



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



In the matter of:)
)
) ISCR Case No. 17-03463
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: *Pro se*

07/12/2018

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On October 16, 2017, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD acted 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 on June 8, 2017.

Applicant answered the SOR on November 8, 2017, and he requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 5, 2018, and the hearing was convened as scheduled on March 20, 2018. The Government offered exhibits (GE) 1 through 6, which were admitted into evidence without objection. The Government's exhibit list was

identified as hearing exhibit (HE) I. Applicant testified and offered exhibits (AE) A and B, which were admitted without objection. The record remained open until April 20, 2018, to allow Applicant to submit documentary evidence. He submitted AE C through E, which were admitted without objection. DOHA received the hearing transcript (Tr.) on March 29, 2018.

Findings of Fact

Applicant admitted SOR ¶ 1.b and denied the remaining allegations. His admission is incorporated into these findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 62-year-old employee of a defense contractor. He began working at his present job in June 2016. He tests software. He experienced unemployment from April 2016 until June 2016 and from November 2014 to February 2015. He has taken some college courses. He married in 1978. He has two adult children whom he still financially supports from time to time.¹

The SOR alleged four delinquent debts totaling approximately \$33,133. The debts were listed in credit reports from August 2016, August 2017, January 2018, and March 2018 (SOR ¶¶ 1.a – 1.f).²

Applicant explained that that a combination of factors led to his financial problems. He admitted that he and his family lived beyond their means for a number of years between 2007 and 2014. Additionally, his wife loaned a friend approximately \$20,000 in 2010 with the expectation that the loan would be repaid. The repayment never occurred. There is no documentation of this loan and Applicant did not pursue legal recourse against the debtor. Also, in approximately 2010, Applicant claims he used approximately \$80,000 of his retirement funds to fund his son's substance abuse treatments. He provided no documentation for this claimed expense.³

In July 2012, Applicant retained an attorney to try to resolve his debts. The attorney was able to settle five non-SOR debts, which Applicant claimed totaled approximately \$10,540. His credit reports verify that at least four debts were settled in 2013. Applicant contacted the attorney again in January 2018 and later in March 2018. Applicant has not paid the required retainer amount and the attorney is not actively working on his case now.⁴

¹ Tr. at 6, 22-23, 39-40, 48; GE 1.

² GE 3-6.

³ Tr. at 23-24, 33-35; AE A.

⁴ Tr. at 24, 43; Answer; AE A, E.

The status of the SOR debts is as follows:

Credit Card Debt (SOR ¶ 1.a). Applicant admitted he was a joint owner on this account opened through his wife's former employer. The card was used for consumer purchases. The account was opened in 2008 and the last payment was in August 2012. It is a charged-off account. In 2012 or 2013, Applicant was advised by his attorney to send the creditor a letter to negotiate a settlement, which Applicant claimed was done. He received no response. His attorney recently advised him not to do anything else because the debt was close to being barred by the statute of limitations. This debt is unresolved.⁵

Timeshare/Retail Account (SOR ¶ 1.b). Applicant claimed this debt was from delinquent payments on a timeshare property he purchased. However, his credit report indicates this debt is a consumer credit card account. The account was opened in January 2014 and was reported delinquent in March 2014. It is in collection status. The debt is unresolved.⁶

Consumer Debt (SOR ¶ 1.c). Applicant admitted that this was a credit card debt that was used to purchase unnecessary goods. It was opened in 2013 and reported delinquent in February 2018. Applicant admitted his last payment on this account was over 10 years ago. It is in collection status. He has asked his attorney to look into settling this account. This account is unresolved.⁷

Consumer Debt (SOR ¶ 1.d). Applicant claims this debt derived from satellite TV equipment that he was told by the company was obsolete and did not need to be returned. He was later billed for not returning the equipment. I found Applicant's explanation credible. This debt is resolved.⁸

Applicant did not produce a budget. At the date of the hearing he had \$900 in his checking account and \$250 in his savings account. He has \$15,000 in his retirement account. He is current on his monthly mortgage payments. He has not sought financial counseling. He claims that he learned much from his financial difficulties and his family has adjusted accordingly.

Applicant presented character references from a work supervisor and from two personal friends. All described Applicant as having integrity and being trustworthy. Two had knowledge of Applicant working through his financial difficulties. His supervisor recommended Applicant receive a security clearance.⁹

⁵ Tr. at 25, 42-43.

⁶ Tr. at 27-28, 44.

⁷ Tr. at 28-30, 45.

⁸ Tr. at 26, 45; AE A.

⁹ AE B-D.

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 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, 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 about 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

AG ¶ 18 expresses the security concern for 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.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (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; and

Applicant has delinquent debts that remain unpaid or unresolved. I find all the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following 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 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 debts are recent and multiple and, although he settled several non-SOR debts in 2013, he has not resolved any of the SOR debts, except for SOR ¶ 1.d. He failed to produce evidence showing that recurrence of his financial problems is unlikely. AG ¶ 20(a) is not applicable.

Applicant's short periods of unemployment, a loan to friends that was not repaid, and the additional expenses incurred because of his son's medical issues can be considered circumstances beyond his control. However, he failed to act responsibly by establishing payment plans for the identified debts. Overall, the record evidence does not support that Applicant acted responsibly under the circumstances. AG ¶ 20(b) is partially applicable.

Although Applicant worked with an attorney to settle five debts in 2013, he did not present evidence of financial counseling. Given the unpaid status of all of the debts, Applicant's financial problems are not under control and good-faith efforts to pay or resolve the remaining debts are lacking. AG ¶¶ 20(c) and 20(d) do not apply. Applicant credibly disputed SOR ¶ 1.d and 20(e) applies to that debt.

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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant 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.

I considered Applicant's federal contractor service and the circumstances surrounding his indebtedness. However, I also considered that he has made insufficient efforts to resolve his debts. He has not established a meaningful track record of debt management, which causes me to question his ability to resolve his debts.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the financial considerations security concerns.¹⁰

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
Subparagraph: 1.d:	For Applicant

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

Robert E. Coacher
Administrative Judge

¹⁰ I considered the exceptions under Security Executive Agent Directive (SEAD) 4, Appendix C, dated June 8, 2017, and determined they are not applicable in this case.