



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



In the matter of:)
)
) ISCR Case No. 14-03627
)
Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

06/24/2015

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 October 9, 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 November 7, 2014, and November 19, 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 2, 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 March 26, 2015. As of May 12, 2015, he had not responded. The case was assigned to me on May 21, 2015. The Government exhibits included in the FORM (Items 4-8) are admitted.

Findings of Fact

Applicant is a 38-year-old employee of a defense contractor. He has worked for his current employer since 2010. He served in the U.S. military from 1996 until he was honorably discharged for medical reasons in 2003. He married in 2001 and divorced in 2009. He married for the second time in 2012. As of 2013, he had two children, ages 19 and 13.¹

The SOR alleges 16 delinquent debts with balances totaling about \$16,600. It also alleged that Applicant was charged with uttering a worthless check in 2010. Applicant denied being charged with uttering a worthless check in 2010, and he essentially denied owing the debts alleged in SOR ¶¶ 1.c (\$1,026), 1.h (\$140), 1.i (\$300), and 1.k (\$3,912). He admitted owing the remaining debts. He also submitted information in mitigation. Each debt is listed on at least one credit report.²

Applicant attributed his financial problems to several factors, including his unemployment for about a year after he was discharged from the military in 2003. He also stated that his first wife did not pay her share of the marital expenses after their divorce. He had multiple medical procedures that generated a large amount of medical bills.³

SOR ¶ 1.a alleges a \$6,289 deficiency owed to a collection company on an auto loan after the vehicle was repossessed and sold. During his background interview in March 2013, Applicant stated that he bought the vehicle in about 2000, and he returned it to the dealership about five months later because the vehicle kept breaking down. In his response to the SOR, Applicant stated the vehicle was voluntarily returned because the military transferred him overseas, and he was unable to bring the vehicle with him. The debt is listed on credit reports from March 2013 and April 2014 as opened in 2007, with a date of last action of 2008. Applicant has not paid the debt.⁴

The SOR alleges medical debts of \$1,178 (SOR ¶ 1.b), \$530 (SOR ¶ 1.d), \$284 (SOR ¶ 1.f), \$168 (SOR ¶ 1.g), \$156 (SOR ¶ 1.n), \$137 (SOR ¶ 1.o), and \$100 (SOR ¶ 1.p). Applicant stated that he had multiple medical procedures in 2011 and 2012 that

¹ Item 4.

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 3.

⁴ Items 3, 5-7.

resulted in more than \$38,000 in medical bills. He indicated that he will continue to attempt to resolve his medical debts.⁵

Applicant denied owing the \$1,026 debt alleged in SOR ¶ 1.c. He stated the loan was paid in 2003. The debt is listed on both the 2013 and 2014 credit reports. Both reports also listed a debt to the same creditor in the same amount as paid.⁶

Applicant admitted owing the delinquent debts alleged in SOR ¶¶ 1.e (\$386), 1.i (\$300), 1.j (\$830), and 1.l (\$804). Regarding the \$804 debt, he told the background investigator in March 2013 that he applied for a credit card with the creditor in 2010 but he never received the card. In his SOR response, he stated the account was “a credit card secured for [his] previous wife who upon divorce left unpaid, thereby remaining on [his] credit report.” That debt was listed by TransUnion on the March 2013 credit report as an individual account. It was not listed on the April 2014 Equifax credit report. No payments have been made on the debts in this paragraph.⁷

Applicant denied owing the \$130 debt to a utility company as alleged in SOR ¶ 1.h. He stated the loan was paid in 2003. The debt is listed on the 2013 credit report with the annotation “dispute resolved – consumer disagrees.” It is listed on the 2014 credit report with the annotation “outstanding balance; consumer disputes after resolution.”⁸

SOR ¶ 1.k alleges a \$3,912 debt to a collection company on behalf of an apartment landlord. Applicant stated that he had to break a lease in 2010 due to unemployment and relocation in search of employment. He stated he discussed it with the property manager before he departed. The property manager told him he would not be held liable for breaking the lease.⁹

Applicant admitted owing the \$365 debt to a collection company on behalf of a telephone services company (SOR ¶ 1.m). Applicant stated the account was opened for his ex-wife “who upon divorce left unpaid, thereby remaining on [his] credit report.” The debt was listed by Experian and TransUnion on the March 2013 credit report as an individual account. It was not listed on the April 2014 Equifax credit report.¹⁰

Applicant denied being charged with uttering a worthless check in 2010. The Government submitted records indicating he was charged. Applicant’s name and date of birth is correctly listed in the records. The address for Applicant in the records does

⁵ Items 3, 5-7.

⁶ Items 3, 5-7.

⁷ Items 3, 5-7.

⁸ Items 3, 5-7.

⁹ Items 3, 5-7.

¹⁰ Items 3, 5-7.

not coincide with any address Applicant listed on his Questionnaire for National Security Positions (SF 86). The records do not indicate that Applicant was ever served and there is no disposition listed.¹¹

Applicant discussed his financial problems during a background interview in March 2013. Since then he has made little to no payments toward his delinquent debts. There is no evidence of financial counseling.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.

¹¹ Items 3, 6, 8.

¹² Items 3, 5-7.

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

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 unemployment, divorce, and multiple medical procedures. His medical debts resulted from events beyond his control. They do not raise security concerns. SOR ¶¶ 1.b, 1.d, 1.f, 1.g, 1.n, 1.o, and 1.p are concluded for Applicant. I have doubts about the legitimacy of the uttering a worthless check charge (SOR ¶ 1.q) as well as the debts alleged in SOR ¶¶ 1.c and 1.k. Those allegations are also concluded for Applicant.

There remain seven delinquent debts totaling about \$9,100 that are unresolved. Applicant and his first wife divorced in 2009, and he has been working for his current employer since 2010. He has known of the debts for more than two years, and some of the debts are of modest amounts. There is no evidence that Applicant made any effort to pay the debts.

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. 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:	Against Applicant
Subparagraphs 1.b-1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraphs 1.f-1.g:	For Applicant
Subparagraphs 1.h-1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraphs 1.l-1.m:	Against Applicant
Subparagraphs 1.n-1.q:	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