



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



In the matter of:)
)
) ISCR Case No. 17-03146
)
Applicant for Security Clearance)

Appearances

For Government: Brittany Muetzel, Esq., Department Counsel
For Applicant: *Pro se*

03/14/2018

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On September 29, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 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) effective within the DOD on June 8, 2017.

Applicant answered the SOR on October 31, 2017, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM), and it was received by Applicant on December 8, 2017. He was afforded an opportunity to file objections and submit

material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 8. Applicant did not provide a response to the FORM, object to the Government's evidence, or submit documents. The Government's evidence is admitted. The case was assigned to me on February 13, 2018.

Procedural Issues

In the FORM, Department Counsel gave notice to Applicant that she amended the SOR by adding ¶ 1.I, which read:

1.I. You are indebted to the State of Maryland for a tax lien entered against you in 2016, in the approximate amount of \$34,788. As of the date of this Statement of Reasons, the lien remains unpaid.

Department Counsel requested that Applicant respond to the new allegation in his FORM response and stated that if Applicant failed to do so that it would be considered a denial. Applicant's failure to respond is considered a denial.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.c, 1.e, and 1.h. He denied the SOR allegations in ¶¶ 1.a, 1.b, 1.d, 1.f, 1.g, and 1.i through 1.l. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 54 years old. He married in February 2017. He has adult two children from previous relationships. He served in the military from 1984 to 1988 and was honorably discharged. He was employed from 1997 through 2014. He was self-employed from 2014 to 2016. In February 2016, he began working for his present employer, a federal contractor.¹

In Applicant's answer to the SOR, he stated that he does not live beyond his means nor is he reckless with his finances. He resigned from corporate America, took a leap of faith to start his own business, which he put time and money into. He was promised funding that did not materialize and has since returned to the workforce.²

The SOR allegations are supported by Applicant's admissions, credit reports from April 2016 and August 2017, and official court documents.³

¹ Items 3 and 8.

² Item 2.

³ Items 2, 3, 4, 5, 6, 7, and 8.

Applicant denied he is responsible for the foreclosure on his house that is alleged in SOR ¶¶ 1.j (\$9,131) and 1.k, which occurred in approximately 2012. He had an 80% mortgage with the lender in SOR ¶ 1.k and a 20% mortgage with the lender in SOR ¶ 1.j. Applicant stated he did not miss any payments on his mortgage, and there was a misunderstanding. He indicated the mortgage company made a mistake with one of his payments, which they acknowledged, but never corrected. His insurance was canceled, without his approval and the lender in SOR ¶ 1.j doubled his payments and then the house was foreclosed. Applicant provided copies of payments he made from December 2010 to February 2013, and a letter from his attorney to the lender disputing that Applicant was in arrears and demanding it rectify the problem. The foreclosure was completed. Applicant continues to dispute the debt related to the foreclosure. In June 2017, Applicant was interviewed by a government investigator. He told the investigator that his attorney believed he had a viable lawsuit against the lender for wrongful foreclosure and that Applicant intended to sue the lender in the future, but had not yet filed suit. Applicant's documents show he made mortgage payments, but no other documents were provided regarding the foreclosure from the lender or Applicant that chronicle their actions, substantiate Applicant's claims, or show the remaining debt has been resolved.⁴

In his SOR answer, Applicant denied he owed the debts in SOR ¶¶ 1.a (\$3,349), 1.b (\$2,948), and 1.f (\$675) that are all with the same creditor. During his February 2017 interview with a government investigator, he indicated that he was unaware that the debts in SOR ¶¶ 1.a and 1.b were in collection, and he intended to follow up on the accounts by the summer and resolve them. In his SOR answer, he stated that he agreed he owed the creditor some money, but the amounts were not correct. He said he was working on addressing these debts. Regarding the debt in SOR ¶ 1.f to the same creditor, he told the investigator the account was current. In his answer, he indicated he was working on addressing this debt. No evidence was provided to show he resolved the debts.⁵

Applicant admitted he owed the debt in SOR ¶ 1.c (\$2,744). He did not provide evidence of action to resolve it.⁶ He denied the collection account alleged in SOR ¶ 1.d (\$1,780). He indicated he was looking into what the account related to. No other information was provided. It is not resolved.⁷

The debt in SOR ¶ 1.e (\$1,005) is an unpaid utility bill. Applicant indicated during his interview that he would pay it by the summer of 2017. No additional information was provided to show he resolve it.⁸

⁴ Items 2, 3, and 8.

⁵ Items 2 and 8.

⁶ Item 2.

⁷ Item 2.

⁸ Item 2 and 8.

Applicant denied the debt in SOR ¶ 1.g (\$339). He stated in his SOR answer that he returned equipment to the creditor. He provided insufficient evidence to substantiate his efforts to dispute or resolve the debt with the creditor.⁹

In his SOR answer, Applicant admitted he owed the debt in SOR ¶ 1.h (\$205). During his background interview, Applicant indicated this debt was erroneous, and it was removed from his credit report. No evidence was provided to support Applicant's assertion that he is resolving the debt or that it is current on his credit report.¹⁰

SOR ¶¶ 1.i (\$14,220) and 1.l (\$34,788) are state tax liens entered in 2012 and 2016, respectively. Applicant was confronted during his interview with the 2012 state tax lien. He stated this tax lien was released in July 2017. In his SOR answer, he stated this tax lien was a mistake and was resolved. He provided copies of his 2009 federal and state tax returns. He did not provide documents or proof to show that the 2012 or 2016 state tax liens were released or resolved.¹¹

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG 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(c), 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 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.

⁹ Item 2.

¹⁰ Items 2 and 8.

¹¹ Items 2, 6, 7, and 8.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states 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.

Section 7 of EO 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive 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. 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 provides conditions that could raise security concerns. The following are potentially applicable:

- (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
- (g) 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 has unresolved delinquent debts. He has two outstanding state tax liens from 2012 and 2016. There is sufficient evidence to support the application of the above disqualifying conditions.

The 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 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 did not provide evidence that he has paid, resolved, or is paying any of the delinquent debts. He did not provide evidence that he has made payment

arrangements to resolve the state tax liens or that they have been released. Applicant's financial problems are recent and ongoing. AG ¶¶ 20(a) and 20(g) do not apply.

Applicant attributed his financial problems to a decision he made to start his own business, which subsequently failed. Additional information was not provided. That decision was within his control. He stated the 2012 state tax lien is a mistake. There is no evidence the tax lien is an error. He also indicated his house was foreclosed due to an error by the lender. There is some evidence to support this assertion based on the payments he made, but additional substantive information is required. I find that the foreclosure may have arisen as a result of issues beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant did not provide evidence that he has acted responsibly. He has not provided sufficient evidence that he has resolved or is resolving his delinquent debts or tax liens. There are not clear indications his financial problems are under control. There is no evidence he has participated in financial counseling or made good faith efforts to pay or resolve his delinquent debts. Applicant disputes certain debts, but failed to provide sufficient evidence to substantiate the basis of the disputes or evidence he is resolving the issues. The mitigating conditions under AG ¶¶ 20(b), 20(c), 20(d) and 20(e) do 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(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. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is 54 years old. He is a veteran. He has delinquent debts and two state tax liens that are unresolved. He did not provide sufficient evidence that he is paying or resolving his financial issues. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to 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
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Subparagraphs 1.a-1.i:	Against Applicant
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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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge