



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 17-03219
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: *Pro se*

04/11/2018

Decision

HOGAN, Erin C., Administrative Judge:

On September 29, 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 (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.

On November 1, 2017, Applicant answered the SOR and requested a decision on the record. Department Counsel issued a File of Relevant Material (FORM) on November 30, 2017. Applicant received the FORM on December 5, 2017. Applicant had 30 days to submit a response to the FORM. He did not submit a response. On January 25, 2018, the FORM was forwarded to the Hearing Office and assigned to me on April 5, 2018. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

Applicant is a 51-year-old employee of a DOD contractor seeking to maintain a security clearance. He has worked for his current employer since October 2009. He has had a security clearance since 2002. His highest level of education is an associate's degree. He is married and has two daughters, ages 11 and 12. (Item 3)

On June 2, 2016, Applicant submitted an Electronic Questionnaire for Investigations Processing. (Item 3) A subsequent background investigation revealed Applicant had failed to file federal and state income taxes for tax years 2012 and 2013 and had 21 delinquent accounts, a total approximate balance of \$25,290. Ten of the accounts were delinquent medical accounts, an approximate total of \$4,481. (SOR ¶¶ 1.a – 1.v; Item 5; Item 6; Item 8) In his response to the SOR, Applicant admitted all of the allegations. (Item 2)

Applicant started having financial problems in 2005, after he started having uncontrollable seizures. In February 2005, he underwent brain surgery. After surgery, he was not able to focus on anything and his wife took over paying the bills. He was on short-term disability for two to three months. He was separated from his wife for a period in 2014 to 2015. They eventually reconciled but this further complicated their financial situation. His wife was laid off from work during the marital separation. Applicant was maintaining two households while trying to support his family. (Item 7)

On January 24, 2017, Applicant was interviewed by an investigator conducting his background investigation. He indicated that his net monthly income was \$2,908. His wife's net monthly income was \$600. Their total net monthly income was \$3,508. His monthly expenses were \$2,445. His monthly debt payments were \$475. The debt payments did not include any of the delinquent debts alleged in the SOR. After expenses, Applicant has \$588 left over each month.

Applicant states that his state and federal tax returns for 2012 and 2013 were filed, but did not provide proof that his federal and state income tax returns were filed in his answer to the SOR. He did not provide proof that he resolved or is paying any of the delinquent debts alleged in the SOR. Applicant did not provide a response to the FORM. (Item 2)

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 adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 over-arching 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 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant 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 the applicant may deliberately or inadvertently fail to protect or 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 notes several disqualifying conditions that could raise security concerns. The disqualifying conditions that are relevant to Applicant's case include:

- (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.

All of the above disqualifying conditions apply because Applicant incurred significant delinquent debts. Applicant admits he failed to file federal and state income tax returns. He incurred 21 delinquent debts, a total balance of over \$25,000.

The security concern under Financial Considerations is broader than the possibility that a person might knowingly compromise classified information to obtain money or something else of value. It encompasses concerns about a person's self-control, judgment, and other important qualities.

The Government's substantial evidence and Applicant's admissions raised security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

AG ¶ 20 includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply:

- (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 financial counseling service, and there are clear indications 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

(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.

AG ¶ 20(b) partially applies because circumstances beyond Applicant's control adversely affected his financial situation. His health issues in 2005 resulted in his inability to focus. His marital separation in 2014 to 2015, created additional financial issues for Applicant. I cannot conclude that Applicant acted responsibly under the circumstances because he did not show what action he is taking to resolve his delinquent debt and improve his financial situation. AG ¶ 20(b) is given less weight. The remaining mitigating conditions do not apply based on the same reasons. At some point in the future, Applicant may establish a plan to resolve his delinquent debts. He did not provide proof of steps that he is taking to resolve his delinquent debts in this proceeding.

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 Applicant's favorable employment history. I considered that he is married and has two daughters. I considered that circumstances beyond Applicant's control contributed to his financial problems. However, he did not explain or provide documentation about the steps he is taking to resolve his delinquent debts. He did not provide proof that he filed his state and federal tax returns for 2012 and 2013. The security concerns raised under financial considerations are not mitigated.

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.v:	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 a security clearance. Eligibility for access to classified information is denied.

ERIN C. HOGAN
Administrative Judge