



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



In the matter of:

ISCR Case No. 17-01794

Applicant for Security Clearance

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

05/09/2018

Decision

DAM, Shari, Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns arising from bankruptcies and delinquent debts. He mitigated the criminal conduct security concerns. National security eligibility for access to classified information is denied.

History of Case

On June 22, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F (Financial Considerations) and Guideline J (Criminal Conduct). Applicant answered the SOR in writing on August 30, 2017, and requested a hearing before an administrative judge.

The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on October 19, 2017. It issued a Notice of Hearing on December 12, 2017, setting the hearing for January 10, 2018. On that day, Department Counsel offered Government Exhibits (GE) 1 through 8 into evidence. Applicant testified, and offered Exhibits (AE) 1

through 15 into evidence. All exhibits were admitted.¹ DOHA received the hearing transcript (Tr.) on January 19, 2018. The record remained open until February 13, 2018, to permit submission of additional evidence. Applicant did not provide further evidence.

Findings of Fact

Applicant is 51 years old and divorced. He has a 10-year-old child for whom he pays child support from that marriage. He also has an adult child from a previous relationship. Applicant earned a bachelor's degree in engineering in 1996. He has worked for defense contractors in the past. (Tr. 36-38; AE 3) He has not worked full-time since February 2015, when his full-time position was dissolved. (Tr. 39, 41; GE 1.)

Applicant's financial difficulties began in March 2015 when he became ill and was unable to work the rest of that year. In mid-2016, he began driving his car for a driving service. He continues to work for the driving service. Currently, he is developing a business that he hopes may be profitable in the future. (Tr. 41-42; AE 1) In 2015, he earned about \$17,800; in 2016 about \$12,000; and in 2017 about \$32,000. Prior to his illness, he worked as a professional engineer earning about \$72,000 annually. His sister helps him financially each month. (Tr. 44, 46, 47; AE 11)

Based on credit bureau reports (CBR) from October 2017, April 2017, and July 2016, the SOR alleged two bankruptcies, a delinquent mortgage, four delinquent debts, and an insufficient funds check. The SOR allegations were reported to the credit card companies between 2014 and 2017. (GE 3, GE 4, GE 5, GE 6, GE 7) The status of each allegation is as follows:

Applicant filed a Chapter 7 bankruptcy in August 2016. (SOR ¶ 1.a) His liabilities totaled \$392,519, and included an unpaid mortgage, medical bills, automobile loan, legal bill, telephone bills, credit card debts, and other miscellaneous bills. Those liabilities were discharged in November 2016. (Tr. 51; GE 6; AE 4, AE 5, AE 6)

Two months later, in January 2017, Applicant filed a Chapter 13 bankruptcy. (SOR ¶ 1.b) He filed this bankruptcy as a method to stop the foreclosure process on his house and to give him time to negotiate a loan modification of the \$198,675 mortgage that was included in the earlier Chapter 7 bankruptcy. Applicant never made any payments into a Chapter 13 payment plan and the proceeding was dismissed in March 2017. Applicant's last mortgage payment was in July 2014. He has continued to live in the house since then, but is moving because the property was sold. (Tr. 48-49, 52, 58; AE E, AE 6, AE 7)

The SOR alleged that Applicant owed the state's child support division \$29,728 in unpaid support. (SOR ¶ 1.c) Applicant stated that the correct amount is \$22,000 because he has paid \$7,000. He said he also gave his ex-wife about \$600 to \$800 in cash two

¹ Prior to the admission of GE 2 into evidence, Applicant made a correction to the exhibit, which is his personal subject interview, dated October 10, 2017. (Tr. 13-15)

months ago. He agreed to submit proof from the state of the balance owed as of January 2018. (Tr. 54-56; AE 13) No additional evidence was submitted.

The SOR alleged Applicant's delinquent mortgage, which as of June 2017, had a loan balance of \$219,544. (SOR ¶ 1.d) Applicant asserted that the mortgage has been resolved because the house was recently sold. He stated he does not owe any money to the bank and that the matter has been settled. (Tr. 57-58) He did not submit documentation confirming his assertion that there is no deficiency owed.

In November 2017, Applicant paid the \$900 delinquent parking ticket bill, alleged in SOR ¶ 1.e. (AE 9)

Applicant has not resolved the \$900 tollway debt alleged in SOR ¶ 1.f. (Tr. 59) He negotiated a settlement, but has not been able to make payments on it. (Tr. 29; AE 9)

In 2015, Applicant was arrested and charged with fraud-insufficient funds check. He did not appear in court as required and a warrant issued. (SOR ¶¶ 1.g and 2.a) Applicant said he was unaware of the warrant, but when he learned of it, he appeared before a judge in June 2016, and the case was dismissed. (AE 4, AE 14)

Applicant submitted a budget that indicates he has about \$1,000 remaining at the end of each month after paying expenses. (AE 7) He completed the credit counseling course required for filing his 2016 bankruptcy. (Tr. 49; AE 8) He said he owed the Federal government between \$1,000 and \$2,000 for unpaid 2016 income taxes. He also owed the state government money for unpaid 2016 taxes, but does not know the amount.² (Tr. 50)

Applicant submitted letters of recommendation. An executive director for a non-profit organization complimented Applicant on his trustworthiness and technical knowledge. A former business associate stated Applicant is reliable and reputable. His sister, who works for a defense contractor, said he is trustworthy and dependable. (AE 15)

Policies

The action was taken under 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 (AG) effective within the DOD after June 8, 2017.

² The SOR did not allege Applicant's 2016 unpaid Federal and state income taxes; hence, those derogatory facts will not be considered in analyzing pertinent disqualifying conditions. Those facts may be considered in assessing Applicant's credibility, and analyzing the mitigating conditions and the whole-person concept.

When evaluating an applicant's suitability for national security eligibility, 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 to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states that an "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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person applying for national security eligibility seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *a/so* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline F: Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

AG ¶ 19 describes conditions that could raise security concerns. Three may be potentially applicable in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has a history of delinquent debts, including two bankruptcies, which began in 2014. Some delinquent debts continue to the present. He has been unable or unwilling to address his debts. These facts establish prima facie evidence for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate the resulting security concerns.

The guideline includes conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged financial difficulties. The following four may potentially apply:

- (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 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; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's child support debt, delinquent mortgage, and tollway debt remain unresolved and are ongoing. AG ¶ 20(a) does not apply. Applicant presented evidence to establish some mitigation under AG ¶ 20(b). His financial delinquencies appear to be the result of an illness he suffered for most of 2015, and a subsequent long period of unemployment or underemployment. Those were circumstances beyond his control. However, in order to establish full mitigation under this condition, Applicant is required to provide proof that he acted responsibly under the circumstances. Although some of the debts may have been difficult to pay, Applicant accumulated significant parking tickets and tollway debts that were within his control. There is insufficient evidence from which to conclude that Applicant responsibly managed his debts while they were accumulating or prior to his filing bankruptcy.

Applicant provided evidence that he participated in the required credit counseling course that is mandatory for filing bankruptcy. However, his large mortgage, a child support debt, and tollway debt are not resolved or being resolved. The evidence does not establish mitigation under AG ¶ 20(c) because there are not clear indications that his financial obligations or unpaid taxes for 2016 are under control. He established mitigation under AG ¶ 20(d), as to the debts alleged in SOR ¶¶ 1.e and 1.g, which he paid or resolved.

Guideline G: Criminal Conduct

AG ¶ 30 sets out the security concern related to criminal conduct:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

AG ¶ 31 lists conditions that could raise a security concern and may be disqualifying in this case. One may be potentially applicable in this case:

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

In 2015, Applicant was arrested and charged with fraud-insufficient funds check. In June 2016, the case was dismissed. The evidence established the above disqualifying condition.

The guideline includes conditions in AG ¶ 32 that could mitigate the security concerns arising from Applicant's criminal conduct. The following two may potentially apply:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

The criminal charge was minor and occurred in 2015 almost three years ago. The case was dismissed in July 2016. No other criminal incidents are in the record. The evidence established mitigation under both of the above mitigating conditions.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case, including those detailed in the analysis of the financial considerations and criminal conduct guidelines.

Applicant is a mature individual, who began accumulating debts in 2014, most of which remain unresolved. Although he stated that he would submit pertinent evidence after the hearing to address the status of his mortgage and child support payments, he

did not. Based on insufficient evidence and his 2016 bankruptcy discharge of almost \$400,000 of debt, he has not established a track record of responsibly managing his financial obligations, including his 2016 income taxes. Overall, he has not met his burden to mitigate the security concerns arising under the guideline for financial considerations, but he did mitigate those raised under the guideline for criminal conduct.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant access to classified information. National security eligibility is denied.

SHARI DAM
Administrative Judge