



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



In the matter of:

Applicant for Security Clearance

)
)
)
)
)

ISCR Case No. 18-00420

Appearances

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

08/20/2018

Decision

KILMARTIN, Robert J., Administrative Judge:

Applicant did not mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for access to classified information is denied.

Statement of the Case

On April 13, 2018, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. Applicant timely answered the SOR and elected to have his case decided on the written record.

Department Counsel submitted the Government's file of relevant material (FORM) on June 26, 2018. Applicant received the FORM on July 2, 2018, and had 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the Government's evidence, and he provided a response to the FORM dated July 23, 2018. He attached three certificates of completion, a list of training courses completed, and four character reference letters. The Government's evidence, identified as Items 1 through 15, is admitted into evidence without objection. The case was assigned to me on August 13, 2018.

Findings of Fact¹

Applicant is 51 years old. He graduated from high school in 1985, and took some college courses. Applicant has been employed as an information technology (IT) professional by a federal contractor since March 2015. He reported previous assignments with federal contractors going back to 1999, and a previous security clearance for the past 13 years with no issues.² Applicant reports no military service and he has been married since October 2004. He reports two children, ages four, and eight.

Applicant reported delinquent debts in section 26 of his security clearance application (SCA),³ including an \$85,000 federal tax lien filed in November 2010 due to Applicant not having enough taxes withheld from pay checks over multiple years. He stated that he was improperly advised by a tax professional about the proper amount to withhold, and he has now entered into a repayment plan with the Internal Revenue Service (IRS).⁴ Applicant reported a similar \$9,000 state tax lien entered in April 2010, due to inadequate withholding of state taxes by his employer. His credit bureau reports reflect an additional state tax lien in the amount of \$4,229 filed on September 1, 2012.⁵ He subsequently changed his withholdings form with his payroll office, and filed a Chapter 13 bankruptcy petition. Applicant stated that he and his wife initially filed for bankruptcy protection in September 2014. However, they allowed that Chapter 13 plan to be dismissed and re-filed for a more feasible plan in September 2015. He also claimed to be repaying both federal and state tax fees as part of their repayment schedule in the Chapter 13 plan.

The SOR alleged seven delinquent debts totaling \$100,175 plus two failed Chapter 13 bankruptcy plans, one filed in 2014 (dismissed in 2015) and another one filed in September 2015 (dismissed in May 2017). The bankruptcy court documents provided by Department Counsel reflect the initial Chapter 13 plan was dismissed in July 2015 due to failure to amend.⁶ Applicant had obtained modifications to this Chapter 13 plan in February 2015, and again in May 2015 before defaulting. The second Chapter 13 petition was filed in September 2015, and dismissed on May 12, 2017, for material default in payment plan.⁷ Applicant's explanation for this second default was

¹ Unless stated otherwise, the source of the information in this section is Applicant's October 23, 2015 Security Clearance Application (SCA) (Item 3).

² Response to FORM.

³ Item 3.

⁴ Item 3, p. 45.

⁵ Item 13.

⁶ Items 4 and 5.

⁷ Item 6.

that he and his wife surrendered their home and two vehicles around that time, and he could not afford the monthly payments to the trustee.⁸

In his Answer to the SOR, Applicant admitted to owing the \$85,000 federal tax lien alleged in SOR ¶ 1.e and the two state tax liens at SOR ¶¶ 1.f and 1.g, as well as the two dismissed Chapter 13 bankruptcy plans. The bankruptcy court documents indicate that these tax liens were filed in November 2010 and November 2011.⁹ He claims that he allowed the two bankruptcy cases to be dismissed “on advice of our attorney” in his answer to the SOR. He denied the allegations in SOR ¶¶ 1.b, 1.c, and 1.d, and provided documentation substantiating his assertions that these have now been paid in full. He also provided evidence of a payment plan entered into with the creditor in SOR ¶ 1.a.

In his answer to the SOR, Applicant stated he had surgery in 2013, and he was out of work for two months. This caused his debts to become delinquent in the fall of 2013. Applicant lost approximately \$12,862 in wages for the two months. Also, he changed tax accountants in 2013, and his accountant provided erroneous or incomplete tax advice. No details or corroborating information were provided about this accountant, or the attorney supposedly relied upon in the two bankruptcy defaults. Although, Applicant and his wife have combined net monthly incomes of \$10,824, they only paid approximately \$25,000 into the Chapter 13 plans over a two and one half year period, at the rate of \$1,700 each month to the bankruptcy trustee.

In his responses to interrogatories, Applicant attached a student loan rehabilitation agreement, which indicated he had been in default on student loans.¹⁰ He provided no budget showing income against expenses, or other documentation to show progress on his delinquent tax debts. He professed his intentions to repay these delinquencies in his response to interrogatories in December 2017, but provided no substantiation showing results.

