



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



In the matter of:)
)
) ISCR Case No. 17-02237
)
Applicant for Security Clearance)

Appearances

For Government: Andrew W. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

04/12/2018

Decision

COACHER, Robert E., Administrative Judge:

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

Statement of the Case

On July 3, 2017, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD acted 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).

Applicant answered the SOR on July 19, 2017, and he requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 12, 2017, and the hearing was convened as scheduled on January 17, 2018. The Government offered exhibits (GE) 1 through 8, which were admitted into evidence without objection. The Government's exhibit list was identified as hearing exhibit (HE) I. Applicant testified and offered exhibits (AE) A

through E, which were admitted without objection. The record remained open until February 16, 2018, to allow Applicant to submit documentary evidence. He submitted AE F through I, which were admitted without objection. DOHA received the hearing transcript (Tr.) on January 24, 2018.

Findings of Fact

Applicant admitted all the SOR allegations, except for SOR ¶¶ 1.b and 1.d, which he denied. His admissions are incorporated into these findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 43-year-old employee of a defense contractor. He began working at his present job in 2000. He is an information technology (IT) engineer. He has a bachelor's degree. He married in 1999 and divorced in 2012. He remarried in 2014. He has two children from his first marriage, ages 20 and 16. His youngest child resides with him.¹

The SOR alleges six delinquent debts totaling approximately \$56,216. The debts were listed in credit reports from February 2016, June 2017, August 2017, and January 2018 (SOR ¶¶ 1.a – 1.f).²

Applicant explained that his financial problems started about 2012 when he separated from his first wife. As a result of the divorce, he was required to pay \$2,500 monthly to his ex-wife. Additionally, he was required to pay for her psychological evaluation, which cost approximately \$10,000. He also claimed that his ex-wife accumulated credit-card debt before their separation. He stated to an investigator conducting his background investigation that during his first marriage he was barely living within his means. He testified that they were spending more than they were receiving in income. He had his wages garnished beginning in November 2013 because of a judgment entered by a consumer creditor. The judgment was satisfied in 2014.³

The status of the SOR debts is as follows:

Student Loan Debt (SOR ¶ 1.a). Applicant's student loans went into default for nonpayment in 2013 or 2014. He rehabilitated those loans by paying \$5 monthly for approximately 10 months. Once rehabilitated, he was able to enter into a plan to repay those loans. He made his first \$377 monthly payment in December 2017. He documented two payments thus far. The balance owed on the two student loans is approximately \$43,000. He did not enter into his payment plan until after the SOR was issued in July 2017.⁴

¹ Tr. at 5, 27-28; GE 1.

² GE 5-8.

³ Tr. at 30, 33, 60; GE 2-3, 5.

⁴ Tr. at 39-44; AE B.

Repossession (SOR ¶ 1.b). Applicant had a leased vehicle repossessed for nonpayment. He presented documentation showing that he reached a payment agreement with the collection company holding the debt in December 2017. The agreement shows a balance owed of approximately \$3,400. He made two monthly payments of \$70 in December 2017 and January 2018, after the SOR was issued.⁵

Consumer Debts (SOR ¶¶ 1.c and 1.f). Applicant believes his ex-wife should pay these two charged-off debts. He is seeking to have these debts allocated to her through a modification of his divorce settlement. He failed to provide documentation supporting his action in that regard. He acknowledged joint responsibility for the debts. During his background investigation he committed to setting up a payment plan for these debts by June 2016. He failed to do so.⁶

Consumer Debt (SOR ¶ 1.d). Applicant claims that the creditor for this charged-off account issued an IRS Form 1099-C (cancellation of debt) in 2016. He failed to produce evidence of the 1099, or that he claimed the debt as income on his 2016 federal tax return.⁷

Consumer Debt (SOR ¶ 1.e). Applicant disputes that he owes this collection debt because of damage the creditor caused installing equipment. He failed to produce documentary evidence supporting his dispute. He also acknowledged not pursuing a civil action against the creditor.⁸

Applicant did not produce a budget. He claimed yearly income of approximately \$146,000. His disposable income after all expenses is approximately \$500 monthly. He has \$5 in his savings account and has borrowed to the limit against his \$12,000 retirement account. He provided documentary evidence showing he is current on his monthly mortgage payments, but he does owe approximately \$350 in past-due fees. He has not sought financial counseling. He admitted at the hearing to failing to file his 2014 and 2015 state tax returns. He failed to file because he was afraid he owed on those returns and did not have the money to pay. He presented post-hearing evidence showing that he filed both returns (no date indicated), but he presented no evidence of payment for those years.⁹

⁵ Tr. at 45-46; AE C.

⁶ Tr. at 47, 51; GE 2.

⁷ Tr. at 47-48, AE F.

⁸ Tr. at 50-51, 53.

⁹ The SOR did not allege non-filing of Applicant's state tax returns or nonpayment of taxes, therefore, evidence of that conduct will not be used for disqualification purposes, but may be used to determine credibility, the application of mitigating conditions, and weighing of the whole-person factors. Tr. at 61-64, 74; AE H-I.

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 are 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, 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 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." 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that 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

AG ¶ 18 expresses the security concern for financial considerations:

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.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (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; and

Applicant has delinquent debts that remain unpaid or unresolved. I find all the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following 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, 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; and

(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.

Applicant's debts are recent and multiple and, although he made two payments towards his student loans and the repossessed car debt, he did so only after the SOR was issued. He failed to produce evidence showing that recurrence of his financial problems is unlikely. AG ¶ 20(a) is not applicable.

Applicant's divorce and resulting additional expenses can be considered circumstances beyond his control. However, he failed to act responsibly by establishing payment plans for the identified debts in a more timely manner since his divorce occurred in 2012. Overall, the record evidence does not support that Applicant acted responsibly under the circumstances. AG ¶ 20(b) is partially applicable.

Applicant did not present evidence of financial counseling. Given the unpaid status of four of the debts and the recent establishment of payment plans on two debts, Applicant's financial problems are not under control and good-faith efforts to pay or resolve the remaining debts are lacking. There is no documentary evidence supporting his dispute of SOR ¶ 1.e. AG ¶¶ 20(c), 20(d), and 20(e) do not apply.

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 the 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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's federal contractor service and the circumstances surrounding his indebtedness. However, I also considered that he has made insufficient efforts to resolve his debts and that he only recently filed his 2014 and 2015 state tax returns. He also failed to provide proof of payment of any taxes owed for those years. He has not established a meaningful track record of debt management, which causes me to question his ability to resolve his debts.

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 has not mitigated the financial considerations security concerns.¹⁰

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.f: 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge

¹⁰ I considered the exceptions under Security Executive Agent Directive (SEAD) 4, Appendix C, dated June 8, 2017, and determined they are not applicable in this case.