



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-02368

Appearances

For Government: Michelle Tillford, Esquire, Department Counsel
For Applicant: *Pro se*

06/08/2018

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On July 14, 2017, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations).¹ In a response signed on July 21, 2017, he addressed the allegations and admitted four of the five allegations raised. Applicant also requested a determination based on the written record. On December 22, 2017, the Government issued a File of Relevant Material (FORM) with eight attachments ("Items"). The case was assigned to me on May 23, 2018. Based on my review of the record as a whole, I find Applicant failed to mitigate financial considerations security concerns.

Findings of Fact

Applicant is a 46-year-old general manager who has worked for the same employer since 2008. He also has a part-time position as a furniture installation consultant within his company's facility. Applicant served in the United States military on active duty

¹ 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 on or after June 8, 2017.

from 1989 until receiving a honorable discharge in 1998. He has earned a high school diploma and taken some coursework at a community college. Applicant divorced in October 2005. He has three adult children and one preteen child. There is no indication he has received financial counseling.

As based on materials contained in the FORM, the SOR sets forth five allegations pertaining to finance-related issues:

1.a – Admitted. Applicant filed for Chapter 7 bankruptcy protection in about December 2011. This bankruptcy was discharged in April 2012. Applicant wrote that he filed for bankruptcy as a result of his divorce and accumulated marital debt. At the time, he was barely earning sufficient income to cover his living expenses. (SOR Response)

1.b – Admitted. Applicant is indebted to the federal government for a tax lien entered against him in about May 2015 for approximately \$42,286. Applicant asserted that he is currently working with a firm to help him address this debt. He noted that he has paid them half of the money owed for its services and that the firm is working diligently on the matter. (SOR Response) He provided no documentary evidence, however, reflecting this arrangement.

1.c – Admitted. Applicant failed to file state income tax returns for tax years (TY) 2012, 2014, and 2015. By way of explanation, Applicant admitted that he did not handle his personal finances well in the past. He did not provide documentary evidence reflecting that those tax returns have been filed, or showing any arrangements with the state have been initiated. (SOR Response)

1.d – Admitted. Applicant is indebted to that same state for delinquent taxes in the approximate amount of \$7,000. He wrote that he is now making automatic payments to the state to address the issue, but he did not provide corroborative documentary evidence reflecting that arrangement or payments made. (SOR Response)

1.e – Denied. Applicant was shown to be indebted to a second state for a tax lien entered against him in 2009 for approximately \$3,843. Applicant denied this allegation, writing that he has not lived in this state since 1990-1994, when he was assigned to military housing. He noted, however, that his ex-wife moved to this state after their 2005 divorce. Applicant further wrote that he has never been notified by this state regarding any debt owed. Applicant stressed that he “will work towards making contact with [this state and] hopefully get the details so this can be removed.” (SOR Response) No documentary evidence was introduced reflecting efforts to address this matter.

Applicant stressed that he is a loyal American and former member of the U.S. armed services. He is committed to handling his financial situation properly.

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 adjudicative goal is a fair, impartial, and commonsense decision. This 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, in making a decision.

The protection of the national security is the paramount consideration. Any doubt concerning personnel being considered for access to classified information will be resolved in favor of national security. In reaching this decision, I have only drawn conclusions that are reasonable, logical, and based on the evidence provided.

Under the Directive, the Government must present evidence to establish controverted facts alleged in the SOR. 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 seeking access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. This relationship transcends normal duty hours. Decisions include consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such 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.

Analysis

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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.

Here, Applicant admitted four of the five allegations raised in the SOR. Those admitted allegations include his 2011 Chapter 7 bankruptcy petition, a currently pending federal tax lien for over \$42,000, a state income tax debt due of about \$7,000, and his failure to timely file state tax returns for three tax years. Applicant denied without offering any corroborative documentary evidence, however, a state tax lien for approximately

\$3,842 from 2009. These facts are sufficient to invoke financial considerations disqualifying conditions:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the inability to do so;

AG ¶ 19(c): a history of not meeting financial obligations; and

AG ¶ 19(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.

Five conditions could mitigate the finance related security concerns posed:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(c): the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit counseling service, and there are clear indications that the problem is being resolved or is under control;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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.

While the debts at issue may have been acquired in the past, there is no documentary evidence reflecting attempts to address the debts or complete the unfiled tax returns at issue. This vexes assessment of Applicant's present reliability and judgment. Moreover, issues regarding these finance-related concerns remain current. Therefore, AG ¶ 20(a) does not apply.

The only bases provided by Applicant for explaining the origin of the delinquent debts at issue are his October 2005 divorce and related marital debt. That divorce is also cited as the reason for his December 2011 filing for Chapter 7 bankruptcy. Due to the scant information provided by Applicant, however, it is unclear as to what, if any, responsible action Applicant took to address those marital debts in the intervening six years. Such factors obviate application of AG ¶ 20(b).

There is no evidence reflecting that Applicant has received financial counseling. The limited offering from Applicant fails to document that his financial problems have been brought under control or are being resolved. Similarly, his documentation does not demonstrate a good-faith effort to resolve his financial issues or provide a reasonable basis to dispute the financial issues raised. Indeed, even with regard to the state tax lien for which Applicant denies responsibility because he has not lived in that state since the 1990s, he failed to offer any documentation showing efforts made to validate, disprove, or dispute the sum at issue. Taken together, there is insufficient documentation to raise any of the remaining mitigating conditions under this guideline.

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 adjudicative process factors listed in the AG. Under AG ¶ 2(a), the need to utilize a "whole-person" evaluation is set forth. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I incorporated my comments under the guideline at issue in my whole-person analysis.

Applicant is a 46-year-old general manager and furniture installation consultant. Divorced in October 2005, he is the father of three adult children and one preteen child. He served on active duty in the U.S. military for many years, and has attended some post-secondary courses.

The finance-related issues set forth in the SOR reflect a certain degree of fiscal laxity on the part of Applicant. This is apparently the result of either simple neglect or a lack of knowledge as to his financial and tax responsibilities. While he credited his December 2011 bankruptcy petition to his 2005 divorce, he failed to explain how he juggled the delinquent debts at issue during the intervening six years.

Also lacking is documentation corroborating Applicant's statements regarding corrective action he has taken to address his late state tax returns, two tax-related liens amounting to about \$46,000, and an outstanding state income tax liability of \$7,000. This process depends on documentation to substantiate statements of action. This is especially true in cases where an applicant requests a determination based on the written record in lieu of a hearing. Given Applicant's deficient documentary offering, financial considerations security concerns remain unmitigated.

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-1e:

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

Arthur E. Marshall, Jr.
Administrative Judge