



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



In the matter of:)
)
) ISCR Case No. 17-02663
)
Applicant for Security Clearance)

Appearances

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

09/06/2018

Decision

MURPHY, Braden M., Administrative Judge:

Applicant did not provide sufficient evidence to mitigate the security concerns under Guideline F, financial considerations. Applicant filed Chapter 13 bankruptcy in June 2017, but the petition is pending dismissal because he was unable to make the required payments. His debts remain largely outstanding and unresolved, and he has not established a reasonable plan for resolving them. Applicant's eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on October 22, 2013. On August 15, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. 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 effective within the DOD on June 8, 2017.

Applicant answered the SOR on September 16, 2017, and requested a hearing. The case was assigned to me on April 27, 2018. On May 4, 2018, a notice of hearing was issued scheduling the hearing for June 5, 2018. The hearing convened as scheduled.

At the hearing, Department Counsel submitted Government's Exhibits (GE) 1 through 8. GE 2 through 7 were admitted without objection. Applicant objected to GE 1, his 2013 SCA, due to the document's age, but I overruled the objection.¹ Documents attached to Applicant's Answer were marked as Applicant's Exhibits (AE) A through AE F, and admitted without objection. Applicant submitted additional documents at his hearing, which were marked as AE G through AE I, and admitted without objection. Applicant also testified. I held the record open to allow Applicant the opportunity to submit additional documentation. He timely submitted exhibits AE J through AE L, which were admitted without objection.² DOHA received the transcript (Tr.) on June 13, 2018. The record closed on July 6, 2018.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a through 1.g with explanations and documents. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 55 years old. He has a general equivalency diploma (GED) and some certificates in information technology (IT). He married in 2000. He and his wife were separated from 2002 to about 2004. They reconciled, and bought a house together in 2006. They separated again about six years ago, in 2012. Applicant has three grown children: two with his wife (ages 27 and 28) and another child, age 21. (Tr. 48-50, 92-94; GE 1)

Applicant was employed full time in IT and communications with a large defense contractor from November 2006 until he was laid off at the end of June 2014 when his employer lost the contract that employed him. He was then unemployed for about six months. His employment since then can best be described as sporadic. He has held numerous temporary or part-time jobs with defense or other government contractors. His work has either lasted only for a few weeks or months, and has been largely at half

¹ Tr. 21-22.

² During the hearing, I described for the record several original certificates and awards Applicant brought with him. They were marked as AE J, but they were not placed into the record, as they were originals of personal significance to Applicant. (Tr. 43-45, 105-106) I have nonetheless considered them. After the hearing, Applicant submitted copies of some but not all of these documents, and they were admitted as AE J. AE K is a judicial order regarding a probate matter. AE L is a scheduling order regarding Applicant's bankruptcy case.

time or less. (Tr. 50-53; 60-62; Answer) Applicant has a job offer from an employer for a full-time position at an annual salary of \$62,400. The job requires a clearance. (AE I)³

Applicant attributed his financial woes to his layoff in June 2014. Due to his sporadic employment, he fell behind on his expenses, including his mortgage (SOR ¶ 1.b) and other debts, some of which he incurred to make ends meet. (SOR ¶¶ 1.d and 1.e). He testified that he intended to pay his bills, but, "I couldn't pay what I didn't have." (Tr. 51, 61; Answer)

Applicant also attributed his debts to his marital separation, in 2012. (Tr. 88-89). He listed several debts on his October 2013 SCA, which he filled out several months before he was laid off. These included a credit card debt, a debt to a phone company, and debts related to his house, all debts listed in the SOR. On his SCA, he said several of the debts were incurred when his wife did not pay them. (GE 1)

Applicant and his wife purchased a home in October 2006. The first and second mortgages on the home are SOR ¶¶ 1.b and 1.c. Applicant said in his Answer and at hearing that his wife was responsible for the monthly payments on the second mortgage, but she filed for Chapter 7 bankruptcy in May 2014 and stopped making payments. Applicant asserted that he attempted to make payments on the second mortgage, but was not able to do so because the account was in bankruptcy. (Tr. 64-69, 74-78, 91-92; Answer) The account was charged off, though no amount is alleged at SOR ¶ 1.c. (GE 3; GE 4) Applicant provided a Form 1099-C, issued to him alone, from tax year 2015, in which the creditor canceled the debt, of \$51,143. (AE C) Applicant did not pay taxes on any income he received as a result of that cancelled debt. (Tr. 76-77) Applicant claimed that his wife's Chapter 7 bankruptcy was discharged, but did not provide corroborating documentation. (Tr. 97)

