



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



In the matter of:)
)
) ISCR Case No. 15-01004
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

01/28/2016

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On August 17, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order 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 effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on September 3, 2015, and elected to have his case decided on the written record. On September 30, 2015, Department Counsel submitted the Government’s file of relevant material (FORM). The FORM was mailed to Applicant on October 5, 2015, and it was received on October 27, 2015. Applicant was

afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the Government's evidence and did not offer any additional information. The Government's documents identified as Items 2 through 4 are admitted into evidence. The case was assigned to me on December 28, 2015.

Procedural Issues

Department Counsel withdrew the Guideline B, foreign influence, allegations in the SOR.

Findings of Fact

Applicant admitted all of the allegations in SOR except ¶¶ 1.g and 1.h, which he denied. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 40 years old. He is a high school graduate. He was married in 1999 and divorced in 2008. He remarried in 2009 and is separated from his wife. He has two grown stepchildren. He provides financial support to his estranged wife and stepchildren. He was on active duty in the military from 1998 until 2010 when he was honorably discharged. He was then a reservist with the National Guard from August 2010 to April 2011, when he was honorably discharged. He was unemployed from September 2010 to April 2011 at which time he began working for his current employer, a federal contractor.¹

The SOR alleges six delinquent debts totaling approximately \$16,498 (¶¶ 1.a-1.f). It also alleges a delinquent mortgage account that was foreclosed in January 2013 due to nonpayment. In April 2014, Applicant was interviewed by a government investigator as part of his background check. He acknowledged that he owed the delinquent debts alleged in the SOR. He attributed his financial problem to his divorce and alcohol consumption. When he divorced in 2008, he went from having two incomes to pay debts, to only having his income. He indicated that in 2007, he stopped making mortgage payments because he was focused on going out at night and drinking alcohol. He admitted in his answer to the SOR that his foreclosure was due to overspending. In 2012, Applicant was no longer entitled to per diem he was receiving while he was stationed overseas, which impacted his finances. At the time of his interview, he indicated that he was working on repairing his finances and paying his debts one at a time. His parents gave him a gift to help pay some of his debts. Applicant did not provide any information with his answer to the SOR or by way of a response to the FORM to show what actions he has taken to resolve the alleged debts.²

During his 2014 interview, Applicant indicated that he had not filed his 2012 or 2013 federal and state income tax returns. He indicated he did not have a good reason

¹ Item 2.

² Items 2, 3, and 4.

for failing to file timely. At the time, he indicated that he intended on filing the delinquent tax returns. He did not believe he owed taxes because of his overseas employment status. The investigator included in the summary of interview that Applicant had sent an email on September 9, 2014, stating that he had mailed his income tax returns for 2012 and 2013 that day. No other information was included. Applicant did not provide proof he had mailed and filed the returns either with his answer to the SOR or in response to the FORM.³

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 and mitigating conditions, which are 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 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." 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an applicant may deliberately or inadvertently fail to safeguard

³ Items 2 and 3.

classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that 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 relating to the guideline 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.⁴

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant has delinquent debts that are unpaid or unresolved. He failed to timely file his 2012 and 2013 federal and state income tax returns. There is sufficient evidence to support the application of the above disqualifying conditions.

⁴ See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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 has delinquent debts that are not resolved. He failed to provide mitigating evidence. Therefore, there is insufficient evidence to conclude that his financial problems are unlikely to recur. His failure to timely address his delinquent debts or file income tax returns cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply

Applicant attributed his financial problems to three factors: he went through a divorce and his income decreased; he stopped receiving per diem in 2012; and he overspent and focused on consuming alcohol rather than manage his finances. Applicant's divorce was beyond his control. The other reasons were within his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. There is some evidence that Applicant resolved delinquent debts that were not listed on the SOR. However, he failed to provide evidence of what, if any, action he has taken to resolve the alleged debts or his future plans to resolve them. I find AG ¶ 20(b) partially applies.

Applicant failed to provide evidence that he has received financial counseling, made good-faith payments to pay overdue creditors, or other information about his efforts to resolve the alleged debts. There are not clear indications that Applicant's

financial problems are being resolved or under control. AG ¶¶ 20(c) and 20(d) do not apply.

Applicant denied that he failed to file his federal and state income tax returns for 2012 and 2013. He was afforded an opportunity to provide proof that he has filed the tax returns, but failed to do so. AG ¶ 20(e) does not apply.

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 the 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 my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 45 years old. He served in the military and received an honorable discharge. He has had financial difficulties since 2008 when he divorced. Applicant had an opportunity to provide substantiating documentation of actions he may have taken to resolve his delinquent debts and tax returns, but did not provide any information. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

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.i: Against 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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge