



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



In the matter of:)
)
) ISCR Case No. 17-03206
)
Applicant for Security Clearance)

Appearances

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

05/25/2018

Decision

BENSON, Pamela C., 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 January 12, 2017, Applicant submitted a security clearance application (SCA). On October 27, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, effective within the DOD after June 8, 2017.¹

¹ GE 1, 3.

Applicant answered the SOR on November 21, 2017. He admitted SOR ¶¶ 1.a, 1.d and 1.e, and denied SOR ¶¶ 1.b and 1.c, under Guideline F. He did not submit any documentation. He requested that his case be decided by an administrative judge on the written record in lieu of a hearing.²

On December 14, 2017, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing seven Items, was mailed to Applicant on that same day. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant did not respond to the FORM. He did not object to Items 1 through 7, which I marked as Government Exhibits (GE) 1-7, and admitted into evidence. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on May 2, 2018.

Findings of Fact

Having thoroughly considered the evidence in the record, including Applicant's admissions, I make the following findings of fact:

Applicant is 58 years old. He has been employed full time as a systems engineer for a Federal contractor since December 2010. He received a bachelor's degree in 1982 and a master's degree in 1997. He has been married since 1983, and he has two adult children.³

The SOR alleges two unpaid credit card accounts, a delinquent rental account, an unpaid utility account, and a delinquent mortgage account. The SOR debts total approximately \$31,000. The debts are supported by a credit report dated December 2017.⁴

Applicant disclosed on his January 2017 SCA that he was unable to pay his state tax debt for tax years 2013, 2014, and 2015, after he had filed his income tax returns. The combined amount of state tax debt for those three years totaled approximately \$4,260. He also listed an unsatisfied judgment and four delinquent accounts; one unpaid, two accounts he was disputing, and another account he paid in full after he received a hardship loan from his retirement account. He explained that his financial problems occurred after both he and his spouse were laid off from their jobs as engineers with the same employer in late 2008. He was then underemployed as an insurance agent from February 2009 to June 2010 with an annual income of approximately \$19,000. He was able to obtain a full-time job in June 2010.⁵

² GE 2.

³ GE 3.

⁴ GE 1, 6.

⁵ GE 3.

In June 2017, Applicant was interviewed by an authorized DOD agent as part of his background investigation. Applicant admitted that he was three to four months behind on his mortgage, but he was working to obtain a loan modification. (SOR ¶ 1.e). Applicant also admitted he had moved out of an apartment in March 2012, on the advice of his property manager, after Applicant notified him that he would not be renewing his lease, which was ending in June 2012. Applicant knew he had four months of unpaid rent, but he was disputing the account since he did not agree with the total balance owed. He told the investigator that he did not have any plans to resolve this debt. (SOR ¶ 1.b).⁶

In November 2016, Applicant's wages were garnished for an unpaid credit card account that had resulted in a judgment against him. Applicant stated the account was paid through wage garnishment until it was fully satisfied in May 2017. He also claimed that he paid three state tax liens that had been filed against him in 2013, 2014 and 2015. He had another delinquent credit card account, which also resulted in a judgment being filed against him. After his wage garnishment ended in 2017, he began paying \$125 a month towards this second delinquent credit card debt. (SOR ¶ 1.d). Applicant admitted that he was delinquent on another credit card account. (SOR ¶ 1.a). His net pay at that time was reported as \$4,563.50 per month. He told the investigator that he was supporting a daughter enrolled in college, and his spouse was not employed.⁷

Applicant admitted the credit card debt alleged in SOR ¶ 1.a/\$14,116, but noted that the account had been charged off. He denied owing the apartment lease debt alleged in SOR ¶ 1.b/\$2,445 since he was currently disputing it. He also denied the utility debt alleged in SOR ¶ 1.c/\$120 since he claimed it was paid but the creditor applied the payment to a wrong account. He admitted the credit card judgment alleged in SOR ¶ 1.d/\$10,776 and listed that he was going to court to resolve this account in November 2017. He also admitted the delinquent mortgage account alleged in SOR ¶ 1.e, but listed that this mortgage was purchased by another lender and he was in the process of securing the loan modification.⁸ Applicant did not provide any corroborating documentation for any payments he claimed to have made on these debts.

Applicant provided no evidence concerning the quality of his job performance. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected a decision without a hearing.

Policies

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

⁶ GE 7.

⁷ *Id.*

⁸ GE 1, 2.

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.

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

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 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; and
- (c) a history of not meeting financial obligations.

Applicant has approximately \$31,000 of delinquent debt that is unpaid and unresolved. The above disqualifying conditions apply.

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; 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's financial problems occurred after both he and his spouse lost employment in late 2008. He was underemployed from February 2009 to June 2010. He has been employed full time as a systems engineer for a Federal contractor since late 2010. Despite being fully employed, his financial difficulties have continued. He did not establish that his financial problems are unlikely to recur or no longer cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

There is some evidence that Applicant's financial problems occurred due to conditions beyond his control, since both he and his spouse were laid off by their employer in late 2008. In order to receive the full application of the mitigating condition, however, Applicant must show that he acted reasonably under the circumstances. There is no documented evidence that any of the debts alleged in the SOR have been resolved. There is insufficient evidence provided by Applicant to show he acted responsibly under the circumstances in dealing with his creditors. Hence, AG ¶ 20(b) does not fully apply.

There is no evidence Applicant received financial counseling. There is no supporting documentation that Applicant initiated and is adhering to a good-faith plan to repay overdue creditors. He did not initiate the effort to resolve a delinquent credit card account until the creditor took action by having his wages garnished. Garnishment does not constitute a good-faith effort to repay financial obligations. Applicant has not provided any evidence to show that his disputes with creditors are legitimate, or provide proof of his communication with these creditors in an effort to resolve the unpaid accounts. He failed to provide documentation that his mortgage loan is now current through an approved loan modification. Applicant acknowledged a large credit card debt, but he listed that the account was charged off by the creditor. A charged-off account does not necessarily alleviate Applicant's responsibility for the debt. AG ¶¶ 20(c), (d) and (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 those guidelines, but some warrant additional comment.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a position of trust with the Government. An applicant is not required to be debt-free, but is required to manage his finances to meet his financial obligations.

Applicant's financial difficulties began several years ago, during a period of unemployment and underemployment. However, he has been fully employed since late 2010. Nevertheless, he provided no documents to establish that he has made sufficient effort to pay, legitimately dispute, or otherwise resolve any of the debts alleged in the SOR. Applicant has not provided a reasonable financial plan to resolve delinquent accounts with his creditors. Applicant failed to demonstrate that he acted reasonably under the circumstances. His history of recurring financial difficulties continues to be a security concern.

Overall, the record evidence leaves me with doubts as to Applicant's reliability, trustworthiness or good judgment, as well as his eligibility and suitability for a security clearance. Because protection of the national interest is the primary focus of these adjudications, any unresolved doubts must be resolved against the granting of eligibility to classified information.

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

Conclusion

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

Pamela C. Benson
Administrative Judge