Applicant testified that when his wife filed bankruptcy, she "was trying to get disconnected from the house, and they took her off of it. She said she didn't have any money, so everything fell on me." (Tr. 71) Applicant and his wife have been separated for six years, since about 2012. He remains living in the house they bought together. The primary mortgage account is \$30,742 past due, with a total balance due on the loan of about \$279,000. (SOR ¶ 1.b) Applicant was unable to recall at hearing when the account became past due. (Tr. 72-74) Credit reports reflect that no payments have been made on SOR ¶ 1.b since April 2013. (GE 3; GE 4)

Applicant filed for Chapter 13 bankruptcy in June 2017, to keep the home out of foreclosure. (SOR ¶ 1.a) He testified that he attempted to make mortgage payments before then but the creditor would not accept them. He testified that they accepted payments only after he filed bankruptcy. (Tr. 70)

Applicant stated in his Answer that he had made arrangements with the mortgage creditor to pay them \$2,078 for his mortgage and \$300 in arrears, each

³ Applicant was also sponsored for a clearance by another employer at the time of the hearing. (Tr. 14-16)

month. For a time, his brother was renting a room in the house, and may have been contributing financially. (Tr. 66-68; Answer) Applicant also testified that he had not made payments on the primary mortgage for four or five months, due to insufficient income. (Tr. 59-60)

Applicant filed for bankruptcy as a sole debtor. He listed \$319,000 in real estate assets. He also listed a potential \$200,000 inheritance from a distant family member. He listed about \$370,000 in liabilities. The mortgage (about \$343,000) was the largest debt. Applicant listed himself as the sole debtor for the account, but noted that the property was jointly owed, with his “ex-wife.” (Tr. 91-92; GE 2, Schedule D) Applicant went through credit counseling during the bankruptcy process, as required. (GE 2)

The mortgage is listed in Applicant’s bankruptcy petition, though with a different creditor than on his credit reports or in SOR ¶ 1.a. (Tr. 58-59; GE 2; GE 3, GE 4, GE 5) Two debts to a credit union are also listed. These include a \$20,227 credit card debt. (SOR ¶ 1.d) and a home equity account, for \$535. (SOR ¶ 1.e) (Tr. 60; GE 2) These debts remain unresolved.

SOR ¶ 1.f is a \$162 past-due debt to a phone company. SOR ¶ 1.g is a \$638 past-due debt to a cable provider. Both of these debts have been paid. (AE E; AE F)

Applicant listed two possible inheritances in his bankruptcy petition. The first concerns the estate of a lifelong friend. The second concerns the estate of a cousin in another state. Applicant testified that he expects to be the sole beneficiary of the friend’s estate. (GE 7 at Schedule A/B)

The friend’s estate includes a bank account containing about \$188,000. It also includes a vacant home currently designated as blighted. The property has been appraised and is listed for sale, though it must be cleaned and cleared of debris. (AE H) The decedent’s children sought to invalidate the will, alleging claims of undue influence, lack of capacity, and fraud by Applicant. These claims were dismissed by the probate court in June 2018 after a three-day evidentiary hearing. Applicant was appointed personal representative for the estate, pending his filing of a petition for probate within 30 days. (Tr. 55-57, 81-86; AE B; AE G; AE K). The decedent’s will is not in evidence in this proceeding.

Applicant also noted in his bankruptcy petition that he expected to receive \$200,000 from his cousin’s estate. (GE 2 at Schedule A/B) At hearing in this proceeding, he said he expected to receive between \$70,000 and \$75,000. The cousin’s estate remains in probate. (Tr. 57, 100-104) He provided no supporting documentation, and the cousin’s will is not in evidence in this proceeding.

