



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



In the matter of:

ISCR Case No. 17-02974

Applicant for Security Clearance

Appearances

For Government: Allison Marie, Esq., Department Counsel

For Applicant: *Pro se*

06/26/2018

Decision

MURPHY, Braden M., Administrative Judge:

Applicant did not provide sufficient evidence to mitigate the financial security concerns relating to an outstanding state tax lien and other delinquent debts. Applicant's eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on October 21, 2015. On September 19, 2017, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations.¹ Applicant answered the SOR on November 16, 2017, and elected a decision on the written record, in lieu of a hearing.

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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

On January 5, 2018, Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 7. Applicant received the FORM on January 19, 2018. 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 3) are the pleadings in the case. Item 2 (Applicant's signed receipt of the SOR) is a procedural document. Items 3-7 are admitted into evidence without objection. The case was assigned to me on April 27, 2018.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a, 1.b, and 1.c, with brief explanations but no documents. His admissions and other comments are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 58 years old. He and his wife have been married since 1996. He has one adult stepson. He was previously married from 1984-1996. Applicant served honorably in the United States Navy from 1980 to 2001. Since then, he has been employed with federal contractors in the information technology field. According to his SCA, he was last granted a security clearance in 2002. (Items 4, 5)

The Statement of Reasons concerns three alleged delinquencies, all of which appear on Applicant's August 2017 credit report, and all of which he admitted. SOR ¶¶ 1.a (\$3,056) and 1.b (\$1,895) are past-due credit cards. The "dates of last activity," or "DLA" are listed on Applicant's credit report as 2013 and 2012, respectively. Applicant said in his Answer that debt 1.a was "being addressed." Debt 1.b is an account opened by his wife. Applicant said he was not aware the account had become past due, but he said he would pay the debt. (Items 1, 3, 6)

SOR ¶ 1.c is an outstanding state tax lien for \$18,381. It was filed in January 2011 against Applicant and his wife. The tax lien concerns tax years 2004-2009. The tax lien was filed in State 1. (Items 6, 7) Applicant and his wife lived in State 1 from February 2004 to December 2009 – the same tax years covered by the tax lien. (Item 1)

Applicant admitted SOR ¶ 1.c. He asserted in his Answer that three days after he moved to State 1, he was in an auto accident. He asserted that his insurance company denied him coverage because his insurance had lapsed when he moved (apparently because he failed to inform the insurance company of his move, though Applicant did not say this). Applicant claimed that State 1 tax authorities "attached an insurance cost to my taxes" of about \$1,200, with the rest of the \$18,000 being fees and penalties. Applicant claimed to be contesting the matter, and said once it was settled, he would pay what he owes. Applicant provided no documents to support any of his claims. (Item 3)

Applicant did not list either the credit card debts or the tax lien on his SCA in October 2015. When confronted about the debts during his interview in October 2016, he stated that he was not aware of the tax lien. He also said had never lived in the county in

State 1 where the lien was filed. This is true. However, the county where the lien was filed is also the county where the capital of State 1 (and thus, the State Comptroller's office) is located. Further, Applicant's address in State 2 listed on the 2011 tax lien is the same address he gave on his SCA as his home in 2011. (Items 4, 7)

Applicant provided no documents concerning the current status of either SOR ¶¶ 1.a, 1.b or 1.c, nor did he provide any documents showing any payments towards those debts, all of which he admitted. He provided no documents concerning his current financial situation, such as his income, assets, and expenses.

Policies

It is well established that no one has a right to a security clearance.² 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."³

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 ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information 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. Likewise, I have avoided drawing 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 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.

² *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").

³ 484 U.S. at 531.

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.⁴

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;
- (c) a history of not meeting financial obligations, and
- (g) . . . failure to pay annual Federal, state or local income tax as required.

Applicant did not document, or prove, any link between his auto accident and the tax lien. It is far more likely that Applicant and his wife failed to file or pay State 1 state income taxes, as required, when they lived there during tax years 2004-2009 (the same years noted in the tax lien). AG ¶ 19(g) is established as to SOR ¶ 1.c. All three debts alleged satisfy AG ¶¶ 19(a) and 19(c).

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

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

(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;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; 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 did not provide any documents regarding the current status of any of his SOR debts, nor did he provide proof of any payments made. He provided no documents to verify his claim that the tax debt related to an insurance dispute following an auto accident which occurred many years ago. It is reasonable to expect applicants to present documentation about the satisfaction of specific debts.⁵ Applicant did not do so. His assertions, standing alone, are insufficient to show that the SOR debts have been, or are being, resolved in a responsible way.

Each of the SOR debts are several years old. However, as they remain unresolved, they are also ongoing. They therefore continue to cast doubt on Applicant's current reliability, trustworthiness and good judgment. Applicant also provided no documents concerning his current financial situation, such as his assets, income, or expenses, evidence which might show his ability to resolve his debts. AG ¶ 20(a) does not apply.

Applicant did not establish that any of the debts are due to conditions beyond his control. He did not establish that he has acted responsibly to resolve them, or that he has undertaken good-faith efforts to do so. AG ¶¶ 20(b) and 20(d) do not apply. As to the tax lien, Applicant did not establish that he has made any arrangements to pay or resolve that debt, which is by far the largest and most significant debt alleged (and the oldest). AG ¶ 20(g) 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):

⁵ ISCR Case No. 09-07091 at 2 (App. Bd. Aug. 11, 2010).

(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 has had past-due debts, including significant tax debt, for several years. He has not shown any reasonable effort in resolving them. He has failed to meet his burden of establishing that his financial issues are in the past, or that he is resolving them responsibly. The record evidence therefore leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For 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.c: Against 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