant
Subparagraphs 1.k-1.l:	For Applicant
Subparagraphs 1.m-1.o:	Against Applicant

Subparagraph 1.p:	For Applicant
Subparagraphs 1.q-1.t:	Against Applicant
Subparagraphs 1.u-1.v:	For Applicant
Subparagraphs 1.w-1.x:	Against Applicant
Subparagraphs 1.y-1.aa:	For Applicant
Subparagraphs 1.bb-1.cc:	Against Applicant
Subparagraph 1.dd:	For Applicant
Subparagraphs 1.ee-1.ff:	Against Applicant
Subparagraph 1.gg:	For Applicant
Subparagraph 1.hh:	Against Applicant
Subparagraph 1.ii:	For Applicant
Subparagraphs 1.jj-1.mm:	Against Applicant
Subparagraph 1.nn:	For Applicant
Subparagraphs 1.oo-1.qq:	Against Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraph 2.a:	For Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge