



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 16-03163
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: *Pro se*

02/13/2019

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. At one time, after being unemployed for six months, he was past due on four student loans, past due on a home equity line of credit, and owed approximately \$15,500 for two medical debts. The line of credit against his home equity was paid when his house sold. He is current on the consolidation of his student loans. He has made sufficient progress toward resolving his past-due debts and delinquent obligations to continue his security clearance eligibility. Applicant’s eligibility for access to classified information is granted.

Statement of the Case

On December 4, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, and explaining why it was

unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him.¹

On January 9, 2017, Applicant answered the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On February 7, 2018, DOHA issued a Notice of Hearing scheduling a hearing that was conducted on February 26, 2018.

Five Government exhibits (Ex. 1-5) and two Applicant's exhibits (Ex. A and B) were admitted into evidence without objection. Records submitted by Applicant as attachments to his answer were considered. Applicant testified, as reflected in a transcript (Tr.) received on March 6, 2018. I held the record open after the hearing for Applicant to submit additional documents, which were received and admitted into the record as Ex. C – C-3.

While this case was pending a decision, the Director of National Intelligence issued Security Executive Agent Directive 4, establishing the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), which he made applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The new AGs supersede the Sept. 1, 2006 AGs and are effective “for all covered individuals” on or after June 8, 2017. Accordingly, I have evaluated Applicant's security clearance eligibility under the new AGs.²

Findings of Fact

In Applicant's answer to the SOR, he admitted the delinquent obligations (SOR 1.a -1.f), specifically admitting a \$15,149 (SOR 1.a) medical debt, which he had been told was covered by his health insurance, but later he learned the majority of the cost was not covered by his insurance. (Tr. 21) He admitted he owed four student loans (SOR 1.c -1.f) that were for his daughter's college education. The loans totaling approximately \$35,500 were \$2,572 past due. He denied being more than 120 days delinquent on a \$32,478 (SOR 1.g) home equity loan, which he asserted had been paid when he sold his home in June 2016. After a thorough review of the pleadings and exhibits, I make the following findings of fact.

¹ The DoD CAF took the action 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 for Determining Eligibility for Access to Classified Information* (AG) effective within the DoD on September 1, 2006.

² Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case. The new AGs are available at http://ogc.osd.mil/doha/5220-6_R20170608.pdf.

Applicant is a 64-year-old aircraft technical design engineer who has worked for a defense contractor since July 2015. (Ex. 2) He seeks a favorable security clearance determination. (Ex. 2) He is married and has a 31-year-old son, a 32-year-old daughter³, and a 36-year-old stepdaughter. (Ex. 2) His annual income, with overtime, is approximately \$110,000. (Tr. 44) His wife is not employed.

From November 2004 until January 2015, Applicant had worked as a contractor for an aircraft manufacturing company. From January 2015 through July 2015, he was unemployed due to company downsizing. (Tr. 43) In July 2015, he obtained a contractor's position with the same aircraft manufacturing company, but the position required him to move to a new state. (Ex. 2) As a result of the move, he sold his house and had to pay the cost of the 2,000 mile move. (SOR Response, Tr. 12).

In 2015, Applicant missed two or three mortgage payments on his loan for his previous residence and worked with the Making Home Affordable Program. (Ex. 3) For approximately a year, from July 2015 through June 2016, he was paying his \$800 mortgage at his old location and paying for a hotel at his new location, which left no extra money. (Ex. 3, Tr. 35) The SOR lists \$1,869 as being 120 days past due on a \$32,478 home equity line of credit. (SOR 1.g) In June 2016, he sold his home. (Ex. 3) All outstanding debts were paid at the time of sale, including the mortgage and equity line of credit. (Tr. 28, SOR Response) He received \$87,858 at the time of sale representing his equity in the home. (SOR Response)

Three months after he sold his previous home, Applicant purchased a new home at his new location. (Tr. 30) The home he purchased has been paid for in full. (Tr. 39) He asserted he has \$25,000 in savings and \$5,000 in his checking account. (Tr. 40) His vehicles are paid for and he has no loan payments apart from his payment on his consolidated student loan. (Tr. 40) His only large monthly expenditure is \$1,600 for health insurance. (Tr. 48)

In 2015, when Applicant was unemployed, he was unable to make student loan payments. The student loans were for his daughter's college education and had been obtained between November 2005 and October 2008. (Ex. 4) The loans totaling approximately \$35,500 were \$2,572 past due. In June 2017, he contacted the federal loan servicing company which serviced the student loans in order to consolidate the four loans. (Ex. C-3) The servicing company's February 2018 letter indicates he owed \$39,203 on the student loans with monthly payments of \$270. (Ex. C-1) At that time, he was zero days delinquent on the loan and had unpaid interest of \$57. (Ex. B) The student loan payment is automatically debited from his bank account. (Tr. 47) He asserts he has made his monthly payments in a timely manner since March 2017. (Tr. 37)

During his June 2016 enhanced subject interview, he stated his intention was to first buy a house and then establish a payment plan to resolve the student loan obligation. (Ex. 3) At that time, he believed he could pay off all of the student loans in three to five years. (Ex. 3)

³ At the hearing, Applicant stated his daughter was 24 year old and was living with him. (Tr. 23)

