



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



In the matter of:)
)
) ISCR Case No. 14-04085
)
)
Applicant for Security Clearance)

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: *Pro se*

08/31/2015

Decision

WHITE, David M., Administrative Judge:

Applicant incurred more than \$40,000 in delinquent taxes and consumer debts over the past five years, and failed to document resolution of any of them despite substantial income. Resulting security concerns were not mitigated. Based on a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SF-86) on March 8, 2013.¹ On June 12, 2014, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations).² The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960),

¹Item 5.

²Item 1.

as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines that came into effect in the Department of Defense on September 1, 2006.

Applicant timely submitted an undated written response to the SOR, and requested that his case be decided by an administrative judge on the written record without a hearing.³ Department Counsel submitted the Government's written case on February 27, 2015. A complete copy of the File of Relevant Material (FORM)⁴ was provided to Applicant on April 21, 2015, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant submitted additional material in response to the FORM on May 27, 2015, to which Department Counsel had no objection. This response to the FORM, with eight enclosures, is admitted as Applicant's Exhibit (AE) A. I received the case assignment on June 8, 2015.

Findings of Fact

Applicant is 51 years old, and has worked full time for various defense contractors since June 2003 when he began terminal leave before retiring from the Navy. He is married for the second time, with an adult daughter. He served on active duty in the Navy from August 1983 to October 2003, and was honorably discharged in pay grade E-6. He earned Enlisted Aviation Warfare Specialist and Naval Air Crewman designations, two Navy Air Medals, two Navy/Marine Corps Commendation Medals, five Navy/Marine Corps Achievement Medals, five Navy Good Conduct Medals, and various unit and service awards. He has held a security clearance since his time in the Navy.⁵

In his response to the SOR, Applicant admitted the truth of the allegations concerning his seven delinquent debts, totaling about \$40,000. He also admitted the allegations that his home mortgage loan went into foreclosure with an outstanding balance of about \$205,000 and that he failed to file his required Federal and state income tax returns for 2010.⁶ Applicant's admissions are incorporated as findings of fact.

³Item 4. Applicant's response said that he had made three monthly \$100 payments toward his credit union unsecured loan delinquency, alleged in SOR ¶ 1.d. A credit union letter (AE A, Encl. 2) said that he began those payments on August 14, 2014. This, and references to making future payments toward other alleged debts in early November 2014, suggest that the response was signed and submitted in mid to late October 2014.

⁴Department Counsel submitted eight Items in support of the SOR allegations. Item 8 is a part of the Office of Personnel Management (OPM) Report of Investigation. It is a summary of Applicant's unsworn interview with an OPM investigator on March 28, 2013. It is not admissible evidence since it was neither adopted by Applicant nor authenticated by a witness. Its contents will not be considered. (Directive ¶ E3.1.20.)

⁵Item 5; AE A, Encl. 9.

⁶Item 4.

Applicant lived in the home he purchased with his first wife from November 2000 until July 2011, when he began living with his current wife pending finalization of his divorce in October 2011. He refinanced his original \$154,000 home mortgage loan in March 2007, with the now foreclosed loan for \$221,000 on which he stopped making payments in June 2011. The record credit reports show that he was \$17,789 past due in mortgage loan payments, with a total balance due of \$204,939 as of May 2012. He reported that, after failed attempts at a short sale, the home was sold in foreclosure proceedings in January 2013. He provided neither documentation nor details concerning what, if any, deficiency balance is due or may have been forgiven by the mortgage lender. His 2013 tax return does not reflect inclusion of any debt forgiveness in his income.⁷

Applicant said that he did not file his Federal or state income tax returns for tax year 2010 on time because he thought his first wife had filed them jointly when, in fact, she had only filed them for herself due to their pending divorce. He reported on his March 2013 SF-86 that he was waiting to get tax information in the mail from the IRS before filing these returns. He also reported that he filed his 2011 Federal income tax return on time, but forgot to pay approximately \$2,800 that he owed for that year. He said that after he filed his 2010 return he would set up a payment plan with the IRS to resolve his tax debts. In his October 2014 answer to the SOR, he admitted that he still had not filed either his Federal or state returns for 2010, nor had he made arrangements to repay his delinquent 2011 Federal tax debt, but again said that he would promptly do both.⁸

In his FORM response, Applicant submitted a copy of a 2010 Federal income tax return dated, "4/3/2013," that bears his signature and the typed name, but not signature, of a paid tax preparer. The return claims that he is due a refund of \$1,834 on adjusted gross income of \$67,824. Applicant provided nothing from the IRS acknowledging receipt of this tax return, and no explanation for the discrepancy between the April 2013 date on the return and his October 2014 admission that he had still not filed it.⁹

Applicant also provided an unsigned copy of a joint Federal tax return for 2013, filed with his wife, showing that they owed an additional \$976 in taxes on adjusted gross income of \$164,235. He further submitted a copy of the first page of a letter from the IRS to his wife, dated May 19, 2015, documenting her agreement on May 8, 2015, to begin monthly \$200 installment payments on July 28, 2015, toward their combined Federal income tax delinquencies for tax years 2005, 2008, 2012, and 2013. Since only the first page of this letter was submitted, neither the total amount of this debt nor the duration of payments needed to resolve it could be determined. Applicant also said that

⁷Items 4 through 7; AE A, Encl. 5, Encl. 8. See SOR ¶¶ 1.a.

⁸Item 4; Item 5. The 2010 and 2011 tax issues are alleged in SOR ¶¶ 1.g through 1.i.

⁹AE A, Encl 4; Item 4.

he was working with a tax accountant to file his 2014 tax return after having timely filed for an extension of time to do so.¹⁰

On his March 2013 SF-86, in addition to his delinquent taxes and mortgage loan, Applicant reported four consumer credit debts totaling about \$18,000 that had become delinquent between June 2010 and July 2011. He said that he either had or would promptly set up repayment plans to resolve those debts.¹¹ Applicant provided documentation that, as of May 14, 2015, he had made nine monthly \$100 payments under an agreement he entered into in August 2014 with the collections department of the credit union holding the debt alleged in SOR ¶ 1.d, and had reduced the outstanding balance from \$4,377 to \$3,432.¹² No payment toward any of the other three debts was demonstrated, although he submitted a letter from the law firm that obtained a judgment against him, for the \$4,773 debt alleged in SOR ¶ 1.c, acknowledging his agreement to begin paying \$200 per month toward the new balance due of \$6,315.¹³

On May 14, 2015, Applicant and his wife signed up for a debt management plan, under which payments of \$810 per month (with an additional \$50 set-up fee due with the first payment) would start on June 1, 2015. The debt management company agreed to offer free financial counseling and included monthly budget information showing total income of \$8,942 and total expenses of \$7,231 with a resulting net surplus of \$1,711 available to support those payments. The debts alleged in SOR ¶¶ 1.b and 1.d are included in the plan, which reflects that the former debt has grown from the alleged \$8,752 to \$16,605 and bears a 20% interest rate. The plan proposes to repay 18 debts totaling \$29,927 over a four-year period, but does not appear to include the delinquencies alleged in SOR ¶¶ 1.a, 1.c, 1.e, or 1.f. No payments toward this plan were documented, nor was participation in financial counseling by either Applicant or his wife.¹⁴

The record lacks evidence concerning the quality of Applicant's post-service professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. No character witnesses provided statements describing his judgment, trustworthiness, integrity, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

¹⁰AE A, Encl 5 through 7.

¹¹Item 5 at 41-44. These are the debts alleged in SOR ¶¶ 1.b, 1.c, 1.d, and 1.f.

¹²AE A, Encl. 2.

¹³AE A, Encl. 3.

¹⁴AE A, Encl. 1.

Policies

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 for each guideline, the adjudicative guidelines list potentially disqualifying conditions (DCs) and mitigating conditions (MCs), 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, 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. According to AG ¶¶ 2(a) and 2(c), 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 that "[a]ny doubt concerning personnel being considered for access to classified information 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "[t]he 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." Section 7 of Executive Order 10865 provides: "[a]ny 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."

A person applying for access to classified information seeks to enter 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 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 information.

Analysis

Guideline F, Financial Considerations

The security concerns under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

Department Counsel asserted, and the record evidence established, security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

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

Applicant owes more than \$40,000 in unresolved delinquent taxes and other debts that he incurred over the past five years. His home mortgage loan was reportedly foreclosed in 2013, while over \$17,000 past due, with an undetermined deficiency balance. He provided minimal evidence of efforts to repay or otherwise resolve any of these debts, despite more than two years of statements that he intended to do so. His ongoing pattern and history of inability or unwillingness to pay lawful debts raise security concerns under DCs 19(a) and (c), and shift the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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 has incurred substantial delinquent debts, which continue to date. He offered insufficient evidence from which to establish a track record of debt resolution. He failed to demonstrate that conditions beyond his control contributed to his financial problems, or that he acted responsibly under such circumstances. Much of the debt arose around the time of his divorce from his first wife, but the record evidence does not indicate that those circumstances were either beyond his control or a surprise to him. MC 20(e) requires documented proof to substantiate the basis of a dispute concerning a delinquent debt, and Applicant admitted owing each debt alleged in the SOR. Accordingly, the record is insufficient to establish mitigation under any of the foregoing provisions.

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 pertinent facts and circumstances surrounding this case. Applicant is an accountable and experienced adult, who is responsible for the voluntary choices and conduct that underlie the security concerns expressed in the SOR. His SOR-listed delinquent debts arose over the past five years and remain largely unresolved despite his continuous employment during the period involved, and a current budget showing at least \$1,700 per month in excess income over expenses. He offered insufficient evidence of financial

