



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 17-02149
)	
Applicant for Security Clearance)	

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: *Pro se*

07/09/2018

Decision

BORGSTROM, Eric H., Administrative Judge:

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

Statement of the Case

On June 28, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations).¹ On July 25, 2017, Applicant answered the SOR and requested a hearing. On November 2, 2017, a notice of hearing was issued, scheduling the hearing for November 14, 2017.² The hearing proceeded as scheduled. Applicant testified and two witnesses testified. Applicant submitted seven documents, which I admitted as Applicant Exhibits (AE) A through G, without objection. Department Counsel submitted

¹ The action was taken 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 implemented by the DOD on June 8, 2017.

² Tr. 7 (Applicant waived the 15-day notice requirement).

six documents, which I admitted as Government Exhibits (GE) 1 through 6, without objection. DOHA received the transcript (Tr.) on November 27, 2017.

Procedural Issue

At the hearing, Applicant provided documents to Department Counsel indicating that Applicant intended to file a Chapter 13 bankruptcy petition on the day of the hearing. Pursuant to Paragraph 17 of the Additional Procedural Guidance, Department Counsel moved to amend the statement of reasons to add the following allegation to Paragraph 1 of the SOR:

1.I. On or about November 14, 2017, you filed for Chapter 13 bankruptcy. That bankruptcy remains pending.

Without objection, I granted Department Counsel's motion. The record remained open for an additional 30 days to allow both parties to supplement the record regarding SOR ¶ 1.I. Applicant subsequently submitted two emails, which I admitted as AE H and I, without objection.

Findings of Fact

The security concerns alleged in the SOR are based on Applicant's eight delinquent debts (SOR ¶¶ 1.a.-1.g., 1.k.), three tax liens (SOR ¶¶ 1.h.-1.j.), and Chapter 13 bankruptcy filing (SOR ¶ 1.I.). In his Answer, Applicant admitted all of the alleged debts (SOR 1.a.-1.k.) and claimed to be taking steps to resolve his delinquent debts. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact:

Applicant is 42 years old. He earned an associate's degree in 1997. He has been employed full time as an aviation mechanic since at least 2006, with no reported periods of unemployment. Since December 2013, he has been employed full time as a flight test mechanic for his current employer, a DOD contractor. He was married in 2004 and has been separated since November 2015. He has two children, ages 9 and 12.

Applicant's admissions and the three credit reports establish the eight delinquent debts and three tax liens, totaling approximately \$192,700. These accounts became delinquent between October 2014 and July 2016. Applicant provided documentary evidence of one payment (\$345) on an unalleged medical bill, his monthly child support obligation (\$1,100), and some payments on his delinquent state taxes.³

Applicant attributed his financial problems to the nationwide mortgage crisis, his estranged wife, and his tax preparer. In 2010, Applicant moved across the country. He rented out his former residence (House A) in lieu of selling it, because the market value of the house was significantly lower than the mortgages owed (SOR ¶¶ 1.b. and 1.c.). In 2010, Applicant and his wife purchased a second home (House B) (SOR ¶ 1.a.). In

³ GE 2-6; AE A-E; Tr. 50.

September 2015, Applicant learned that his wife had ceased paying the mortgages on House A and House B in May 2015, and that the lenders had initiated foreclosure proceedings on both houses. Foreclosure proceedings on the House A have concluded; however, Applicant provided no documentary evidence demonstrating that the debts were resolved.

In December 2015, Applicant reached an agreement with the lender to rehabilitate the mortgage on House B. Applicant and his estranged wife received a \$14,000 gift from her parents to use towards these payments. Applicant's estranged wife had agreed to take over the mortgage payments in May 2016; however, no further payments were made, and House B is again pending foreclosure. Applicant and his estranged wife have not filed for divorce or completed property-settlement or custodial agreements.⁴