In March 2017, Applicant agreed to pay a financial repair company approximately \$600 over six months to assist him in restoring his credit profile and maximizing his credit score. (Ex. C-2, Tr. 46) He had one financial counseling session with the company. (Tr. 38) He had incurred a \$15,489 medical collection debt (SOR 1.a) when he had a stent inserted in the blood vessel going to his liver. (Tr. 44) He had medical insurance, and prior to the procedure had been told the medical procedure would be covered by his insurance. (Tr. 24) After the procedure, he learned most of the cost was not covered by his insurance. The medical debt no longer appears on his credit report. (Tr. 24, Ex. 6)

Applicant's November 2015 credit report lists the four past-due student loans, a past-due home equity line of credit, a past-due mortgage, and the medical collection debt (SOR 1.a \$15,489). (Ex. 4) It also list 18 accounts as being "paid as agreed." His August 2016 credit report lists a zero balance on his home equity line of credit and mortgage loan. (Ex. 4) The credit report lists the medical collection account, but does not list any amount as past due on the debt. (Ex. 5) His February 2018 credit report lists no collection accounts or any past-due amounts. (Ex. 6) The medical debt no longer appears as a debt on his February 2018 credit report. (Ex. 6) He asserted he paid the \$115 medical debt (SOR 1.b). (Tr. 27) The debt does not appear on either of his most recent credit reports. (Ex. 5, Ex. 6)

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 must be considered 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(a), the adjudication process is an examination of a sufficient period and a careful weight of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is known as the whole-person concept.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the 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, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or

mitigate facts admitted by 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.

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 of 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

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

Failure 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 or sensitive information An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed-upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

The SOR lists two medical collection accounts, \$2,572 as past due on four student loans, and \$1,869 past due on a home equity line of credit. AG ¶ 19 includes two qualifying

conditions that could raise a security concern and may be disqualifying in this case: “(a) inability to satisfy debts,” and “(c) a history of not meeting financial obligations.” The Government’s evidence and Applicant’s own admissions raise security concerns under AG ¶¶ 19(a) and 19(c). The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005)).

Four of the seven Financial Considerations 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, a death, divorce or separation, clear victimization by predatory lending practices or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

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

Applicant was \$1,869 past due on a \$32,478 home equity line of credit. In June 2016, the debt was paid when his house sold. At that time, he received almost \$88,000 in equity from the home sale. He purchased a new house that is paid in full as are his vehicles.

In 2015, Applicant was out of work for six months when his company downsized. He incurred moving expenses when he obtained a new job 2,000 miles away. For a year, until his house sold, he had to make his mortgage payments as well as paying for a motel stay. When he was unemployed, four student loans went past due. In May 2017, he consolidated the four loans and entered into an agreement whereby the monthly loan payment on the consolidated loans would be automatically deducted from his account. As of February 2018, there was no delinquency on the student loan debt. He asserts he paid the \$115 medical debt. Neither that medical debt, nor the larger medical debt appear on his most current credit report. His annual salary is \$110,000, and he has \$30,000 in his saving and checking accounts.

Applicant's November 2015 credit reports, listed the past due accounts and the two medical collection accounts, but also listed 18 accounts as being paid as agreed. That November 2015 credit report followed his six months of unemployment from January through July 2015.

AG ¶ 20(b) applies. Applicant's financial situation was compromised by his six months of unemployment and having to make his mortgage payments at his previous location while also paying for a motel stay at his new location. Loss of employment is a factor beyond his control as is having to relocate 2,000 miles for a new job. Additionally, he had a medical procedure to have a stent inserted into a blood vessel. Prior to the procedure, he was told the cost would be covered by insurance. After the procedure, he learned the majority of the cost was not covered by his insurance. Such a procedure is not elective surgery. It may not have been a medical emergency, but it did result in a debt that was largely beyond his control.

AG ¶¶ 20(c) and 20(d) apply. He received financial counseling, his home equity line of credit debt was paid, and he is current on the student loan payments. He initiated, and is adhering to, a good-faith effort to repay his past-due student loans. His income and amounts on deposit in his checking and saving accounts, indicate he has sufficient income and funds to resolve his debts, especially when he has no house or vehicle payments.

The medical debts do not appear on Applicant's current credit report. He has sufficient income and savings to address the medical debt should that debt be pursued by the creditor. There is no indication the creditor is pursuing the debt.

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(d):

- (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 common sense 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. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is 64 years old, and he has been employed by a DoD contractor as an aircraft engineer since July 2015. A security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. The largest of his obligations are the student loans. At one time the loans were past due, but have now been consolidated and he is current on his payment on the debt. Incurring student loans is seen as an obligation incurred to improve his daughter's life, with respect to future employment and career prospects, and, as such, are viewed differently than a debt obligation for a new car or credit card debt.

There is no indication in the record as to the status of the larger of the two medical debts. It is clear that the debt no longer appears on Applicant's credit report. There are numerous reasons why a debt may no longer appear on a credit report. However, there is no indication the creditor is pursuing collection of the medical debt. Should the creditor pursue collection, Applicant has sufficient income and savings to address the debt.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, DOD Manual 5200.02, and the AGs, to the facts and circumstances in the context of the whole person. The issue is not simply whether all the delinquent obligations have been paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(c)) Overall, the record evidence leaves me without questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated 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, Financial Considerations: FOR APPLICANT

Subparagraphs 1.a – 1.g: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

CLAUDE R. HEINY II
Administrative Judge