



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



In the matter of:)
)
) ISCR Case No. 14-03265
)
Applicant for Security Clearance)

Appearances

For Government: James Norman, Esq., Chief Department Counsel
For Applicant: *Pro se*

06/24/2015

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied. The Government did not submit evidence to establish the personal conduct allegation. That allegation is concluded for Applicant.

Statement of the Case

The Department of Defense (DOD) issued an undated and unsigned Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E (personal conduct) and 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 September 1, 2006.

Applicant responded to the SOR on August 28, 2014, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on March 27, 2015. 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 April 2, 2015. He responded with documents that I have marked Applicant's Exhibits (AE) A through C. The case was assigned to me on May 5, 2015. The Government exhibits included in the FORM (Items 3-10) and AE A-C are admitted without objection.

Findings of Fact

Applicant is a 52-year-old employee of a defense contractor. He has worked for his current employer since 2008. He served in the U.S. military from 1980 until he was honorably discharged in 1983. Applicant applied for a position of trust in 2008, but this is his first application for a security clearance since he was in the military. He attended college for a period, but it does not appear that he has earned a degree. He is married with two adult children and a minor child.¹

Applicant has lived in the same house since he bought it in 1994. A 2008 credit report lists a closed mortgage loan that was opened in 1994, with a high credit of \$138,979, and a date of last action of 2003. The report also listed a mortgage loan that was opened in January 2008 with a high credit of \$368,231 and a \$366,206 balance.²

Applicant filed a Chapter 13 bankruptcy in 1999.³ He stated that he had a period of unemployment, and the bankruptcy was to ward off foreclosure of his home. He stated that the "bankruptcy was paid in full and was discharged in December 2001."⁴

Applicant filed another Chapter 13 bankruptcy in 2004. He stated that creditors filed suit against him, claiming they had not been paid through the previous bankruptcy. He stated that he made the payments to the trustee, but he "received notification that creditors had not responded to an appeal for their claims and that [his] bankruptcy would be dismissed." The bankruptcy was dismissed in about December 2006.⁵

The IRS filed a \$7,613 tax lien against Applicant in 2006 for unpaid income taxes from 2003. The taxes were paid, and the lien was released in 2007. It is unclear

¹ Items 3, 8, 10.

² Items 3, 7.

³ A Chapter 13 bankruptcy is also called a wage earner's plan. It enables individuals with regular income to develop a plan to repay all or part of their debts. Under this Chapter, debtors propose a repayment plan to make installments to creditors over three to five years. See <http://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-13-bankruptcy-basics>.

⁴ Items 2, 10.

⁵ Items 2, 6, 7, 10.

whether Applicant owes for other years.⁶ During his background interview in May 2013, he told the investigator that he was on a payment plan with the IRS.⁷

Applicant's state filed a \$3,833 tax lien against him in March 2007 for unpaid state taxes. The taxes were paid, and the lien was released in May 2007. Applicant apparently had another state tax lien. He submitted a copy of a release of a \$1,811 state tax lien that was filed in October 2013 and released in April 2015.⁸

Applicant's wife lost her job in February 2012. She was unemployed for about 18 months. Applicant fell behind on his mortgage payments. A credit report from March 2013 listed the mortgage loan as \$7,770 past due with a \$376,081 balance.⁹ An April 2014 credit report listed the mortgage loan as \$101,874 past due with a \$376,081 balance. The report stated that Applicant "disputes this account information; paying under a partial agreement." The loan was modified under a federal government plan. The March 2015 credit report listed the mortgage loan as current with a \$349,159 balance.¹⁰

The SOR alleges a charged-off debt to a bank for \$18,264 (SOR ¶ 1.d). The October 2008 credit report listed the account as an auto loan that was opened in June 2008, with a high credit of \$33,703 and a balance of \$33,974. The terms were listed as \$749 per month for 72 months. The March 2013 credit report listed the loan as \$2,249 past due with a \$17,325 balance. It also listed that the account was "in dispute." The April 2014 credit report listed the loan as charged off with an \$18,264 balance. The high credit was reported as \$15,220. The March 2015 credit report listed the loan as charged off with a \$15,219 balance.¹¹

Applicant was asked about his finances during his background interview in May 2013. He was asked about the auto loan that was listed on his credit report as \$2,249 past due. Applicant stated that he did not know what it was, but he would look into it.¹² In his August 2014 response to the SOR, Applicant wrote about the loan:

⁶ Any matters that were not alleged in the SOR will not be used for disqualification purposes. They may be considered in assessing Applicant's credibility, in the application of mitigating conditions, and when conducting the whole-person analysis.