Applicant received financial counseling from a credit repair agency from July 2014 to June 2015. It is unclear what progress the agency has made on the debts alleged in the SOR. Attached to his response to the FORM, Applicant provided four favorable character reference letters, all attesting to his work ethic, integrity, trustworthiness, and reliability. Applicant also attached a list of completed training courses, and three certificates of completion of cyber-awareness and sensitive information assurance courses.

⁸ Item 12, p. 7.

⁹ Item 7, schedule D.

¹⁰ Item 14. Student loan delinquencies were not alleged in the SOR.

Policies

This 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 new Administrative Guidelines (AGs) promulgated in Security Executive Agent Directive 4 (SEAD 4), effective within the DOD on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, 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 adjudicative process is an examination of a sufficient period and a careful weighing of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, 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.

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, 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. Decisions include 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 relating to 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 abuse, 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 an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

AG ¶ 19 provides conditions that could raise security concerns. The following apply here:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (f) failure to pay or fraudulently filing annual federal, state, local income tax returns or failure to pay annual federal, state, or local income tax as required.

Applicant’s delinquent debts alleged in the SOR are confirmed by his credit reports, bankruptcy court documents, and answer to the SOR. The Government produced substantial evidence to support the disqualifying conditions in AG ¶¶ 19(a), 19(b), 19(c), and 19(f), thereby shifting the burden to Applicant to produce evidence to

rebut, explain, extenuate, or mitigate the facts.¹¹ Applicant has not met that burden. Most of the delinquent debts have not been addressed.

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 . . . , 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 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

(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.

Although Applicant has made some progress in resolving his delinquent debts, he has not provided any explanation how he became delinquent on these debts in the first place, aside from two months of lost wages following his surgery in 2013. The most glaring deficiency is his federal and state tax liens amounting to almost \$100,000. Applicant has known about these tax problems for over six years since the liens were entered in 2010 and 2011, before his surgery. He has done nothing to address these tax delinquencies aside from two half-hearted chapter 13 plans that went into default. He did not follow through with his obligations to the bankruptcy trustee. He has not identified any circumstances or conditions that were beyond his control. He has produced no relevant or responsive documentation either with his answer to the SOR, or in response to the FORM. Applicant has derived income from federal contractors for most of the last 20 years. Yet, he has not paid his taxes. He has not demonstrated that he acted responsibly under the circumstances. Applicant has the burden to provide sufficient evidence to show that his financial problems are under control, and that his debts were incurred under circumstances making them unlikely to recur.

¹¹ Directive ¶ E3.1.15. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep 22, 2005) (An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government).

None of the mitigating conditions fully apply. Applicant's credit reports and bankruptcy court documents reflect delinquent tax debts totaling over \$98,000. Applicant did not provide enough details with documentary corroboration about what he did to address his SOR debts. He did not provide documentation relating to any of the SOR debts: (1) proof of payments, such as checking account statements, photocopies of checks, or a letter from the creditor proving that he paid or made any payments to the creditors; (2) correspondence to or from the creditors to establish maintenance of contact;¹² (3) credible debt disputes indicating he did not believe he was responsible for the debts and why he held such a belief; (4) more evidence of attempts to negotiate payment plans, such as settlement offers or agreements to show that he was attempting to resolve these debts; or (5) other evidence of progress or resolution. Applicant failed to establish mitigation under AG ¶ 20(e) because he did not provide documented proof to substantiate the existence, basis, or the result of any debt disputes.

In the FORM, Department Counsel informed Applicant that it was important for him to provide corroborating or supporting documentation of resolution of the debts in the SOR. (FORM at 4) Aside from Applicant's resolution of a few smaller consumer debts, there is no documentary evidence that Applicant paid, arranged to pay, settled, compromised, or otherwise resolved the SOR debts except SOR ¶¶ 1.a through 1.d. The record lacks corroborating or substantiating documentation and detailed explanations of the causes for his financial problems and other mitigating information. The FORM informed Applicant that he had 30 days from the receipt of the FORM "in which to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate. If you do not file any objections or submit any additional information . . . your case will be assigned to an Administrative Judge for a determination based solely" on the evidence set forth in this FORM. (FORM at 4)

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

¹² "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

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. Notably, Applicant has retained a credit repair agency to help him and he paid off some of the smaller debts. Most importantly, Applicant has not addressed the delinquent tax allegations in the SOR. He has not met his burden of production.

Applicant's finances remain a security concern. There is insufficient evidence to conclude that Applicant's financial problems are under control. He has not met his burden of persuasion. The record evidence leaves me with serious questions and doubts as to Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated 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 through 1.d:	For Applicant
Subparagraph 1.e through 1.i:	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 a security clearance. Eligibility for access to classified information is denied.

Robert J. Kilmartin
Administrative Judge