



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



In the matter of:)
)
) ISCR Case No. 17-02396
)
Applicant for Security Clearance)

Appearances

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

03/06/2018

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 26, 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 16, 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 19, 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 September 25, 2017. He did not respond to the Government's FORM. 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 denied all of the SOR allegations.¹ The Government conceded that Applicant paid his delinquent mortgage in SOR ¶ 1.d through the sale of his home in January 2014.

Applicant is 50 years old, married, and he does not have any children. He has worked as an engineer for a defense contractor since 1997. He obtained a bachelor's degree in 1990. He served in the U.S. military from 1990 to 1994. He was first granted a security clearance in 1998. He previously owned a home from April 2002 to January 2014, upon which time he has since rented.²

The SOR alleges a judgment from December 2013 for \$20,732, a mortgage account for a home foreclosed in January 2014, and four delinquent consumer accounts totaling \$107,833. A credit report from August 2017 verifies Applicant's resolution of his mortgage account in SOR ¶ 1.e, after foreclosure proceedings commenced on his home. Credit reports from November 2016, April 2017, and August 2017 verify the judgment in SOR ¶ 1.a and the remaining delinquent debts in SOR ¶¶ 1.c, 1.d, and 1.f. Applicant also listed them in his security clearance application.³

Applicant attributes the judgment and delinquent debts to the period from 2013 to 2014 when he attempted to sell his underwater home. He encountered difficulties when his lender refused to negotiate short sale terms. He eventually short sold his home in January 2014.⁴

Applicant indicated in his application that his pay was garnished from July to November 2014 to resolve the judgment in SOR ¶ 1.a. He then stated in his response to the SOR that the judgment was dismissed in June 2014. Contrary to his assertions, the documentation he provided from the state general district court reflects that there was a garnishment proceeding initiated in April 2014 to collect on the judgment, and the garnishment proceeding was dismissed due to "no funds." Applicant has not resolved this judgment.⁵

¹ Item 2.

² Item 3.

³ Items 1-5.

⁴ Items 2, 3.

⁵ Items 2, 3.

Applicant stated that the debts in SOR ¶¶ 1.b, 1.c, 1.d, and 1.f are uncollectible because they have exceeded the three-year period of statute of limitations. He provided a copy of the state code concerning statutes of limitations.⁶

Applicant stated that he minimized his family's expenses and was on a steady path to financial recovery. He cited to his work performance as an indication that he values his job.⁷

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.

⁶ Item 2.

⁷ Item 2.

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. 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 difficulty in short-selling his underwater home from 2013 to January 2014 constitutes a condition beyond his control that contributed to his delinquent debts. However, he failed to show that he acted responsibly under his circumstances. He resolved his delinquent mortgage through the eventual short sale of his home in January 2014. However, he has not resolved his remaining delinquent debts. AG ¶ 20(b) only partially applies.

Though he stated that SOR ¶ 1.a was dismissed in June 2014, his documentation did not reflect that he resolved this judgment. In addition, he did not provide documentation to show that he paid or otherwise resolved his remaining delinquent debts. The federal government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy the debt in a timely manner, even if a delinquent debt is legally unenforceable under state law. See, e.g., ISCR Case No. 01-09691 at 3 (App. Bd. Mar. 27, 2003). Moreover, even assuming that judicial enforcement of the debt has been precluded by the statute of limitations, reliance upon such a remedy is not normally a substitute for good-faith efforts to pay off the debt. ISCR Case No. 07-16427 (App. Bd. Feb. 4, 2010). 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(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 military service and his work for a defense contractor since 1997.

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, 1.f:	Against Applicant
Subparagraph 1.e:	For 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