⁷ Items 2, 6, 7, 9, 10.

⁸ Items 2, 6, 7, 10; AE B.

⁹ "Credit reports are generally sufficient to establish the Government's prima facie case of Guideline F security concerns." See ISCR Case No. 10-03668 at 2 (App. Bd. Oct. 5, 2012).

¹⁰ Items 2, 4-10.

¹¹ Items 4-7.

¹² Items 6, 10.

I deny and was not aware of a charge off account, nor have I received any type of written correspondence from [bank] on this matter. I will request a credit report and seek to resolve any discrepancies.¹³

Applicant did not provide any additional information about the charged-off auto loan when he replied to the FORM in April 2015.

Applicant denied owing the \$372 delinquent debt alleged in SOR ¶ 1.g. The debt is reported by all three credit reporting agencies on the March 2013 combined credit report. It is not listed on the Equifax credit reports obtained in April 2014 and March 2015.¹⁴

Applicant went on cruises to foreign countries with his wife in 2007, February 2012, and November 2012. The March 2015 credit report listed an unalleged auto loan as charged off with a \$27,214 balance. There is no evidence of financial counseling, but Applicant stated that he “actively use[s] financial management applications to monitor spending and be alerted of potential issues.” He also stated that he has recently “taken an active role in managing the household expenses and contacting creditors in an attempt to improve [his] credit.”¹⁵

Applicant submitted a Questionnaire for Public Trust Positions (SF 85P) in September 2008. He submitted a Questionnaire for National Security Positions (SF 86) in March 2013.¹⁶ He answered “No” to all the financial questions under Section 26. There is no evidence that he submitted an SF 86 in 2011.¹⁷

Applicant submitted a character letter from 2012 that attested to his excellent job performance, leadership, professionalism, loyalty, and “love for his country.”¹⁸

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.

¹³ Item 2.

¹⁴ Items 2, 4-6.

¹⁵ Items 3, 4, 10; AE A.

¹⁶ Items 3, 8.

¹⁷ The SOR alleged that Applicant intentionally falsified an SF 86 in September 2011. It did not allege falsification of the 2013 SF 86.

¹⁸ AE C.

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 access to classified information will be resolved in favor of 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 E, Personal Conduct

SOR ¶ 2.a alleges that Applicant intentionally falsified an SF 86 in September 2011. There is no evidence that Applicant submitted an SF 86 in 2011. SOR ¶ 2.a is concluded for Applicant.

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

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

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

Applicant had delinquent debts that he was unable or unwilling to pay. The evidence is sufficient to raise the above 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated 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 attributed his first bankruptcy to unemployment. He attributed his recent financial problems to his wife's unemployment in February 2012, which lasted for about 18 months. Those events qualify as conditions that were beyond his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances.

Applicant's tax issues predate his wife's unemployment, and do not appear to be related to his or his wife's unemployment. Applicant and his wife went on cruises to foreign countries in February 2012 and November 2012, which coincides with his wife's unemployment. There could be a valid reason to go on cruises while his wife was unemployed, such as the tickets were prepaid, but the record is silent in that regard. The bankruptcies were a long time ago, the tax liens were resolved, and the modified mortgage loan is current. However, Applicant still has a large unresolved charged-off auto loan. In his response to the SOR, Applicant denied owing the debt, and he stated that he would "request a credit report and seek to resolve any discrepancies." The debt is listed on the most recent credit report in evidence, albeit with a smaller balance and past-due amount (\$15,220) than alleged in the SOR (\$18,264). Applicant did not provide any additional information about the charged-off auto loan when he replied to the FORM in April 2015. The March 2015 credit report also listed an unalleged auto loan as charged off with a \$27,214 balance.

Because Applicant chose a decision without a hearing, I have been left with unanswered questions about his finances. The bankruptcies, mortgage loan, and tax liens are mitigated. The unresolved auto loan is not. There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay all his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) and 20(c) are not applicable. AG ¶¶ 20(b) and 20(d) are partially applicable. AG ¶ 20(e) is only applicable to the \$372 delinquent debt alleged in SOR 1.g. I find that financial considerations concerns remain despite the presence of some mitigation.

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(a):

- (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.

I considered Applicant's favorable character evidence and his honorable military service. However, he has unresolved financial problems.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns. The Government did not submit evidence to establish the personal conduct allegation.

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:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraphs 1.e-1.g:	For Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraph 2.a:	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.

Edward W. Loughran
Administrative Judge