



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



In the matter of:)	
)	
)	ISCR Case No. 17-03040
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

04/30/2018

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant mitigated the financial considerations security concerns. Applicant's eligibility for a security clearance is granted.

Statement of the Case

On October 13, 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 (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 adjudicative guidelines (AG), implemented by DOD on June 8, 2017.

Applicant responded to the SOR on November 9, 2017, and elected to have his case decided on the written record in lieu of a hearing. The Government submitted its written case on December 13, 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 Government's FORM on December 23, 2017. He responded with documentation I have marked collectively as Applicant's Exhibit (AE) A. The case was assigned to me on March 15, 2018. The Government's documents identified as Items 1 through 8 and AE A are admitted in evidence without objection.

In its FORM, the Government amended the SOR, pursuant to ¶ E3.1.13 of the Directive, to add allegation SOR ¶ 1.o under Guideline F. In so doing, the Government requested that Applicant provide an answer to the amended allegation in his response to the FORM. Should Applicant not do so, the Government requested the Administrative Judge construe his silence as denials. Applicant did not admit or deny the amended allegation in his response to the FORM. Accordingly, I have taken his lack of response to mean that he has denied SOR ¶ 1.o.¹

Findings of Fact

Applicant admitted SOR ¶¶ 1.g to 1.k, 1.m, and 1.n. He denied SOR ¶¶ 1.a to 1.f, 1.l, and 1.o. He is 42 years old. He married in December 1996, divorced in May 2000, remarried in July 2000, and divorced in October 2005. He has two children, one adult and one minor.²

Applicant obtained his high school diploma in 1993. As of his response to the Government's FORM, he was pursuing a bachelor's degree in cybersecurity. He served in the Reserves from 1993 until he was honorably discharged in 1997. He worked for other defense contractors from April 2003 until September 2011, when he began working as a network specialist for his current defense contractor. He was first granted a DOD security clearance in 2004.³

The SOR alleges two state tax liens from 2014 and 2015 for \$12,447 and \$2,181, respectively (SOR ¶¶ 1.a to 1.b), a September 2010 judgment for \$10,629 (SOR ¶ 1.o), a delinquent consumer account for \$3,046 (SOR ¶ 1.f), 8 delinquent traffic tickets for \$1,110 (SOR ¶¶ 1.g to 1.n), and three delinquent medical accounts for \$968 (SOR ¶¶ 1.c to 1.e). Applicant listed his debts on his October 2013 security clearance application (SCA). He also discussed them during his December 2013 and March 2017 interviews with a background investigator. The liens, judgment, and delinquent debts are reported on the April 2016 credit report; the liens and judgment are also reflected in court records from late 2017. Only the three delinquent medical debts are reported on the August 2017 credit report.⁴

¹ AE A.

² Items 2-3; AE A.

³ Items 3-4; AE A.

⁴ Items 1, 3-8.

Applicant attributed his state tax liens to an error he made at a date not in the record when his job transitioned from one contracting company to another. He mistakenly claimed zero deductions on his state income tax paperwork. He did not realize his mistake until he worked with a tax company one year later to file his income tax returns and discovered that he owed a significant amount in taxes. He also attributed his financial delinquencies to the housing market decline, which affected his ability in 2010 to find renters for his property that he purchased in 2007. He voluntarily foreclosed the home in around May 2013, and he was released of any remaining liability.⁵

Applicant stated in his response to the SOR that he had been paying his two state tax liens in SOR ¶¶ 1.a and 1.b since May 2016, in accordance with a monthly payment agreement he reached with the state tax authority. He provided documentation to show that he made a \$2,240 payment by cashier's check to the state tax authority on May 13, 2016, and the state tax authority released a hold against his driver's license and vehicle registration renewal on the same date. He subsequently reached a payment agreement with the state tax authority in October 2017, to resolve his remaining tax liability of \$7,433. The agreement provided that he pay \$302 monthly for 28 months. As of January 2018, the payment agreement was active, his remaining balance was \$7,334, and he paid the \$302 installment due that month. One credit bureau removed one of the liens from his credit report in December 2017 as a result of a dispute he filed, and another credit bureau reported in January 2018 that both liens in SOR ¶¶ 1.a and 1.b were paid.⁶