In November 2017, Applicant’s Chapter 13 bankruptcy payment plan was confirmed. He was to pay \$300 a month for 14 months, and then a minimum of \$3,115 for 46 months. He was also to provide sufficient inheritance proceeds to fund his payment plan. (GE 2; GE 7; AE A; AE D)

Applicant fell behind on his bankruptcy payments for lack of income. He also was unable to pay his monthly mortgage (estimated \$2,000). (Tr. 54-55, 58, 80-81) In April 2018, the bankruptcy trustee moved to dismiss Applicant's petition as a result. (GE 8) Applicant requested more time because he was going to court on the probate matter in late May 2018. (Tr. 54-55; AE H) The bankruptcy matter was set for hearing on July 20, 2018. (AE L)

Once he receives them, Applicant's intention is to use the proceeds from the two estates to begin making payments towards his bankruptcy plan. Applicant has an attorney for the probate matter regarding his friend, and he acknowledged that he likely owes the attorney between \$25,000 and \$30,000. (Tr. 87)

Applicant worked at the Pentagon for 17 years, until he was laid off. He provided a letter from a former Secretary of Defense commending him for his work on the Pentagon rebuilding project after 9/11, a certificate from a former Commandant of the Marine Corps commending him for his renovation work, a certificate from the White House Communications Agency commending his work regarding a presidential visit to the Pentagon, and other commendations. (Tr. 42-45, 61; AE J)

Policies

It is well established that no one has a right to a security clearance. 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."⁴

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 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 ¶ 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

⁴ *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).

have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

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 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.

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. . . .

The financial considerations guideline sets forth several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable:

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

Applicant incurred numerous unresolved delinquent debts in the last several years, due to his separation from his wife in 2012, a job loss in 2014, and sporadic, unstable employment in the years since then. He fell behind on his mortgage, incurred several other debts, and is now in Chapter 13 bankruptcy. AG ¶¶ 19(a) and 19(c) apply.

Conditions that could mitigate 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 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; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant has been behind on his debts since before he submitted his SCA, in 2013. He and his wife separated in 2012. He lost his job in June 2014, and he has not been fully employed since. These are conditions beyond his control, and the first prong of AG ¶ 20(b) therefore applies.

Applicant filed Chapter 13 bankruptcy in June 2017. His mortgage (SOR ¶ 1.a) and other debts, including SOR ¶¶ 1.d and 1.e) are listed in the bankruptcy. The second mortgage on his marital home (SOR ¶ 1.c) was charged off. Applicant asserted that his wife was responsible for it but Applicant was issued a 1099-C Form, in his name alone, cancelling that debt, of about \$51,000. The debt is no longer an active concern, but the origin of the debt is substantially similar to the others.

Applicant has not paid his mortgage in several months. His bankruptcy petition is pending dismissal because he has not paid agreed upon payments. Applicant's stated plan is to use the proceeds he expects to receive from the two probate matters as bankruptcy payments. However, this plan is largely speculative and undocumented. Applicant provided no documents from his cousin's probate matter to establish any proceeds that might eventually come to him. His cousin's will is not in evidence. Applicant documented that he is the personal representative for his friend's estate. The estate has \$188,000 in a bank account, as well as a blighted piece of real property for sale. His friend's will is not in evidence, so it is not clear what proceeds he might receive from that estate, either. Applicant has a pending job offer, but a clearance is required for the position.

Applicant's outstanding delinquencies are a "continuing course of conduct."⁵ Applicant did not provide sufficient evidence to establish that the behavior which led to his financial problems happened so long ago, were so infrequent, or occurred under such circumstances that they are unlikely to recur and do not continue to cast doubt on his current judgment, trustworthiness and reliability. AG ¶ 20(a) does not apply.

Applicant's plan to restore his financial stability is contingent on his receipt of significant as-yet-unrealized proceeds from two estates, both still in probate. His plan is too speculative at this point to be considered reasonable. Even if Applicant had shown evidence of a realistic plan, he has not established enough of a track record of payments into the bankruptcy plan or otherwise to his creditors to warrant application of any of the mitigating conditions. AG ¶ 20(b) does not fully apply. Applicant's debts are not under control, so AG ¶ 20(c) does not fully apply, even with some evidence of credit counseling. AG ¶ 20(d) does not fully apply, except as to Applicant's two smallest debts (SOR ¶¶ 1.f and 1.g), which have been paid.

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(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(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 my whole-person analysis. Applicant did not provide sufficient evidence that his significant financial delinquencies are being resolved or are under control. The financial security concern arising from Applicant's significant delinquencies remains unresolved. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility for access to classified information.

⁵ ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017).

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.e:	Against Applicant
Subparagraphs 1.f-1.g:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

Braden M. Murphy
Administrative Judge