



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 17-01183
)
Applicant for Security Clearance)

Appearances

For Government: Nicholas T. Temple, Esq., Department Counsel
For Applicant: *Pro se*

09/24/2019

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On May 16, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on June 27, 2017, and requested a hearing before an administrative judge. After unsuccessful attempts to schedule the hearing, on January 30, 2019, Applicant changed his request to a decision on the written record in lieu of a hearing.

The Government's written case was submitted on April 10, 2019. 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 July 19, 2019. He responded to the FORM with a memorandum and documents that I have marked Applicant's Exhibits (AE) A through F. The case was assigned to me on August 21,

2019. The Government exhibits included in the FORM and AE A through F are admitted in evidence without objection. On August 23, 2019, I notified Applicant that I would reopen the record if he wanted to submit additional documentary evidence. I reopened the record upon his request. He did not submit any additional documents, but his e-mails contain additional information. They are marked AE G and admitted without objection.

Findings of Fact

Applicant is a 50-year-old employee of a defense contractor. He has worked for his current employer since 2009. He served on active duty in the U.S. military from 1986 until his general under honorable conditions discharge in 1994. He attended college for a period without earning a degree. He is married for the second time, but separated since about 2013. He does not have children. (Items 4, 5)

Applicant has a history of financial problems. He apparently resolved the problems he had in the 2000s. He attributed his recent problems to his marital separation, medical issues, and a significant reduction in his salary. (Items 2, 5-10; AE A)

The SOR alleges a mortgage loan that is in foreclosure; four defaulted student loans totaling \$18,445; two delinquent debts to banks totaling \$12,114; and a \$1,488 debt to a state. The SOR also alleges a \$5,756 debt (SOR ¶ 1.c) to the same bank as the \$7,406 debt alleged in SOR ¶ 1.h. I conclude these are duplicate allegations that allege the same debt. Applicant admitted owing all the non-duplicate debts, but he stated that he was paying some of the debts. (Item 2; AE A)

Applicant contracted with a credit counseling company in about 2016 to assist him in resolving his debts. The specifics of how long he was in the company's debt-management plan and how much he paid are unavailable. However, when he responded to the SOR in June 2017, he indicated that he had been paying debts through the plan for more than a year. (Item 2; AE A)

Applicant indicated in his June 2017 response to the SOR that he planned to use his income tax refund to pay his Department of Education student loans. It is unclear if anything was paid in 2017. However, in October 2018, the IRS withheld \$10,752 from his income tax refund and applied it to his student loans. The April 2019 credit report listed the total balance of the four student loans as \$9,756. In July 2019, the IRS withheld another \$8,675 from his income tax refund and applied it to his student loans. (Items 2, 7-10; AE A, C-E)

Applicant started payments to the state for the \$1,488 debt alleged in SOR ¶ 1.i in 2017. He paid the debt in full in November 2017. (Items 2, 7-10; AE A, B)

Applicant wrote in his June 2017 response to the SOR that he had been paying the debt alleged in SOR ¶ 1.h through the debt-management plan for about a year. He did not submit documentation of the actual payments, but the credit reports support his

assertion. The April 2016 credit report lists the balance of the debt as \$7,408. The three subsequent credit reports list the balance as \$5,756 in March 2017; \$4,584 in August 2017; and \$3,268 in April 2019. The evidence for the \$4,706 debt alleged in SOR ¶ 1.d is similar to the above. The balance in 2017 was \$4,706. In April 2019, the balance was \$3,647. (Items 2, 7-10; AE A)

Applicant bought a house for \$248,500 in 2007. The purchase was financed by a joint mortgage loan. It appears that the house was mainly for his wife to live in, as he has lived primarily in Japan since 2006. He lived in the house for about five months in 2008 to 2009, before returning to Japan. The creditor initiated foreclosure proceedings, but agreed to a short sale. The house was sold for \$229,458 in August 2018, which was less than what was owed on the mortgage loan. There is no indication that the creditor is seeking the deficiency owed on the loan. (Items 2, 4, 7-10; AE A, F)

Applicant stated that his finances are greatly improved. He plans to continue paying his debts. He will increase the payments to the two remaining consumer debts after the student loans are paid. He expects to be completely debt free within two years. (Item 2; AE A, G)

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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 national security eligibility will be resolved in favor of the 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.

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 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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable 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 to satisfy debts; and

- (c) a history of not meeting financial obligations.

Applicant has a history of financial problems, including delinquent debts and a foreclosed mortgage loan. The evidence is sufficient to raise the above disqualifying conditions.

SOR ¶¶ 1.c and 1.h are duplicate accounts. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005). SOR ¶ 1.c is concluded for Applicant.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

(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 financial 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 attributed his recent financial problems to his marital separation, medical issues, and a significant reduction in his salary. Those events were beyond his control.

Applicant has been paying his debts for several years. He paid the \$1,488 debt to the state in 2017. His four defaulted student loans have been reduced from \$18,445 to what appears to be less than \$1,200. The balances on his two consumer debts have been reduced from \$7,408 to \$3,268, and from \$4,706 to \$3,647. His mortgage loan has been resolved by a short sale. His finances are greatly improved. He plans to continue paying his debts. He expects to be completely debt free within two years.

Applicant's student loans were paid through a withholding of his income tax refunds. He does not receive as much credit in mitigation, as he would have if he paid them voluntarily. However, I also note that he did not change his withholding to lower the amount withheld from his paychecks.

A security clearance adjudication is not a debt-collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions

to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

I believe Applicant is honest and sincere in his intentions to address his remaining debts. I find that he has a plan to resolve his financial problems, and he took significant action to implement that plan. He acted responsibly under the circumstances and made a good-faith effort to pay his debts. The above mitigating conditions are sufficiently applicable to mitigate financial considerations security concerns.

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(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 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.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant 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, Guideline F:	For Applicant
Subparagraphs 1.a-1.i:	For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge