



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



In the matter of:)
)
) ISCR Case No. 17-02294
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

03/05/2018

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Clearance is denied.

Statement of the Case

On July 10, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. 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 (AG) implemented by the DOD on June 8, 2017.

Applicant responded to the SOR on August 8, 2017, and elected to have his case decided on the written record in lieu of a hearing. The Government's written case was submitted on September 28, 2017. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant

received the FORM on October 12, 2017. He responded to the Government's FORM with documentation I marked as Applicant's Exhibit (AE) A, and admitted in evidence without objection. The Government's documents identified as Items 1 through 5 are admitted in evidence without objection. The case was assigned to me on January 17, 2018.

Findings of Fact

Applicant admitted the SOR allegations in SOR ¶¶ 1.b through 1.d and denied 1.a. He is 71 years old, married, and he does not have any children. He was unemployed as of April 2014, after his prior position as a project manager that he held since October 2012 with a consulting company was eliminated. He obtained his high school diploma in 1964 and an associate's degree in 1987. He served in the U.S. military from August 1964 to September 1984, when he retired honorably as a disabled veteran with a 30% disability rating. He retired from the federal government in May 2006 after 18 years of public service. He held a security clearance when he served in the U.S. military and when he worked for the federal government. He has owned his home since 2007.¹

The SOR alleges two judgments totaling \$35,020 from 2016 and two consumer accounts that were past due for a total of \$4,405. In addition to his admissions, credit reports from August 2016 and June 2017 verify the judgments and delinquent debts. Applicant also listed them in his security clearance application.²

Applicant attributes his judgments and delinquent debts to his periods of unemployment. His first period of unemployment was from May 2006 to August 2006, after he retired from the federal government. His second period of unemployment was from April 2010 to October 2012, after his prior position as a deputy program manager that he held since August 2006 was eliminated after contract completion. Finally, he was unemployed as of April 2014, as discussed above. He elected to utilize his available funds to pay his mortgage and utility bills.³

Applicant stated that he was in the process of disputing SOR ¶ 1.a. He provided documentation reflecting his disputes for an account with a creditor of the same name from 2016 to 2017. Applicant indicated that he had not received a satisfactory response to his disputes. He intended to seek legal advice upon obtaining employment. The account number he referenced in his disputes was different than that of SOR ¶ 1.a as reported in the credit reports.⁴

¹ Items 2-3; AE A.

² Items 1, 3-5; AE A.

³ Items 2-3.

⁴ Items 2, 4-5; AE A.

Applicant stated that he communicated with the creditors in SOR ¶¶ 1.b through 1.d and explained his situation. He intended to resolve them once he obtained employment, by enrolling in a debt relief program that would enable to him to settle and resolve his debts.⁵

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 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

⁵ Item 2; AE A.

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. 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 under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant was unable to pay his debts. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as disqualifying conditions.

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; 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 periods of unemployment as discussed above constitute conditions beyond his control that contributed to his delinquent debts. However, he failed to show that he acted responsibly under his circumstances. He acknowledged that he had not received a satisfactory response to his disputes for SOR ¶ 1.a, and he thus intended to seek legal advice upon obtaining employment. He did not show that his disputes, which referenced an account number different than that of SOR ¶ 1.a, pertained to the same account.

In addition, he did not provide documentation to show that he paid or otherwise resolved his remaining judgment and delinquent debts. He acknowledged that he intended to take action to resolve them once he obtained employment. There is no evidence that he received financial counseling. At this time, there is insufficient evidence to conclude that his financial problems are unlikely to recur, and they continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(b), 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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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 this whole-person analysis. I considered Applicant's honorable military and public service.

The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under Guideline F, financial considerations.

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.d:	Against Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Candace Le'i Garcia
Administrative Judge