



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



In the matter of:)
)
) ISCR Case No. 15-00838
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

04/20/2016

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 25, 2015, the Department of Defense (DOD) issued to 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 October 6, 2015, and elected to have his case decided on the written record. On November 30, 2015, Department Counsel submitted the Government’s file of relevant material (FORM). The FORM was mailed to Applicant, and it was received on December 16, 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 offered Applicant's Exhibit (AE) A. The Government had no objection and AE A is admitted into evidence. The Government's documents identified as Items 5 through 10 are admitted into evidence. The case was assigned to me on February 17, 2016.

Findings of Fact

Applicant admitted both allegations in the SOR. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 45 years old. He is a high school graduate. He married in 2001 and divorced in June 2011. He has lived with a cohabitant since September 2011. He has two children, ages 13 and 10. Applicant was steadily employed from 1999 to January 2013. He was unemployed from January 2013 until September 2013 when he began work with his current employer, a federal contractor.¹

Applicant stated that he experienced financial problems when he went through a difficult divorce in 2011 and was ordered to pay all of the expenses.² He also had a period of unemployment that impacted his finances. He used credit cards to pay his expenses while going through the divorce and to pay his attorney's fees.³

Applicant completed a security clearance application (SCA) in June 2014. In response to question 26 he wrote: "in [ar]rears for child support due to unemployment, but currently catching up." He answered "yes" to each of the following questions that asked in the past seven years if he had defaulted on a loan, had debts that were turned over to a collection agency, had an account or credit card suspended, charged off, or canceled for failing to pay as agreed, and that he was currently 120 days delinquent on a debt.⁴

Applicant was interviewed in August 2014 by an Office of Personnel Management (OPM) investigator, as part of his background investigation. He explained he got behind on child support payments because the court ordered an increase and backdated it, so he had to catch up on the difference. He indicated he was still \$1,600 in arrears.⁵ It is unknown if he is now current.

Applicant acknowledged during the interview that he had a judgment owed to a credit card account that was not satisfied. He also had several other delinquent credit

¹ Items 5, 10.

² Applicant did not provide a copy of the divorce decree or settlement agreement.

³ Item 10.

⁴ Item 5.

⁵ Item 10.

cards that were charged off or with a collection agency. He stated that he was contacting the creditors and making arrangements to resolve the debts, or he was unaware of the debt and was going to contact the creditor. He indicated to the investigator that his finances were stable.⁶

Applicant filed Chapter 13 bankruptcy in January 2015. In his answer to the SOR, Applicant indicated that his bankruptcy plan was finalized in March 2015. He stated the delinquent debt alleged in SOR ¶ 1.b (\$2,524) is included in the case. He reiterated the reasons for his financial difficulty. He completed the mandated credit counseling for filing bankruptcy.⁷

In Applicant's response to the FORM, he stated that he currently owns his own home. He stated he has never lived beyond his means. He indicated he never missed a mortgage payment, credit card payment, car note, or electric bill until his divorce. He fell behind for a short time with his bills because he decided to pay his child support and alimony payments rather than his bills. He decided to be a responsible father and work with the creditors at a later date. He does not gamble and considers himself a trustworthy adult.⁸

Credit reports from June 2014, December 2014, and July 2015 provide evidence of the debt alleged in the SOR.

Applicant's bankruptcy documents indicate on Schedule F that creditors holding unsecured nonpriority claims total \$11,845. Credit reports from June 2014 and December 2014 indicate that he was delinquent several months on his mortgage and a foreclosure process had started, other accounts were charged off or in collection, and he had an unsatisfied judgment. The July 2015 credit report showed the mortgage was part of the Chapter 13 bankruptcy. Applicant did not provide a status update on his mortgage other than to say he owns his home and never missed a payment until he went through his divorce.⁹ Applicant's Chapter 13 bankruptcy payment plan requires him to pay \$575 for 58 months beginning in April 2015. Beyond Applicant's statement, it is unknown if he has consistently complied with the plan. No documentary evidence was provided by Applicant to show his current financial situation, such as his current salary, expenses, and any accounts on which he is making payments. No explanation was provided as to why Applicant chose to file bankruptcy.¹⁰

⁶ Item 10.

⁷ Items 4 and 6.

⁸ AE A.

⁹ Items 7, 8; AE A.

¹⁰ Items 6, 7, 8, and 9.

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 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.¹¹

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

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant filed Chapter 13 bankruptcy in January 2015 and he indicated the one delinquent debt that was alleged in the SOR was included. There is sufficient evidence to support the application of the above disqualifying conditions.

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

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

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 acknowledged he had financial problems when he went through a divorce in 2011 and experienced a period of unemployment in 2013. In his OPM interview and subsequent statements he indicated he used credit cards during this time to pay expenses and his attorney's fees. He did not provide information about his actions to address the delinquent debts before he filed Chapter 13 bankruptcy in January 2015. He indicated a plan was approved in March 2015, but he did not provide any documents to establish his compliance with it. He did not provide information about his current financial status. Applicant's debts are recent and ongoing. There is insufficient evidence to conclude future delinquent debts are unlikely to recur. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to a 2011 divorce and period of unemployment in 2013. These were conditions beyond his control. For the full application of AG ¶ 20(b), Applicant must demonstrate that he acted responsibly under the circumstances. He admitted he used credit cards during this difficult period of his life, but did not provide evidence of actions he took to pay or resolve these debts before filing bankruptcy. AG ¶ 20(b) partially applies.

Applicant included the debt in SOR ¶ 1.b in his bankruptcy. He completed the mandated credit counseling by the bankruptcy court. Applicant's debts have not yet been discharged. Documentary information was not provided to conclude he has been making consistent payments on his Chapter 13 payment plan. Because he did not provide sufficient information about his current finances, I am unable to determine if there are clear indications that his financial problems are being resolved or under control. AG ¶ 20(c) marginally applies.

Although bankruptcy is a legal means to address dire financial problems, without additional information about Applicant's past actions to address his legal obligations and whether he has made consistent payments on his Chapter 13 payment plan, I cannot make a determination as to whether Applicant's conduct constitutes a good-faith effort to repay overdue creditors. AG ¶ 20(d) 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 experienced financial problems in 2011 due to a divorce and later a period of unemployment. In early 2015 he filed Chapter 13 bankruptcy. He failed to provide sufficient evidence to show he is complying with the bankruptcy plan and his current financial situation. Even if Applicant is complying with the requirements of the Chapter 13 plan, he has not yet established a solid financial track record to conclude his financial problems will not recur. He failed to meet his burden of persuasion. 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:	Against Applicant
Subparagraphs 1.b:	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