



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



In the matter of:)
)
) ISCR Case No: 17-02419
)
Applicant for Security Clearance)

Appearances

For Government: Robert B. Blazewick, Esquire, Department Counsel
For Applicant: *Pro se*

10/03/2018

Decision

DAM, Shari, Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns related to his delinquent debts. Based upon a review of the pleadings and exhibits, national security eligibility for access to classified information is denied.

Statement of Case

On September 15, 2017, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F (Financial Considerations). 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective within the DOD on June 8, 2017.

Applicant answered the SOR on November 13, 2017, and requested his case be decided by an administrative judge on the written record without a hearing (Answer). On

January 8, 2018, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing seven Items, was mailed to Applicant and received by him on January 17, 2018. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant did not submit a response to the FORM or object to the Government's evidence. Items 1 through 7 are admitted into evidence without objection. The Defense Office of Hearings and Appeals (DOHA) assigned this case to me on July 30, 2018.

Findings of Fact

Applicant admitted 12 of the 16 alleged SOR debts. He denied the other four debts.

Applicant is 44 years old and divorced. He has been married twice. He served on active duty from 1991 to 1993 while attending a military academy. From 1993 to 1999, he was in the inactive reserves. He earned a bachelor's degree in 1998. (Item 3, Item 5)

In January 2016, Applicant began a position with a defense contractor. He was unemployed the previous four months. He worked for other federal contractors from 2014 to 2015, and from 2008 to 2010. He held clearances for some of those positions, including during his military education. (Item 5)

Based on Applicant's admissions and credit bureau reports from April 2016 and July 2017, the SOR alleged 16 debts that became delinquent between 2012 and 2016, and totaled over \$150,000. They include: an IRS judgment; a past due mortgage in foreclosure; traffic tickets; utility and cell phone bills; credit card debts; and medical bills.

Applicant stated in his Answer that he paid, settled, or satisfied the following debts: ¶ 1.e for \$1,603; ¶ 1.g for \$383; ¶ 1.j for \$75,322¹; ¶ 1.k for \$14,556²; and ¶ 1.n for \$177. He provided no proof to confirm his assertions and document the current status of the debts. (Item 2)

Applicant stated in his Answer that that he was negotiating settlements or was making payments on the following debts: ¶ 1.a for \$51,355³; ¶ 1.b for \$931; ¶ 1.c for \$2,784; ¶ 1.d for \$1,635; ¶ 1.i for \$240; ¶ 1.m for \$205; and ¶ 1.o for \$66. He provided no proof to confirm his assertions and document the current status of the debts. (Item 2)

¹This debt is owed to the IRS for a judgment filed in November 2016.

² Applicant submitted a copy of a promissory note, dated December 2015, in which he agreed to make monthly payments on the judgment, beginning in April 2016 and continuing until the judgment was paid. There is no signature on that note, or evidence that he made payments on this judgment filed by an apartment complex. (Item 2)

³ This large debt is a past due amount owed on a mortgage. Applicant stated in his Answer that he was in the process of negotiating a short sale to resolve it. (Item 2)

Applicant denied owing the following debts: ¶ 1.f for \$611; ¶ 1.h for \$104; ¶ 1.i for \$41; and ¶ 1.p for \$26. He provided no proof to confirm that these are not his debts and that he successfully disputed them with credit reporting bureaus. (Item 2)

Applicant participated in a background interview with a government investigator in November and December 2016. During those interviews, he discussed the status of the alleged debts. (Item 5)

Applicant did not provide a budget or other information related to his financial obligations from which to determine his current financial reliability or ability to maintain payments on the debts.

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the pertinent AG. In addition to brief introductory explanations of the security concern, the guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person applying for national security eligibility seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information.

Analysis

Guideline F: Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

AG ¶ 19 describes conditions that could raise security concerns. Four may be potentially disqualifying in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.⁴

⁴ See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

Based on his admissions and CBRs, Applicant has a history of being unable or unwilling to meet his financial and tax obligations, which began in 2012 and continue into the present. The evidence raises security concerns under the above disqualifying conditions, and shifts the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial problems. 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, or 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;
- (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; 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's delinquent debts arose between 2012 and 2016, and continue to date. AG ¶ 20(a) does not apply. Applicant did not explain what factors contributed to his financial problems. He did not provide evidence that he attempted to responsibly manage his financial obligations; thus, AG ¶ 20(b) does not apply. There is no evidence that he participated in financial or credit counseling, and there is insufficient evidence to conclude that the 16 delinquent debts are being resolved and are under control. AG ¶ 20(c) does not apply. He provided no documentary evidence that he has payment plans in place and has been making good-faith efforts to adhere to those plans. AG ¶ 20(d) does not apply. Applicant did not provide evidence of a reasonable basis to dispute the four debts that he

denied owing. AG ¶ 20(e) does not apply. He did not submit evidence that he made arrangements with the IRS to resolve his tax debt and is in compliance with the agreement. The evidence does not establish mitigation under AG ¶ 20(f).

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent 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.

Applicant is a mature individual, who has worked for defense contractors and held clearances in the past. During background interviews in November and December 2016, Applicant discussed his financial and tax delinquencies. In the September 2017 SOR, the Government placed him on notice that his debts raised security concerns. After reviewing his Answer to the SOR, the Government notified him in the FORM that the evidence he submitted in his Answer was considered by Department Counsel to be insufficient to mitigate the financial allegations. Despite that notice, he did not provide additional evidence to confirm that he was resolving or had resolved debts as he stated in his Answer. At this time, he has failed to present sufficient evidence of mitigation, including a track record of responsibly managing debts and financial obligations. He failed to meet his burden to mitigate the security concerns arising under the guideline for financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:

AGAINST APPLICANT

Subparagraphs 1.a through 1.p:

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 access to classified information. National security eligibility is denied.

SHARI DAM
Administrative Judge