



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



In the matter of:)
)
) ISCR Case No. 17-01825
)
Applicant for Security Clearance)

Appearances

For Government: Michelle Tilford, Esq., Department Counsel
For Applicant: *Pro se*

08/24/2018

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

History of the Case

On June 19, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on July 11, 2017, and requested a hearing before an administrative judge.

The case was assigned to another administrative judge on February 14, 2018, and reassigned to me on April 16, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 19, 2018, scheduling the hearing for April 16, 2018. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 3 were admitted in evidence without objection. Applicant testified, but he did not submit any documentary evidence. The record was held open for Applicant to submit additional information. He did not submit any additional evidence. DOHA received the hearing transcript (Tr.) on April 26, 2018.

Findings of Fact

Applicant is a 58-year-old prospective employee of a defense contractor. He will start work if he receives a security clearance. He served on active duty in the U.S. military from 1978 until he was honorably discharged in 1988. He served in the reserve⁵³⁵⁴⁵³⁵⁴ from 1988 to 1990 and 2000 to 2003. He has a bachelor's degree, which was awarded in 2008, and a master's degree, which was awarded in 2015. His third marriage ended in divorce in 2016. He has two children, ages 20 and 12.¹

Applicant has a history of financial problems, which are attributed primarily to his divorces and periods of unemployment and underemployment. He filed a Chapter 13 bankruptcy case in 1996. His dischargeable debts were apparently discharged in 1998. He did not file federal income tax returns when they were due for tax years 2010 through 2015. He estimated that he owed the IRS about \$75,000 for those tax years.²

The SOR alleges 14 delinquent debts. However, the debts alleged in SOR ¶¶ 1.c and 1.e are duplicate accounts. The SOR also alleges the Chapter 13 bankruptcy and Applicant's failure to file his federal tax returns and pay his taxes.

Applicant admitted owing the debts alleged in SOR ¶¶ 1.f through 1.i. He denied owing the remaining debts. The debts alleged in SOR ¶¶ 1.j through 1.n are not listed on the most recent credit report. The debts alleged in SOR ¶¶ 1.a through 1.e are listed on the most recent credit report. However, the \$30 medical debt alleged in SOR ¶ 1.d does not list a creditor.³

Applicant retained a law firm to assist him in repairing his credit and deleting inaccurate items from his credit report. He testified that he retained a tax professional to file his back tax returns and negotiate a payment plan with the IRS. He asserted that the back returns were filed in 2016, but he did not receive the tax documents from the tax professional until the week before the hearing. He stated that he owed the IRS about \$5,000. Applicant was informed of the importance of documentary evidence in a financial case. He presented no documentary evidence at his hearing or post-hearing.⁴

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.

¹ Tr. at 16-24, 38; GE 1.

² Tr. at 38, 45-47; Applicant's response to SOR; GE 1.

³ Tr. at 25-45; Applicant's response to SOR; GE 2, 3.

⁴ Tr. at 33-34, 37, 47-59; Applicant's response to SOR.

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 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 delinquent debts, unfiled tax returns, and unpaid federal income taxes. The evidence is sufficient to raise the above disqualifying conditions.

SOR ¶¶ 1.c and 1.e are duplicate accounts. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005). SOR ¶ 1.e is concluded for Applicant.

A Chapter 13 bankruptcy from more than 20 years ago that was apparently completed with a discharge does not raise any current security concerns. SOR ¶ 1.o is 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 divorces, unemployment, and underemployment constitute conditions that were largely beyond his control. His failure to file his tax returns and pay his taxes were 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 filing tax returns and 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 stated, without corroborating documentation, that the tax returns have been filed and his federal tax debt has been reduced to about \$5,000. 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)). There is no documentary evidence that he has filed his tax returns or paid any of his delinquent debts.

Applicant denied owing many of the debts alleged in the SOR. The debts alleged in SOR ¶¶ 1.j through 1.n are not listed on the most recent credit report. Those debts are mitigated. The remaining disputed debts are listed on the most recent credit report. However, the \$30 medical debt alleged in SOR ¶ 1.c does not list a creditor. That debt is also mitigated. The remaining debts are not mitigated.

I am unable to find that Applicant acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. Security concerns raised by Applicant's finances are not mitigated.

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 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
Subparagraphs 1.d-1.e:	For Applicant
Subparagraphs 1.f-1.i:	Against Applicant
Subparagraphs 1.j-1.o:	For Applicant
Subparagraphs 1.p-1.q:	Against 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