



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



In the matter of:)
)
) ISCR Case No. 18-00019
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

10/03/2018

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Clearance is denied.

Statement of the Case

On January 30, 2018, 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) implemented by the DOD on June 8, 2017.

Applicant responded to the SOR on February 22, 2018, and elected to have his case decided on the written record in lieu of a hearing. The Government's written case was submitted on March 22, 2018. 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 FORM on March 29, 2018. He did not respond to the Government's FORM. I admitted the Government's documents identified as Items 1 through 6 in evidence without objection. The case was assigned to me on June 13, 2018.

Findings of Fact

Applicant admitted all of the SOR allegations. He is 60 years old. He married in 1982, divorced in 1994, and remarried in 2011. He has three adult children and one adult stepchild.¹

Applicant obtained his high school diploma in 1977. He has worked as a tooling technician for various defense contractors since 1991. As of his 2017 security clearance application (SCA), he has worked for his current defense contractor since July 2005. He was first granted a security clearance in 1989. He has owned his home since 1994.²

The SOR alleges three judgments totaling \$14,345, two filed against Applicant by the same creditor in 2010 for \$663 and \$665 (SOR ¶¶ 1.c, 1.d), and one filed against him in 2012 for \$13,017 (SOR ¶ 1.b). It also alleges two medical accounts placed in collection for \$39 and \$179 (SOR ¶¶ 1.a, 1.e). The June 2017 credit report verifies all of Applicant's delinquent debts. SOR ¶ 1.a is the only delinquent debt reported in the December 2017 and March 2018 credit reports. Applicant also listed and discussed his delinquent debts in his 2017 SCA and background interview.³

Applicant stated in his response to the SOR:

I do admit I was not the best at paying my past bills on time . . . I was not very good at keeping track and paying bills. As I have grown older, I have done a whole lot better and try to pay everything well before the due date.⁴

SOR ¶ 1.a is for a medical debt in collection for \$39. Applicant stated in his response to the SOR that he was unsure to whom the original debt belonged. He intended to locate the collection agency to determine such and resolve the debt. He did not provide documentation to show that he paid or otherwise resolved this debt.⁵

SOR ¶ 1.b is for a \$13,017 judgment filed against Applicant in May 2012. Applicant indicated in his SCA and response to the SOR that the underlying account is for a loan he was pressured to obtain with his mortgage. He indicated that the creditor from whom he obtained the loan subsequently went out of business. After his mortgage was purchased by another lender, "the rest of the note has since been bought by

¹ Items 1-6.

² Items 1-6.

³ Items 2-6.

⁴ Item 1.

⁵ Items 1, 4-6.

several different companies.” He indicated that he would attempt to negotiate with the current creditor, who was unwilling to take payments in the past, and he did not have the income to make a one-time payment of the judgment in full.⁶

During his background interview, Applicant stated that SOR ¶ 1.b was for a personal loan that he later disputed when the creditor tried to charge him more than the amount he owed. He stated that the debt remained unpaid due to his dispute. After the original creditor went out of business, he did not hear from the current creditor until two to three years later. As of his background interview, he had not heard from the current creditor for years and he did not intend to pay the judgment until he had. He did not provide documentation to show that he paid or otherwise resolved this judgment.⁷

SOR ¶ 1.c is for a \$663 judgment filed against Applicant in December 2010, and SOR ¶ 1.d is for a \$665 judgment filed against him in August 2010. Both judgments were filed by the same creditor. Applicant indicated during his background interview and in his response to the SOR that he believed SOR ¶ 1.d was a duplicate of SOR ¶ 1.c, and he intended to determine if, in fact, it was. He was also unsure for whom the debt underlying the judgments belonged, though he believed it might be related to a hospital bill for a sleep apnea test. He intended to ascertain the identity of the underlying creditors by contacting the creditor that filed the judgments. He stated that he would then try to reach a payment arrangement to resolve any valid judgment remaining. He did not provide documentation to show that he paid or otherwise resolved these judgments.⁸

SOR ¶ 1.e is for a medical debt in collection for \$179. Applicant indicated in his SCA and response to the SOR that this debt was not filed properly with his insurance, and he waited too long to challenge it. He then forgot to pay it, but he intended to. He stated during his background interview that his wife paid the debt after he completed his SCA.⁹

Applicant stated during his background interview that his overall financial status was improving daily and he was timely paying his other debts. He indicated in his response to the SOR that he is a hardworking and proud U.S. citizen. He stated and his credit reports verify that he is current on his mortgage.¹⁰

⁶ Items 1-4.

⁷ Items 1, 2, 4.

⁸ Items 1-4.

⁹ Items 1, 4.

¹⁰ Items 1, 4-6.

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 to be 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, administrative judges apply the guidelines 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."

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 the applicant or proven by Department Counsel." The applicant 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant was unable to pay his debts. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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;
- (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.

The medical debt in SOR ¶ 1.e was only reported in the June 2017 credit report. Applicant's statement that his wife paid this debt after he completed his SCA is corroborated by the December 2017 and 2018 credit reports, which no longer report this debt. As such, I find SOR ¶ 1.e in Applicant's favor.

Applicant acknowledged that his financial problems stemmed from poor financial management. As such, they did not result from conditions beyond his control. In addition, he did not provide documentation to show that he has taken action to resolve or dispute SOR ¶¶ 1.a, 1.b, 1.c., or 1.d. He did not provide documentation to corroborate his claim that SOR ¶ 1.d is a duplicate of SOR ¶ 1.c. At this time, there is insufficient evidence to conclude that his financial problems are unlikely to recur, and they continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(b), 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 relevant 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 this whole-person analysis.

The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant did not 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
Subparagraphs 1.a - 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant

Conclusion

In light of all of the circumstances, 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.

Candace Le'i Garcia
Administrative Judge