Applicant stated in his 2017 background interview that he was unaware of any delinquent medical bills. In his response to the SOR, he stated that he settled the \$968 in medical debts in SOR ¶¶ 1.c to 1.e. He provided documentation to show that he paid the medical creditor for SOR ¶¶ 1.c and 1.e as of late December 2017, in accordance with a June 2016 payment arrangement schedule. The schedule provided for 10 monthly recurring payments of \$80 from July 2017 to April 2018, and a final payment of \$56 in April 2018, for a total of \$856. Since a credit bureau continued to incorrectly report that SOR ¶¶ 1.c and 1.e were in collection, he filed a dispute and the balances were updated to zero in January 2018.⁷

The April 2016 credit report reflects that SOR ¶ 1.f. was a factoring company account. Applicant provided documentation from the creditor to show that he made a last payment of \$950 in May 2017, and the creditor considered the account settled in full as of June 2017. The last four digits of the account number referenced therein are the same last four digits for SOR ¶ 1.f as reported in the April 2016 credit report.⁸

⁵ Items 2-6; AE A.

⁶ Items 2, 4; AE A.

⁷ Items 2, 4; AE A.

⁸ Items 2, 6; AE A.

Applicant stated in his background interviews and response to the SOR that he did not realize he had any of the traffic tickets in SOR ¶¶ 1.g through 1.n, as they were likely sent to an old address and were for cars he no longer owned. He stated that he paid all of these tickets, and he provided documentation to show that he paid the Department of Motor Vehicles (DMV) \$72 in November 2017 and a total of \$1,235 in January 2018.⁹

Applicant stated in his SCA and 2013 background interview that the judgment in SOR ¶ 1.o stemmed from homeowner's dues for his prior residence. Though the judgment was entered against him in September 2010, he stated that the dues were charged to him after he sold his property through a foreclosure sale in May 2013. As such, he did not feel the judgment was valid though he was attempting to hire an attorney to assist him with resolving it. He provided documentation from the property's management company stating that as of January 2018, they did not have any active judgments against him.¹⁰

Applicant stated that he was diligently working with the credit bureaus to update his credit report. He stated that he had been working to resolve his financial delinquencies and he learned the importance of maintaining good credit. He stated that he did not live above his means. The record does not contain any evidence of financial counseling.¹¹

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 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 access to

⁹ Items 2, 4; AE A.

¹⁰ Items 3-4; AE A.

¹¹ Item 1; AE A.

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.

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 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.

Section 7 of Exec. Or. 10865 provides that 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* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant:

- (a) inability to satisfy debts;
- (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.

Applicant was unable to pay his debts, to include his state taxes. AG ¶¶ 19 (a), 19(c), and 19(f) apply.

I have considered all of the mitigating conditions under AG ¶ 20 and considered the following relevant:

- (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;
- (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.

As a result of Applicant's error in claiming zero deductions on his state income tax paperwork when his job transitioned from one contracting company to another, he incurred the two state tax liens in SOR ¶¶ 1.a and 1.b. He incurred additional delinquent debts after the decline in the housing market affected his ability to find tenants for his home in 2010 and he voluntarily foreclosed it in May 2013.

Applicant began resolving the state tax liens in SOR ¶¶ 1.a and 1.b in May 2016, prior to the SOR. As of January 2018, his remaining state tax liability was \$7,433, his payment agreement was active, and he paid the \$302 installment due that month. He paid SOR ¶¶ 1.c, 1.e, and 1.f to 1.n. He provided documentation from the management company for the property that obtained the judgment against him in SOR ¶ 1.o to show that as of January 2018, they did not have any active judgments against him. In addition, the judgment was not reported on his latest credit report from August 2017.

A security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, pay the debts alleged in the SOR first, or establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Applicant has not incurred additional delinquent debts. While he has a balance on his state tax liability, and his documentation did not corroborate his claim that he paid SOR ¶ 1.d, he has demonstrated a good-faith effort to resolve his debts. He also has the means to continue to resolve any outstanding debts. AG ¶¶ 20(a), 20(b), 20(d), 20(e), and 20(g) are applicable.

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(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. While he has a balance on his state tax liability, and his documentation did not corroborate his claim that he paid SOR ¶ 1.d, he has demonstrated a good-faith effort to resolve his debts. He also has the means to continue to resolve any outstanding debts. Overall, the record evidence leaves me

without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant mitigated 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: FOR APPLICANT

Subparagraphs 1.a – 1.o: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant continued eligibility for a security clearance. Eligibility for access to classified information is granted.

Candace Le'i Garcia
Administrative Judge