



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 18-00338

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

08/09/2018

DECISION

LYNCH, Noreen A., Administrative Judge:

This case invokes security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on June 30, 2016. (Item 3.) On February 15, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. (Item 1.) The DOD CAF 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) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on March 16, 2018 (Answer), and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on April 2, 2018. On April 16, 2018, a complete copy of the file of relevant material (FORM) was sent to Applicant, including documents identified as Items 1 through 6. He was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM, but did

not send submissions to supplement the record. The case was assigned to me on July 26, 2018.

Findings of Fact

Applicant, age 57, is divorced and remarried with one child. He graduated from high school in 1978, and attended college courses, but he did not obtain a degree. Applicant served in the United States Marine Corps (USMC) on active duty from 1979 to 1983, receiving an honorable discharge. He has worked in the field of engineering for various contractors for a number of years. Applicant has held a security clearance since 1986. He has worked for his current employer since 2016. (Item 3)

The SOR alleges that Applicant is indebted on a real estate mortgage account in foreclosure with a past-due amount of \$21,684, with an approximate total loan balance of \$207,008. (1.a) The SOR continues with 14 delinquent accounts totaling about \$116,000. He admits the delinquent debts and provides explanations. (Item 2)

Applicant attributes the delinquent debt to a loss of employment. Prior to 2014, he and his wife had a combined income of \$180,000. His wife lost her job in 2016 and is now drawing social security disability in the amount of \$24,000 a year. In addition to the loss of income, Applicant refers to the business downturn in 2010 in the real estate market. He believes his property is impossible to sell and has almost \$60,000 negative equity. The third reason for the financial issues are identity theft. He referred to a police report in 2016, but did not provide any documentation.

Applicant's answer to the SOR speaks generally to the fact that he has contacted the creditors as recently as March 2018 to discuss settlement options. In some cases he expects a settlement. He also mentions a repayment schedule for one account. Applicant emphasized that he has been addressing SOR allegation 1.a through 1.j only. He notes it is very time consuming and he intends in the upcoming weeks to contact the remaining creditors to work with them. (SOR 1.k through 1.o)

As to SOR 1.a, Applicant submitted a document from the mortgage lender from February 2018, showing he started the process of getting a home loan modification. There is no proof that it has been approved or that Applicant is capable of executing any new mortgage account. In his recent investigative interview, Applicant noted that finances are tight. (Item 4) The record is devoid of documentary evidence to show that he made efforts to sell or rent or refinance the home once the problem started.

Applicant has not provided any documentary evidence showing that he has paid, is on a current payment plan, or that he is not responsible for or disputed or otherwise resolved any delinquent debts. He stated he has every intention to address and resolve his debts.

Applicant submitted three letters of reference. The letters are from civilian managers. Each letter praises Applicant's integrity and dedication to work and family. He

is an integral part of the team. His position requires a level of expertise and trust that is difficult to find.

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 (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk 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 or sensitive information. Finally, as emphasized in Section 7 of EO 10865, "Any determination under this order adverse to an applicant shall be a determination 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 concern under this guideline 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

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions and credit reports reflect delinquent debts. This establishes two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"), and AG ¶ 19(c) ("a history of not meeting financial obligations").

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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; and

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(a) is not established. Applicant's home loan account and other delinquent debts are still unresolved. There is no evidence that he has resolved any delinquent debts.

AG ¶ 20(b) is partially established. Applicant's wife's unemployment, move to another state, real estate downturn, and possible identity theft were beyond his control. However, he has not produced any information that he has acted responsibly under the situation. He has started to contact creditors to seek settlement. He wants to pay his debts, but a promise to pay in the future is not sufficient.

AG ¶ 20(c) and 20(d) are not established. Applicant did not respond to the FORM to demonstrate the efforts that have been made to start settlements or a home refinancing. The record is silent as to any financial counseling.

Applicant has not met his burden to mitigate the financial concerns set out in the SOR. For these reasons, I find SOR ¶¶ 1.a through 1.o. against Applicant.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the applicable guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F and evaluating all the evidence in the context of the whole person, including Applicant's many years of military service and letters of recommendation and his wife's unemployment, I conclude that Applicant has not mitigated the security concern. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F AGAINST APPLICANT

Subparagraphs 1.a – 1.o: Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for access to classified information. Clearance is denied.

Noreen A. Lynch
Administrative Judge