



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



In the matter of:)
)
) ISCR Case No. 17-03310
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: *Pro se*

06/28/2019

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations or the personal conduct security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On November 9, 2017, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. The DOD 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) effective on June 8, 2017.

Applicant answered the SOR on December 12, 2017, and he requested a hearing before an administrative judge. The case was originally assigned to another administrative judge in November 2018. It was reassigned to me on February 27, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 25, 2019, and the hearing was convened as scheduled on April 8, 2019. The Government offered

exhibits (GE) 1-8, which were admitted into evidence without objection. Applicant testified, called one witness, and offered one exhibit (AE A) that was admitted. The record remained open until May 17, 2019 (extended to June 14, 2019), to allow Applicant to submit documentary evidence. He offered AE B-E, which were admitted without objection. DOHA received the hearing transcript (Tr.) on April 30, 2019.

Findings of Fact

Applicant admitted some of the financial allegations and denied others. He denied the personal conduct allegations. His admissions are incorporated into these findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 38-year-old employee of a defense contractor. He began working at his present job in 2018. He worked for other government contractors before attaining his current position. He experienced periods of unemployment to include: December 2011 to April 2012; July 2012 to March 2013; and June 2013 to February 2014. He has been employed full-time since February of 2014. He works in the information technology (IT) field. He served in the Air Force from 1998 to 2008, when he was honorably discharged as a staff sergeant (paygrade E-5) for medical reasons. He deployed three times during his service. He has not completed his application for veterans' benefits from the VA. He is a high school graduate and has taken numerous college courses, but has not obtained a degree. He is married for a second time and has two stepchildren from this marriage. He supports an 11-year-old daughter from his first marriage. (Tr. 6, 20-23; GE1)

The SOR alleged 32 delinquent debts totaling approximately \$74,214. Of that total, over \$50,000 of the debt is for delinquent student loans. The debts were listed in credit reports from September 2016, August 2017, and April 2019. The SOR also alleged Applicant failed to list two liens, a judgment and multiple collection debts on his security clearance application (SCA) executed August 7, 2016, as he was required to do. (SOR ¶¶ 1.a – 1.ff, 2.a-2.b; GE 1, 3-4, 8)

Applicant's wife handles the family's finances. She does not work outside the home. Applicant provided documentation showing that the debts listed in SOR ¶¶ 1.j, 1.p, 1.r, 1.t, 1.z, 1.aa, 1.cc, and 1.ff were paid. Those debts are resolved. He also provided proof that the debt listed in SOR ¶ 1.b was resolved when the creditor cancelled the debt. He documented making payments to the IRS on the cancelled debt. The debts listed in SOR ¶¶ 1.l, 1.w, 1.bb, 1.dd, and 1.ee do not appear on Applicant's latest credit report and are resolved for him. (Tr. 38, 41-43, 45-47; 49-50, 53, 55-60; GE 4, 8; AE B-C, E)

The remaining non-student-loan debt includes two telecommunications collection accounts (SOR ¶¶ 1.n-1.o), which Applicant disputed, but provided no documentation supporting those disputes. Applicant admitted the debts listed in SOR ¶¶ 1.s, 1.u, 1.v and 1.x-1.y are still owed. He did not present proof of payment or payment plans. These debts are unresolved. (Tr. 43-45, 48-53)

Applicant incurred over \$50,000 of student loans after using all of his GI Bill educational benefits (SOR ¶¶ 1.a, 1.c-1.i, 1.k, 1.m, 1.q). These loans have been delinquent since April 2017. He claims to have spoken with the loan servicing agent, but he has no plan to repay the student loans except to seek what his wife described as additional deferments or a “zero dollar payment plan,” which apparently is a payment plan based upon the debtor’s income. These debts are unresolved. (36-37, 87-89; AE E)

Applicant is apparently using a budget, though none was produced, and he and his wife have enrolled in a financial management class offered by a well-known national financial expert. Applicant’s wife testified that at the end of the month, after all bills and expenses are paid, they typically have a residual of between \$50-\$100. (Tr. 61-62, 79; AE D)

Applicant presented six reference letters from current and former coworkers. All describe him as a trusted and competent professional who should retain his security clearance. (AE A)

Applicant failed to list his liens, a judgment, and other delinquent debts on his SCA, other than his child support obligations. His student loans were not yet delinquent when he completed his SCA. He claimed that he wanted to be able to explain his answers when completing his SCA, but was not allowed to do so by his company. His wife’s testimony supported that assertion. When Applicant was interviewed by a defense investigator, after completing his SCA, he was asked about whether he had any financial issues. Besides explaining his child support arrearage, he stated he was unaware of any other debt. He was then confronted with other debt listed in his September 2016 credit report. In his SOR answer, Applicant also claimed his memory is affected by brain injury he suffered while in the Air Force. He did not provide supporting documentation for this assertion. I did not find Applicant credible. (Tr. 66-67, 90-91; Answer; GE 1-2)

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(a), 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.” 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 EO 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 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

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

Applicant has delinquent debts that remain unpaid or unresolved. I find both the above disqualifying conditions are raised.

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, 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;
- (d) the individual initiated and is adhering to 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.

Although Applicant has resolved many of his debts, he still has not made arrangements to pay his delinquent student loans, which comprise over \$50,000 worth of his total debt. These debts are ongoing and cast doubt on his reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

Applicant's unemployment before 2014 can be considered a circumstance beyond his control. However, he failed to act responsibly in dealing with his student loans by establishing payment plans. Overall, the record evidence does not support that Applicant acted responsibly under the circumstances. AG ¶ 20(b) is only partially applicable.

Applicant presented some evidence that he intends to get financial counseling. Given the unpaid status of his student loans, Applicant's financial problems are not under control and good-faith efforts to pay or resolve the remaining debts are lacking. AG ¶¶

20(c) and 20(d) only partially apply. Applicant failed to document his asserted disputes of SOR ¶¶ 1.n-1.o. AG ¶ 20(e) is not applicable.

Guideline E, Personal Conduct

AG ¶ 15 expresses the personal conduct security concern:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying in this case. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant failed to list tax liens, a judgment, and multiple collection accounts on his SCA in August 2016. I did not find the reasons why he omitted this information credible. He had a chance to come forward with this information during his background interview with a defense investigator, but he failed to do so. Once confronted with the specific debts he admitted them. AG ¶ 16(a) applies.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered all of the mitigating conditions under AG ¶ 17 and found the following relevant:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully; and

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant failed to make a prompt good-faith disclosure during his background investigation. He claimed his company put pressure on him not to explain his answers when he completed his SCA. His actions did not constitute minor offenses and create doubt about his overall trustworthiness, reliability, and good judgment, and ultimately on his worthiness to hold a security clearance. AG ¶¶ 17(a) and 17(c) do not apply. Some evidence supports AG ¶ 17(b), however, Applicant did not fully cooperate until confronted during his background investigation.

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 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 relevant facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

I considered Applicant's federal contractor service, his military service including his deployments, and his periods of unemployment. However, I also considered that he has made insufficient efforts to resolve his student loans. He has not established a meaningful track record of debt management, which causes me to question his ability to resolve his debts. The evidence supports that he deliberately falsified his SCA.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the financial considerations or the personal conduct security concerns. I considered the exceptions under Security Executive Agent Directive (SEAD) 4, Appendix C, dated June 8, 2017, and determined they are not applicable in this case.

