



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



In the matter of:)	
)	
)	ISCR Case No. 14-06110
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

09/24/2015

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On March 26, 2015, 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 April 25, 2015, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on July 1, 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 July 21, 2015. He responded with documents that I have marked Applicant's Exhibit (AE) A through D. The case was assigned to me on August 25, 2015. The Government exhibits included in the FORM and AE A through D are admitted without objection.

Findings of Fact

Applicant is a 45-year-old employee of a defense contractor. He has worked for his current employer since September 2012. He served in the U.S. military from 1988 until he was honorably discharged in 1991. He held a security clearance in the past. It is unclear whether he currently holds a clearance. He has a bachelor's degree that was awarded in 2000 and two master's degrees that were awarded in 2001 and 2002. He is married with three children, ages 21, 19, and 18.¹

Applicant has a history of financial problems. He filed a Chapter 7 bankruptcy petition in 1998. It is unclear whether his debts were discharged. The reason for the bankruptcy is also unclear. Applicant was unemployed from about December 2004 to May 2005.²

Applicant bought a house to be used as his primary residence in about 2003. It was financed with a first mortgage loan of \$207,000. He refinanced the mortgage in 2005 for \$310,500. He used \$100,000 he received from the new loan to perform home improvements, including a new kitchen.³

Applicant bought another house in 2006 to be used as his primary residence. He kept the first house as a rental property. The new house was financed with a first mortgage loan of \$404,799 and a second mortgage loan of \$101,200. He refinanced the second mortgage with a home equity line of credit (HELOC) in 2007 for \$135,538. He also obtained a third mortgage loan in 2007 for \$38,000. He used \$22,009 he received from the HELOC and the \$38,000 from the third mortgage loan to improve the home, including building a swimming pool.⁴

Applicant's mother developed cancer in 2009. He incurred expenses in moving her cross country to live with him and in caring for her. The renters of Applicant's first house moved out in 2011. Applicant's new renters did not pay the rent. They moved out in late 2011 and left the house in shambles. Applicant became unemployed in November 2011. He obtained his current job in September 2012, but he had to relocate cross country, at a substantially lower salary. His wife lost her job when they moved and did not find steady employment in her field until August 2014.⁵

¹ Items 2, 3.

² Items 1-3.

³ Items 2-5; AE A-C.

⁴ Items 1-5; AE A-C.

⁵ Items 1-3.

Applicant stopped paying the mortgage loans on his two properties. His rental property was lost to foreclosure in March 2012. The holder of the foreclosed mortgage loan issued an Internal Revenue Service (IRS) form 1099-A (Acquisition or Abandonment of Secured Property) for tax year 2012. The form indicated that the lender acquired the property in March 2012. The balance of the principal on the mortgage loan at that time was listed as \$297,513, and the fair market value of the property was listed as \$155,000.⁶

Applicant stated that he resolved the second house (residence) debts through a short sale. He stated the house sold for \$385,343. He did not provide any supporting documentation to establish the house was actually short sold or that the secondary lienholders agreed to a short sale.⁷

The SOR alleges the delinquent HELOC on the residence (SOR ¶ 1.a - \$187,516)⁸ and the unpaid third mortgage loan on the residence (SOR ¶ 1.c - \$37,687). The primary mortgage loans on the two properties were not alleged. Applicant stated that he has “no plans to repay remaining balances from originally collateralized property that has been short sold and has since been charged off.” The HELOC and the third mortgage loan are both listed on the October 2014 credit report with the balances alleged in the SOR. The second mortgage loan is listed as charged off.⁹

SOR ¶ 1.f alleges a delinquent bank credit card debt of \$21,610. SOR ¶ 1.d alleges a delinquent debt of \$19,456 owed to the collection company that acquired the debt. Applicant listed the debt on his Questionnaire for National Security Positions (SF 86), which he submitted in November 2012. He listed the balance as \$22,956 and that he was on a \$175 per month repayment plan. The November 2012 credit report listed the debt to the bank as a charged-off account that was \$4,025 past due with a balance of \$21,610. The October 2014 credit report listed the debt to the collection company with a balance of \$19,456. Applicant noted in his response to the FORM that the balance was being repaid monthly. He submitted no supporting documentation.¹⁰

Applicant admitted owing the delinquent credit union debt of \$7,306 that was alleged in SOR ¶ 1.e. it is a credit card debt to the credit union that held the HELOC on his residence. The credit union reported the debt as charged off. Applicant did not state that he intends to pay the debt, possibly because it was charged off. He indicated that the debt will remain on his credit report until 2019.¹¹

⁶ Items 1-5; AE A-D.

⁷ AE A-C.

