



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



In the matter of:)	
)	
)	ISCR Case No. 15-00530
)	
Applicant for Security Clearance)	

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

04/28/2016

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 18, 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 September 7, 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 September 22, 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

responded with a letter and copies of tax returns that I have marked Applicant's Exhibits (AE) A and B. The case was assigned to me on December 21, 2015. The Government exhibits included in the FORM and AE A and B are admitted in evidence without objection.

Findings of Fact

Applicant is a 62-year-old employee of a defense contractor. He seeks to retain his security clearance. He is married with three adult children.¹

Applicant left steady employment in 2006 to open his own business. The business failed, and Applicant stated that he was living on credit cards. He returned to his former employer in 2007, where he still works.²

Applicant and his wife filed a Chapter 13 bankruptcy case in February 2009. Under Schedule D, Creditors Holding Secured Claims, the petition listed \$103,150 in claims. The petition listed a \$6,500 debt to the IRS under Schedule E, Creditors Holding Unsecured Priority Claims. Under Schedule F, Creditors Holding Unsecured Nonpriority Claims, the petition listed debts totaling \$67,477.³

The approved bankruptcy plan called for 60 monthly payments of \$432 for months 1 to 6, followed by \$455 payments for months 7 to 60. The plan included payments of \$100 per month to the IRS during months 9 to 60. The plan also included car loan payments of \$56 for months 1 to 8, followed by \$236 payments for months 9 to 60. Applicant's \$757 mortgage-loan payments were to be made outside the plan.⁴

In April 2011, the court granted, without objection, the trustee's motion to modify the plan. The modified plan called for a \$4,406 payment in May 2010 (month 15), followed by \$455 payments for months 16 to 25 and \$921 payments for months 26 to 60. The \$921 payments were to begin in April 2011.⁵

The record is unclear as to why the bankruptcy plan was modified. Applicant indicated that "there was some controversy with the attorney." The bankruptcy was dismissed in April 2012 after the trustee took action to remedy Applicant's and his wife's default. The trustee reported that Applicant paid \$23,492 into the plan, of which \$4,434 went to the bankruptcy attorney and the trustee, and \$19,057 was disbursed to Applicant's creditors, including \$2,789 to the IRS and \$6,599 to Applicant's car loan.⁶

¹ Item 3.

² Items 2, 3; AE A.

³ Items 2-5.

⁴ Item 5.

⁵ Item 5.

⁶ Items 2, 3, 5; AE A.

The SOR alleges the dismissed Chapter 13 bankruptcy case, a \$3,983 debt to the IRS, and three delinquent debts totaling about \$20,600. Applicant denied owing the IRS, indicating the debt was paid. He admitted owing the remaining three debts. The debts are listed on an August 2014 credit report; however, Applicant is only reported as an authorized user of the \$8,991 credit card debt alleged in SOR ¶ 1.d.⁷

Applicant paid the back taxes owed to the IRS. He stated that he has been receiving lump-sum settlement offers from the credit card companies. He stated that he was saving up and he intended to use his income tax refund to pay the settlements. He also wrote: "I am not trying to get out of my responsibilities. I am and have always worked hard. I plan to continue working hard to pay these debts off."⁸

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

⁷ Items 2, 4.

⁸ Items 2-5; AE A, B.

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 was unable or unwilling to pay his debts. The evidence is sufficient to raise the above disqualifying conditions.

Applicant is only an authorized user of the \$8,991 credit card debt alleged in SOR ¶ 1.d. That allegation 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; and

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

Applicant's business failed in about 2007. He and his wife filed a Chapter 13 bankruptcy case in February 2009, and paid \$23,492 into the plan before the bankruptcy was dismissed in April 2012. It is unclear why the plan was modified and why Applicant and his wife defaulted on the plan. He has since paid the IRS, but little else is known about the current state of his finances other than that he stated that he intends to pay his debts. The Appeal Board has held that "intentions to pay off debts in the future are not a substitute for a track record of debt repayment or other responsible approaches." See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013) (quoting ISCR Case No. 08-08440 at 2 (App. Bd. Sep. 11, 2009)).

There is insufficient evidence in the record 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(b) and 20(c) are partially applicable. AG ¶ 20(a) is not applicable. AG ¶ 20(d) is only applicable to the paid IRS debt alleged in SOR ¶ 1.e. 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.

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
Subparagraphs 1.a-1.c:	Against Applicant
Subparagraphs 1.d-1.e:	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