



Applicant for Security Clearance

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

02/28/2018

Decision

MURPHY, Braden M., Administrative Judge:

Applicant did not provide sufficient evidence to mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on December 4, 2015. On August 17, 2017, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations.¹

¹ The action was taken under Executive Order (Exec. Or.) 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 (AG), which became effective on June 8, 2017.

Applicant answered the SOR on September 18, 2017. He elected to have his case decided on the written record in lieu of a hearing. On October 11, 2017, Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 6. Applicant received the FORM on October 16, 2017. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not respond to the FORM. The SOR and the Answer (Items 1 and 2) are the pleadings in the case. Items 3 through 6 are admitted into evidence without objection.

Findings of Fact

Applicant admitted SOR ¶¶ 1.d-1.g, 1.i-1.l, 1.n and 1.o. He denied SOR ¶¶ 1.a-1.c, 1.h and 1.m. He provided a narrative explanation but no documents with his Answer. I have incorporated his admissions and other statements into the findings of fact. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is 48 years old. Applicant and his wife have been married since 2001. Applicant has three children, ages 8, 13 and 21. Applicant has been employed with a defense contractor at a naval shipyard since August 2009. Before then, he had been unemployed since November 2008 after he was laid off from an earlier job. (Item 3)

On his SCA, Applicant disclosed a state income tax debt being resolved through garnishment, as well as various credit card debts.² He noted that his debts were due to a lack of funds, because his wife had stopped working. (Item 3)

The Government's evidence also includes credit reports from January 2016 and July 2017, as well as the summary of Applicant's April 2017 background interview, in which he discussed his delinquent debts. (Items 4, 5, 6). The credit reports establish the debts alleged in the SOR, most of which Applicant admits.³

The largest debt in the SOR is Applicant's \$193,000 mortgage, alleged to be almost \$20,000 past due. (SOR ¶ 1.a) Applicant denied the mortgage debt, but offered no additional information in his Answer to rebut the allegation that his mortgage is delinquent.

Similarly, he offered no additional information to rebut the allegations about the other debts he denied. These debts include SOR ¶ 1.b, a past-due debt for \$4,261; SOR ¶ 1.c, a loan regarding a repossessed auto, for \$3,710; SOR ¶ 1.h, a debt in collection for \$638; and SOR ¶ 1.m, a \$1,086 past-due debt to a furniture company.

² This tax debt is not alleged in the SOR, so I have not considered it as a delinquent debt.

³ SOR ¶¶ 1.a through 1.k are found on Item 6. SOR ¶¶ 1.a, 1.b, 1.i, 1.j, 1.l, 1.m, 1.n and 1.o are found on Item 5.

The remaining debts, all of which he admits, are largely consumer accounts and credit cards: SOR ¶¶ 1.d (\$1,167); 1.e (\$985); 1.f (\$666); 1.g (\$643); 1.i (\$528); 1.j (\$506); 1.k (\$384); 1.n (\$686); and 1.o (\$507). Excluding the mortgage (SOR ¶1.a), Applicant's SOR debts total about \$15,767. Applicant also filed Chapter 13 bankruptcy in 2008. The bankruptcy was dismissed in 2010. (SOR ¶ 1.i)

In his Answer, Applicant stated, as he did in his SCA and in his background interview, that his debts began when his wife lost her job. This occurred in 2010. (Item 4 at 1) He explained that his wife applied for credit cards to catch up on bills when she was out of work. He said his wife also had emergency surgery and doctor visits, which delayed the bill payments. He said that other than the credit cards, his other bills are "back on track." (Answer)

Applicant stated that he has received settlement offers from various creditors. He stated that he was offered credit counseling by his mortgage company, and has completed a credit counseling program with his bank. He provided no specific details about what he has learned. He stated that he and his wife are once again a "two-income" household, and that he asked his wife to "stay away from the [credit] cards." (Answer)

Applicant gave no further explanation about any of the debts. He did not provide any basis for any debts he denied. He provided no additional information about any steps he has taken to settle, pay, dispute, or otherwise resolve any of the debts in the SOR. He provided no documentation of the current status of any debt alleged. He also provided no details or documents about his current financial situation, such as his assets, or his monthly income and expenses.

Policies

It is well established that no one has a right to a security clearance.⁴ As the Supreme Court noted in *Department of the Navy v. Egan*, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials."⁵

The adjudicative 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(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 ¶

⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance").

⁵ 484 U.S. at 531.

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, 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 as to obtaining 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 as to potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline 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. . . .

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.⁶

AG ¶ 19 provides conditions that could raise security concerns: ¶¶ 19(a) “inability to satisfy debts” and (c) “a history of not meeting financial obligations” are applicable, given the record evidence of Applicant's delinquent debts.

⁶ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The financial considerations guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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 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 did not provide sufficient evidence to fully apply any of these mitigating conditions. He admitted most of the debts in the SOR and denied some of them, but offered few explanations and updated information about their current status to show that any of the debts are resolved. He also provided no documents about the current status of his debts, whether admitted or denied. It is reasonable to expect applicants to present documentation about the resolution of specific debts, and Applicant did not do so.⁷

Applicant's debts are ongoing. He provided insufficient evidence from which to conclude that his financial issues are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, and good judgment. He did not establish that AG ¶ 20(a) should apply.

I give Applicant some credit under AG ¶ 20(c), as he has pursued credit counseling from two likely reputable sources (his mortgage company and his bank). However, he

⁷ ISCR Case No. 15-02326 at 2 (App. Bd. Oct. 14, 2016)

provided insufficient evidence to establish that his financial issues are being resolved or are under control.

Similarly, I give Applicant some credit under AG ¶ 20(b), as his debts occurred after his wife lost her job and used credit cards to pay some bills. However, even if his debts occurred due to circumstances beyond his control, Applicant still must establish that he acted reasonably under the circumstances. There is insufficient evidence from which to conclude this, so AG ¶ 20(b) only partially applies. He also did not establish that he undertook sufficient good-faith efforts to pay or otherwise resolve his debts. He did not establish that AG ¶ 20(d) should apply.

Applicant set forth neither a basis nor documented proof that the debts he denied are either resolved, current, or are not his responsibility. AG ¶ 20(e) does 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(a), 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 my whole-person analysis. Applicant did not provide sufficient evidence, documented or otherwise, that he attempted to resolve his debts in a good-faith, responsible manner. He did not establish that his debts are being resolved or are under control, and he did not establish that his financial issues are unlikely to recur or no longer cast doubt on his current judgment, trustworthiness, and reliability. Put simply, it is Applicant's burden to mitigate the security concerns shown by his various ongoing debts, and he did not meet his burden. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude that Applicant did not mitigate the financial considerations security concerns.

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.o: 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 security interests of the United States to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

Braden M. Murphy
Administrative Judge