For assistance with his income tax returns for tax years 2010 through 2012, Applicant hired a tax preparer whom he believed specialized in working with U.S. Government contractors working overseas. This preparer was later criminally indicted for falsifying returns and fabricating deductions. Applicant has not initiated any legal action against the tax preparer. He admitted during the hearing that he did have concerns about the tax preparer when he received a tax refund for a tax year when he had had no taxes withheld. In 2014, Applicant began receiving calls from the IRS indicating problems with his federal income tax returns. Applicant hired another tax preparer in about 2015, but made no progress on resolving the delinquent taxes. Applicant has not made any payments on his delinquent federal taxes (SOR ¶ 1.j.), but he intended to include his delinquent federal taxes in his Chapter 13 bankruptcy repayment plan. There is no documentary evidence demonstrating that the delinquent federal taxes were included in the bankruptcy. Applicant initiated monthly payments (\$404) on his delinquent state taxes (SOR ¶¶ 1.h. and 1.i.) in about November 2015, and he provided documentary evidence of monthly payments from December 2016 through October 2017.⁵

On the day of the hearing, Applicant submitted documentation to his bankruptcy attorney with the intent of filing a Chapter 13 bankruptcy petition (SOR ¶ 1.l.). He completed the prerequisite credit counseling and signed some of the bankruptcy materials; however, there is no documentary evidence showing that the bankruptcy petition was actually filed or which debts were included in the bankruptcy.⁶

Applicant's character is well regarded by his father-in-law and his supervisor. Applicant's supervisor testified that Applicant has not had any disciplinary actions or security violations at his current employer.⁷

Policies

⁴ Tr. 33, 51-53, 61-70, 81.

⁵ Tr. 59-61, 90, 95-102; AE B.

⁶ AE F; Tr. 72-77.

⁷ Tr. 30-33; 38-45.

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 S`OR. 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 or inability 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 risk of having to engage in illegal 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 fraudulent filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant's eight debts and three tax liens total approximately \$192,700. These debts became delinquent between October 2014 and July 2016, and they remain outstanding. AG ¶¶ 19(a), 19(c), and 19(f) apply.

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 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 arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant bears the burdens of production and persuasion in mitigation. Applicant was contacted by the IRS in 2014, and he became fully aware of his financial problems in about September 2015. All of the debts remain delinquent, and Applicant made payments only on his delinquent state taxes (SOR ¶¶ 1.h. and 1.i.). He planned to initiate bankruptcy proceedings on the day of the hearing; however, he has not provided documentary evidence of sufficient debt-resolution efforts to remove doubts as to his reliability and judgment. AG ¶ 20(a) does not apply.

The nationwide mortgage crisis, Applicant's marital separation, and his tax preparer were circumstances beyond Applicant's control that contributed to his financial problems. Since learning of his potential problems with his Federal income taxes in 2014 and of his other delinquent debts in September 2015, Applicant has only made payments on his delinquent state taxes. There is no documentary evidence that Applicant actually filed bankruptcy or adhered to a bankruptcy plan. The timing of Applicant's debt-resolution efforts prevents me from concluding that he acted responsibly with respect to his delinquent debts. AG ¶ 20(b) does not apply.

Applicant participated in the credit counseling required by his bankruptcy filing. He has only made payments on his delinquent state taxes, and his other debts are also unresolved. I cannot conclude that his financial problems are under control. AG ¶ 20(c) does not apply.

The concept of good faith requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. Applicant has made consistent payments on his delinquent state taxes (SOR ¶¶ 1.h. and 1.i.), but there is no documentary evidence of any further debt-resolution efforts beyond Applicant's documents prepared in anticipation of filing bankruptcy. AG ¶ 20(d) applies only as to SOR ¶¶ 1.h. and 1.i.

Applicant encountered circumstances beyond his control that contributed to his financial problems. Nonetheless, he has not demonstrated that he has acted responsibly in addressing his delinquent debts and taxes, all of which remain outstanding. Applicant did not mitigate the financial considerations security concerns.

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 and the factors in AG ¶ 2(d) in this whole-person analysis.

Applicant's character and work performance are highly regarded by his father-in-law and supervisor. Nonetheless, Applicant has not demonstrated that he acted in a financially-responsible manner in addressing his delinquent debts and taxes. Given his burden to demonstrate financial responsibility, trustworthiness, and good judgment, 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.g.:	Against Applicant
Subparagraphs 1.h.-1.i.:	For Applicant
Subparagraphs 1.j.-1.k.:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, I conclude that it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Eric H. Borgstrom
Administrative Judge