



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



In the matter of:)
)
-----) ISCR Case No. 17-03643
)
Applicant for Security Clearance)

Appearances

For Government: Michelle Tilford, Esquire, Department Counsel
For Applicant: *Pro se*

03/28/2019

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On November 17, 2017, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations).¹ In a response notarized on January 29, 2018, Applicant addressed all allegations and requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. I was assigned the case on July 20, 2018.

On August 8, 2018, a notice setting the hearing for September 26, 2018, was issued. The hearing was convened as scheduled. The Government offered four exhibits (Exs.), noted as Exs. 1-4, and Applicant presented six exhibits, marked as Exs. A-F. With no objections, all exhibits were accepted into the record. Applicant was granted through October 10, 2018, to submit any additional materials. On October 10, 2018, a file of material was offered by Applicant and admitted without objection as Ex. G. The

¹ 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 (AG) effective within the DOD on or after June 8, 2017.

record was then closed. In the interim, the transcript (Tr.) was received on October 4, 2018. Based on the testimony, materials, and record as a whole, I find Applicant failed to mitigate financial considerations security concerns.

Findings of Fact

Applicant is a 37-year-old project manager who has been with his current employer for over four years. In 2013, he earned an associate's degree in business and administration. The father of four children, he is currently going through a divorce. Applicant has never received financial counseling. Over time, when the stress of being the sole provider in his home would impact him financially, he did not know how to try to work with his lenders. (Tr. 44-45) At issue in the SOR are 10 delinquent debts amounting to about \$10,000.

In 2013, Applicant graduated from college. He was scheduled to begin payments on his student loans (*SOR allegations 1.a-1.d and 1.f-1.g*) in 2014, but he did not have the financial means to do so. (Tr. 36-37) He wanted to go back to school, which would have deferred his existing student loans, but by then the loans were in default. He did not apply for forbearance or deferral because he was not aware of such programs. He did not contact his lenders to let them know he could not afford to pay. (Tr. 38)

By early 2016, Applicant began receiving bills from a collection agency for the lender. (Tr. 38) At that point, he decided to make inquiries concerning the debts. Applicant recalls making about four such payments on the loans in or by December 2017. At hearing, the parties agreed that there were at least two payments for \$50 each. (Tr. 39) Evidence was also presented indicating two additional payments were made in 2017, for \$15 and \$30, respectively. (Ex. G)

In March 2018, a primary lender contacted Applicant to inform him it now held his defaulted student loans. It gave him the opportunity to resume making payments, or to provide some information by which he and the lender could arrive at a mutually agreeable installment plan to make him eligible for loan rehabilitation or pay-off consolidation. (Tr. 39) It was suggested Applicant could make monthly payments of \$600, but Applicant was unable to pay that sum. A few months later, the loans again went into collection. At present, Applicant is waiting for paperwork to initiate the process of consolidation.

Also at issue are four other delinquent accounts (*SOR allegations 1.e, 1.h, 1.i, 1.j*) The parties agreed at the hearing that the debt at 1.j (\$290) was shown paid. (Tr. 44) In his post-hearing package, Applicant provided evidence of the following: The \$438 debt at 1.i was made subject to a settlement agreement and the final payment of \$131 paid in October 2018. The \$655 debt at 1.h was settled in full on or about October 1, 2018. Applicant testified that the \$5,592 debt at 1.e was made subject to a \$100-a-month repayment plan. A copy of that plan was not submitted, but documentary evidence of a \$100 payment from September 2018 was offered. (Ex. D)

Today, Applicant is living within his means. (Tr. 47) He only has one credit card with a small credit limit he rarely uses. At the end of the month, after all regular bills are paid, he has a remainder of between \$500-\$800 from a net monthly income of approximately \$5,000. He does not expect to suffer financially from his pending divorce. He has a retirement and a savings account. Once divorced, he will live with his parents.

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. 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 variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that any 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.

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. Decisions necessarily include consideration of the possible risk an applicant may deliberately or inadvertently fail to safeguard such information. Decisions shall be in terms of the national interest and do not question the loyalty of an applicant.

Analysis

Guideline F, Financial Considerations

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 or sensitive information.

Here, the Government offered documentary evidence reflecting that Applicant has numerous delinquent debts. This is sufficient to invoke financial considerations disqualifying conditions:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the inability to do so; and

AG ¶ 19(c): a history of not meeting financial obligations.

Four conditions could mitigate the finance-related security concerns posed here:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit counseling service, and there are clear indications that the problem is being resolved or is under control; and

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

There are multiple delinquent debts at issue, some dating back to after Applicant's 2013 college graduation. Applicant cites to no event out of his control that led him to acquire these delinquent debts; he only points to periods of time when being the sole-earner in his family was insufficient to meet all expenses. Applicant has not received financial counseling. He is, however, presently living within his means.

Applicant's credible testimony reflects that he has begun approaching the situation with his student loans in earnest. His protraction in addressing the matter, however, left him rushing to gather documentary evidence regarding plans to address the loans before, during, and after the hearing. At present, Applicant is waiting for paperwork to initiate the process of student loan consolidation. Otherwise, there is only documentary evidence of a couple of payments toward the loans made long ago.

The parties agreed at the hearing that the debt at 1.j (\$290) was previously paid. The debt at 1.i (\$438) was settled and paid in October 2018. The debt at 1.h (\$655) was settled in full on or about October 1, 2018. Applicant failed to offer documentary evidence, however, reflecting that the \$5,592 debt at 1.e was, in fact, put formally into a repayment plan under which he had developed a meaningful track record for repayment. At best, AG ¶ 20(d) applies.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of his conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d). Here, I have considered those factors. I am also mindful that, under AG ¶ 2(a), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

Applicant is a 37-year-old project manager who has worked for his current employer for over four years. He earned an associate's degree in business and administration in 2013. Married, but currently undergoing a divorce, he is the father of four children. Applicant acquired delinquent debt due to insufficient income, not through circumstances beyond his control. When faced with financial difficulties, he would not know where to turn or how to proceed. Applicant has never received financial counseling. At issue in the SOR are 10 delinquent debts amounting to about \$10,000.

Today, Applicant is living within his means, but his delinquent debts remain largely unaddressed. Only about \$1,400 of the total debt at issue has been satisfied, with two of those debts having been satisfied in October 2018, after the SOR issuance. He has apparently expended effort on resolving his student loan issues, but he delayed addressing those debts and the procedure to do so has been more protracted and onerous than expected, with scant evidence of how he should proceed available. Until more information and paperwork is received, Applicant remains in limbo. Meanwhile, the debt at 1.e for a sum in excess of \$5,000 lacks sufficient documentary evidence as to its status.

This process does not require an applicant to satisfy all his delinquent debts. It does, however, demand that one show he has implemented an appropriate scheme for addressing that debt, and documentation reflecting a meaningful track record of timely payment. Here, insufficient time has passed to provide such documentation. Consequently, financial considerations security concerns remain unmitigated.

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

Subparagraphs 1.a-1.g:

Against Applicant

Subparagraphs 1.h-1.j:

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 a security clearance. Eligibility for access to classified information is denied.

Arthur E. Marshall, Jr.
Administrative Judge