



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



In the matter of:)
)
) ISCR Case No. 15-00406
)
)
Applicant for Security Clearance)

Appearances

For Government: Gina. L. Marine, Esq., Department Counsel
For Applicant: *Pro se*

03/17/2016

Decision

COACHER, Robert E., 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 15, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD CAF acted 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).

Applicant answered the SOR on September 15, 2015, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government’s File of Relevant Material (FORM) on October 29, 2015. The evidence

included in the FORM is identified as Items 3-10 (Items 1 and 2 include pleadings and transmittal information). The FORM was mailed to Applicant, who received it on November 12, 2015. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He did not submit any additional evidence nor did he object to any of the Government's evidence. Items 3-10 are admitted into evidence. The case was assigned to me on March 2, 2016.

Procedural Issue

In the FORM, Department Counsel amended SOR ¶¶ 1.a and 1.b. However, the amending language for SOR ¶ 1.a appears to be identical to the original SOR language. As for SOR ¶ 1.b, the amount was changed from "\$3,946" to "\$5,104" and "2009" was changed to "2010." Applicant did not object to these amendments or request additional time to respond.

Findings of Fact

In Applicant's Answer, he admitted SOR ¶¶ 1.b – 1.d, but denied SOR ¶¶ 1.a and 1.e – 1.h. Those admissions are adopted as findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 46 years old. He has worked for a defense contractor since August 2009. He was unemployed from January to August 2009. He has been divorced since 2005. He has one child from a different relationship. He is a high school graduate who has taken some college courses. He served in the Marine Corps from 1988 to 1992 and received an honorable discharge.¹

The SOR alleged that Applicant failed to file his federal income tax returns for years 2008 through 2013, and that he owed at least \$5,104 in delinquent federal taxes from 2010 through 2013. (SOR ¶¶ 1.a and 1.b). It further alleged he owed on five collection accounts and a charged-off account in the amounts of \$2,453, \$495, \$138, \$16,717, \$517 and \$1,731 (SOR ¶¶ 1.c - 1.h). Among these obligations are delinquent debts for child support and student loans. These allegations are supported by Applicant's admissions in his answers to interrogatories, his Answer, and by credit reports from July 2010, August 2014, November 2014, and June 2015.²

Applicant stated his financial problems are mostly due to his own "irresponsibility" towards paying his child support, filing and paying his federal taxes, and making his student loan payments. He also experienced a period of unemployment for eight months in 2009.³

¹ Item 3.

² Items 2-9.

³ Item 4.

Applicant admitted that he failed to file his federal tax returns for years 2008 to 2013 (SOR ¶ 1.a). He provided documentary evidence showing that by August 2014 he had filed his federal returns for 2008 through 2013. He admitted that he owed the IRS for back taxes and had a payment arrangement with the IRS (SOR ¶ 1.b). He did not document his payment arrangement or provide other proof of payment. He did not have any documentation showing the current status of his IRS debt.⁴

The collection account for \$2,453 (SOR ¶ 1.c) is a rental property debt. Applicant did not provide documentation showing that he paid this debt or established a payment plan. This debt is unresolved.⁵

The collection account for \$495 (SOR ¶ 1.d) is a telecommunication account. He stated to an investigator that he would pay this debt by January 2013. He has not provided any proof of payment. This debt is unresolved.⁶

The charged-off account for \$138 (SOR ¶ 1.e) is a utility account. Applicant provided documentation that he settled this account in July 2014. This debt is resolved.⁷

The collection account for \$16,717 (SOR ¶ 1.f) is a child support account. Applicant's child is no longer eligible for child support, but Applicant still owes the child's mother for back child support. Applicant provided documentation showing his wages are garnished by the state in the amount of \$560 monthly for his child support obligation. He provided two pay statements showing the garnishment amounts (April 4, 2014, and July 25, 2014). This debt is being resolved.⁸

The collection accounts for \$517 and \$1,731 (SOR ¶¶ 1.g and 1.h) are student loan accounts. Applicant stated that the two amounts were for the same underlying debt, which first became delinquent in 2007. He provided proof that he is paying \$76 monthly toward this debt and as of July 2014 the balance was approximately \$516. This debt is being resolved.⁹

Applicant did not provide any current financial information or evidence that he sought financial counseling.¹⁰

⁴ Items 2-5.

⁵ Items 4, 6.

⁶ Items 4, 6.

⁷ Item 4.

⁸ Items 4, 7.

⁹ Items 4, 9.

¹⁰ Items 2-10.

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 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.

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 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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

AG ¶ 18 expresses the security concern for financial considerations:

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. I have considered all of them under AG ¶ 19 and the following apply:

- (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 failed to file his federal income tax returns for years and has delinquent federal tax debts and collection accounts that remain unpaid or unresolved.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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 tax debts are recent and remain unresolved. He finally filed his past-due tax returns in 2014, but he failed to document evidence that he is paying his past-due tax amounts. His past financial history casts doubt on his current reliability, trustworthiness, and good judgment. I find mitigating condition AG ¶ 20(a) does not apply.

Applicant blames his inability to file and pay his taxes and his delinquent child support debt on his irresponsibility. This is not a condition beyond his control. AG ¶ 20(b) does not.

Applicant presented no evidence of financial counseling. Applicant filed his delinquent tax returns, but failed to produce evidence of back-tax payments. He showed that his wages are being garnished to pay his child support obligation and he is making monthly payments on his student loan debt. However, two debts remain unaddressed (SOR ¶¶ 1.c and 1.d). There is some evidence that he has made a good-faith effort to address some of his debt issues, but not all of them. I find AG ¶¶ 20(c) and 20(d) partially 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 guideline 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 considered Applicant's military service. On the other hand, I also considered that he failed to honor his obligation to pay his federal taxes and other debts for an extended period of time. His inability to make

progress toward paying his taxes and his debts shows a lack of reliability, trustworthiness, and good judgment.

Overall, 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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b – 1.d:	Against Applicant
Subparagraphs 1.e – 1.h:	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.

Robert E. Coacher
Administrative Judge