⁸ SOR ¶ 1.b is a duplicate of this account.

⁹ Items 1, 3-5; AE A-C.

¹⁰ Items 1, 3-5.

¹¹ Items 1, 3-5.

Applicant had debts that were not alleged in the SOR that became delinquent.¹² He had a timeshare property that he bought in 2007 for about \$20,000. It had a balance of more than \$20,000 when it was lost to foreclosure. There is no indication of a deficiency balance. He had three car loans that were initiated in 2008. The credit report lists the high credit on the loans as \$34,383; \$68,788; and \$72,604. The total monthly payments on the three loans were about \$2,750. The cars were repossessed. The credit report does not list a balance on the accounts, and it reports the debts as “paid charge off” and/or “account paid for less than full balance.” Applicant stated that he settled the deficiency balances on the car loans for \$6,000; \$7,000; and \$13,000.¹³

The October 2014 credit report lists that Applicant was current on three car loans with monthly payments of \$355, \$412, and \$498, and balances of \$13,839; \$14,689; and \$19,382. The 2012 credit report lists deferred student loans with balances of \$4,596; \$6,901; and \$37,711. The 2014 credit report lists two of the loans as current and no longer deferred, with balances of \$7,104 and \$39,443. There is no evidence of financial counseling. Applicant wrote in his response to the SOR: “Presently, admitted items are being dealt with in a manner consistent with my current financial situations and obligations, within a timetable defined by my family needs and priorities; and with all options still being explored, including Bankruptcy.” Additional information about Applicant’s current financial situation is unavailable because Applicant chose to forego a hearing.¹⁴

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.

¹² Any matter that was not alleged in the SOR will not be used for disqualification purposes, but may be considered in assessing Applicant’s overall financial status, in the application of mitigating conditions, and when conducting the whole-person analysis.

¹³ Items 2-5.

¹⁴ Items 1, 4, 5.

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 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.

SOR ¶¶ 1.a and 1.b allege the same debt. SOR ¶ 1.f alleges an original credit card debt, and SOR ¶ 1.d alleges the same debt to the collection company that acquired the 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. SOR ¶¶ 1.b and 1.f are 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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant filed a Chapter 7 bankruptcy petition in 1998. The reason for the bankruptcy is unclear. The 1998 bankruptcy does not generate current security concerns. SOR ¶ 1.g is concluded for Applicant.

Applicant was unemployed from about December 2004 to May 2005. He cared for his mother who had cancer. He had tenants who did not pay the rent and moved out, leaving the house in shambles. He was unemployed from November 2011 to September 2012. He had to relocate his family cross country for his current job, which paid substantially less than his previous job. His wife lost her job when they moved and did not find steady employment in her field until August 2014.

Applicant's finances were clearly adversely affected by events that were beyond his control. However, some of his financial decisions are troubling. He was not that far removed from his 1998 bankruptcy and 2005 unemployment when he bought a second house without selling the first house. He took out second and third mortgage loans on the second house in order to build a swimming pool. He bought a \$20,000 timeshare. He had three cars financed through loans that the credit reported listed the high credit

on the loans as totaling more than \$175,000, with total monthly payments totaling about \$2,750. Because Applicant chose to forego a hearing, questions about his decision making went unanswered.

Applicant lost two houses and a timeshare to foreclosure or a short sale and three cars to repossession. He settled the deficiency balances for the three car loans, and the primary mortgages on the two houses appear to be resolved. Applicant did not submit documentary evidence that he is paying the delinquent credit card debt alleged in SOR ¶ 1.d, but the credit reports indicate the balance on the debt is going down. I accept his assertion that he is making payments on the debt. That allegation is mitigated. He stated that he does not intend to pay the HELOC and the third mortgage loan and there is no indication that he has made any effort to pay the \$7,306 credit card debt alleged in SOR ¶ 1.e, possibly because it was charged off.¹⁵ Applicant currently has three car loans, albeit much smaller loans than on the three cars that were repossessed. He also has about \$46,000 in student loans that are no longer in deferment.

It is Applicant's burden to mitigate any concerns raised by his finances. He has not done so. 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), and 20(d) are not applicable to the unresolved debts. AG ¶ 20(b) is partially applicable. 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.

¹⁵ The Appeal Board has noted that "a creditor's choice to charge off a debt for accounting purposes does not affect the debtor's obligation to the creditor." See ISCR Case No. 08-11983 at 2 (App. Bd. Jan. 28, 2011) (citing ISCR Case No. 09-01175 at 2 (App. Bd. May 11, 2010)).

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, and the factors that led to his financial problems. However, he has unresolved financial problems with unanswered questions as to how he plans to remedy those 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:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c-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 grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge