



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



In the matter of:)
)
) ISCR Case No. 14-03565
)
Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank, Jr., Esq., Department Counsel
For Applicant: *Pro se*

07/07/2015

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On August 25, 2014, 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 September 1, 2006.

Applicant responded to the SOR on September 3, 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 26, 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 May 20, 2015. He responded with a letter that I have marked Applicant's Exhibit (AE) A. The case was assigned to me on June 23, 2015. The Government exhibits included in the FORM and AE A are admitted without objection.

Findings of Fact

Applicant is a 53-year-old employee of a defense contractor. He has worked for his current employer since 2007. He served in the U.S. military from 1981 until he retired in 2001. He seeks to retain his security clearance. He is a high school graduate. He has been married for more than 30 years. He has two adult children and a teenage child.¹

The SOR alleges seven delinquent debts with balances totaling about \$38,750. Each debt is listed on at least one credit report.² Applicant admitted owing the debts alleged in SOR ¶¶ 1.a through 1.d, but he stated that he settled the debt alleged in SOR ¶ 1.a, and he was making monthly payments on the debts alleged in SOR ¶¶ 1.b through 1.d. He denied owing the remaining debts.³

Applicant's wife is from another country. Applicant's brother-in-law and father-in-law died within a year of each other. Applicant attributed his financial problems to paying for his wife to travel to the foreign country for their funerals and paying for his father-in-law's funeral. Applicant has been steadily employed since his retirement from the military.⁴

SOR ¶ 1.a alleges a \$22,642 charged-off student loan that Applicant cosigned for his daughter. His daughter stopped making payments on the loan. In August 2014, the collection company handling the debt agreed to settle it for \$9,050. Applicant stated that he withdrew the funds from his 401(k) retirement account to pay the settlement. He did not provide corroborating documentation.⁵

Applicant admitted owing the \$7,599 delinquent credit card account alleged in SOR ¶ 1.b. The credit reports show a date of last action on the account of December 2010. Applicant did not list any delinquent debts on his Questionnaire for National Security Positions (SF 86), which he attributed to an oversight.⁶ During his background interview in March 2013, Applicant stated the creditor obtained a judgment against him

¹ Items 4, 7.

² "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).

³ Items 2, 5, 6.

⁴ Items 2, 7; AE A.

⁵ Items 2, 5-7; AE A.

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

and was garnishing his wages. He stated that he would satisfy the debt by January 2014. In his response to the SOR, Applicant stated that he was making monthly payments toward the debt. He submitted an August 2014 letter from the law firm handling the judgment. It indicated that Applicant agreed to pay \$200 per month toward the \$11,468 balance of the judgment. The judgment is earning 10% interest. Applicant did not submit any documentation establishing that he has been making the monthly payments.⁷

SOR ¶ 1.c alleges a \$5,524 delinquent debt to a bank. The April 2014 credit report lists the date of last action on the account as September 2009. Applicant told the background investigator in March 2013 that he was paying \$200 per month to the bank. He stated that he would satisfy the debt by 2015. In his response to the SOR, Applicant stated that he was making monthly payments toward the debt. He submitted an August 2014 letter from the collection company handling the debt. It indicated that Applicant agreed to pay \$200 per month toward the \$6,501 balance of the debt. Applicant did not submit any documentation establishing that he has been making the monthly payments.⁸

Applicant stated that he is making monthly payments toward the \$1,648 delinquent credit card account alleged in SOR ¶ 1.d. The February 2013 credit report listed the account as current with a \$1,399 balance. The April 2014 credit report listed the account as \$251 past due with a \$1,648 balance. Applicant submitted documentation establishing that the account is current without a past-due amount.⁹

SOR ¶ 1.e alleges a \$710 debt to a collection company. SOR ¶ 1.f alleges a delinquent \$510 credit card debt. These two allegations represent the same debt: the original credit card account and the collection company account after the debt was transferred. Applicant denied owing both debts. The debts are listed on the 2013 and 2014 credit reports. Both reports listed that the SOR ¶ 1.e debt had been disputed, but the credit reporting agency continued to report the debt, noting the information met the requirements of the Fair Credit Reporting Act (FCRA). Applicant denied knowledge of both debts during his background interview in March 2013.¹⁰

Applicant denied owing the \$117 debt to a collection company on behalf of a court in the state where Applicant lives (SOR ¶ 1.g). The debt is listed on the February 2013 credit report, but not the April 2014 credit report.¹¹

⁷ Items 2, 5-7.

⁸ Items 2, 5-7.

⁹ Items 2, 5-7.

¹⁰ Items 2, 5-7.

¹¹ Items 2, 5-7.

There is no evidence that Applicant received financial counseling. In the FORM, Department Counsel notified Applicant of the importance of corroborating his statements with documents. In his response to the FORM, Applicant provided a memorandum but no documents.¹²

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 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

¹² Items 2, 5-7; AE A.

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 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 has delinquent debts that he was unable or unwilling to pay. The evidence is sufficient to raise the above disqualifying conditions.

SOR ¶¶ 1.e and 1.f allege the same debt. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant’s favor. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice). SOR ¶ 1.f is concluded for Applicant.

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 financial problems to the expenses related to the overseas funerals of his brother-in-law and father-in-law. Additionally, his daughter did not pay the student loan he cosigned for her. Those events were beyond his control.

Applicant established that the debt alleged in SOR ¶ 1.d is current. He denied owing the debts alleged in SOR ¶¶ 1.e and 1.g. The debt alleged in SOR ¶ 1.g is not listed on the most recent credit report. The credit reporting agency listed the SOR ¶ 1.e debt as disputed, but it continued to report the debt, noting the information met the requirements of the FCRA. Applicant stated the student loan in SOR ¶ 1.a has been settled. He stated that he has been making payments toward the debts alleged in SOR ¶¶ 1.b and 1.c, but he did not submit any documentation establishing that he has been making the monthly payments. The Appeal Board has held that “it is reasonable for a Judge to expect applicants to present documentation about the satisfaction of specific debts.” See ISCR Case No. 09-07091 at 2 (App. Bd. Aug 11, 2010) (quoting ISCR Case No. 04-10671 at 3 (App. Bd. May 1, 2006)).

Even if I give Applicant credit for settling the student loan alleged in SOR ¶ 1.a, the three debts alleged in SOR ¶¶ 1.b, 1.c, and 1.e are unresolved. 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 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), 20(c), 20(d), and 20(e) are not applicable to the unresolved debts. AG ¶ 20(b) is partially applicable. AG ¶ 20(e) is only applicable to the disputed debts alleged in SOR ¶¶ 1.d and 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 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.

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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraphs 1.f-1.g:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge