



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



In the matter of:)
)
) ISCR Case No. 18-00776
)
Applicant for Security Clearance)

Appearances

For Government: David Hayes, Esq., Department Counsel
For Applicant: *Pro se*

01/24/2019

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On May 4, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken 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 July 28, 2018, and requested a hearing before an administrative judge. The case was assigned to me on October 1, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 12, 2018. I convened the hearing as scheduled on November 6, 2018. The Government offered

exhibits (GE) 1 through 4. Applicant testified and did not offer any exhibits. The record was held open until November 20, 2018, to permit Applicant to submit documents. He timely submitted Applicant Exhibits (AE) A through D. There were no objections to any exhibits offered, and all were admitted into evidence.¹ DOHA received the hearing transcript on November 15, 2018.

Findings of Fact

Applicant admitted the allegations in the SOR ¶¶ 1.a through 1.c, 1.e, 1.g, 1.m, 1.o, and 1.q. He denied the SOR allegations in ¶¶ 1.d, 1.f, 1.h through 1.l, 1.n, and 1.p. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 44 years old. He earned an associate's degree and recently started working on a bachelor's degree. He has never been married. He has four children. He has twins who are 22 years old from a former relationship. He has two children ages 11 and 9-years-old from a former relationship who live with their mother. Applicant has been employed by a federal contractor since August 2016. He has been consistently employed and has not disclosed periods of unemployment.²

Applicant was previously employed by a state agency from August 2015 until August 2016. In January 2016, he was involved in a serious car accident while working. He did not collect unemployment benefits. He testified he did not receive any pay after the accident. He filed a claim for worker's compensation. During this time, he fell behind on his child support payments.³

Applicant testified he had to take his employer to court to receive compensation for his accident. He provided a copy of a settlement agreement with his employer administered through the compensation claims division of the state. The settlement agreement stated that it was a complete and final release, and waiver of all medical benefits which Applicant might be entitled from his former employer. The employer agreed to pay a lump sum of \$7,500, inclusive of attorney's fees and costs. It noted that Applicant understood that this payment would settle his entitlement to all classifications of medical benefits. It highlighted that the settlement specifically included any and all outstanding medical bills, either currently known or unknown to the parties, as well as outstanding medical bills owed to various entities that provided medical services incurred by Applicant as result of the accident. The agreement stated that Applicant agreed that he will be solely responsible for payment of such bills and holds the employer harmless from any liability. The indemnity portion of the claim was previously settled. Out of the \$7,500, Applicant

¹ Hearing Exhibit (HE) I is the exhibit list and II is the discovery letter. HE II is the exhibit list. HE III is Department Counsel's memorandum noting he had not objections to Applicant's documents.

² Tr. 19-25.

³ Tr. 23-25.

was to pay his attorney \$1,250 and other court fees. His net recovery was \$6,181. Applicant signed the agreement before a notary on July 28, 2018.⁴

Applicant stated that the medical debts in SOR ¶¶ 1.d, 1.f, 1.h, 1.i, 1.j, 1.k, and 1.n were to be paid by his employer. He explained that when his accident occurred he learned that the contract for medical insurance had lapsed and the state would pay only \$10,000 for his medical debts. He testified that his attorney told him his medical bills would be paid. He said he believed his medical bills were covered by worker's compensation. He used some of his settlement payment to pay child support.⁵

Applicant disputed the debts in SOR ¶¶ 1.h, 1.j, 1.k, 1.l, and 1.m on his October 2018 credit report. He testified he hired a law firm to dispute his debts. The credit report confirms that these accounts are being disputed. No determination was made as to the validity of the debts. Applicant testified that he paid the debt in SOR ¶ 1.m (\$329). I find in his favor on these debts. He testified that he paid the debt in SOR 1.p (\$200) and would provide documentation. He did not. This debt is not resolved.⁶

Applicant testified that he no longer has to pay child support as of March 2017 for his twin children. He said he is paying the arrearages owed (SOR ¶1.a-\$15,065). He said he was paying \$1,000 a month toward the amount owed. He provided a document that shows he made payments of \$244 twice in September 2018, four payments of \$244 in October 2018, and a payment of \$244 in November 2018. The document shows that as of November 2018, the total arrears owed is \$5,466. His intention was to complete paying this arrearage and then begin paying the arrearages for his other two children (SOR ¶ 1.c-\$12,313) and make the full payments. He provided a document from the state where they reside that shows the current balance of his arrearage is \$16,822. The document showed he made \$200 payments in April, May, June, August, September, and February 2017. In March 2017, he made two payments of \$200 and one payment of \$1,360. The child support order requires him to pay \$660 a month. He understands that each month he is deficient in amount of his payments. Applicant testified when he received his settlement payment, he paid about \$5,000 toward child support.⁷

Applicant provided a document to show he made a payment of \$107 in May 2018 for the debt in SOR ¶ 1.q (\$249). There is still a balance owed. He also provided a payment receipt showing that he made a \$50 and \$23 payment on the debt in SOR ¶ 1.e. The account lists a remaining balance of \$281. These debts are not resolved.⁸

⁴ Tr. 61-72; AE A. It was apparent from Applicant's testimony that he is confused about terms of his settlement.

⁵ Tr. 61-82.

⁶ Tr. 55-78.

⁷ Tr. 25-51; AE B. Applicant's children live in two different states.

⁸ Tr. 58-61; AE C.

In Applicant's October 2017 background investigation, he disclosed he purchased a vehicle in about 2011 and then could not afford the payments.⁹ He testified that the vehicle was repossessed (SOR ¶ 1.b-\$13,013) in 2014. He told the investigator that once he caught up on child support payments, he would pay \$20 a month on the repossessed vehicle. He testified that he contacted the creditor in August 2018 to see if the balance could be reduced. They did not respond. He has not contacted the creditor again. He intends to pay the debt in the future. The debt is not resolved.¹⁰

Applicant acknowledged the debt in SOR ¶ 1.g was for an apartment in which he lived with the mother of his younger children in about 2013 or 2014. When they separated, he broke the lease. During his background investigation, he told the government investigator that he would begin paying \$35 a month within 30 days to resolve the debt. He testified that he does not have the resources to pay this debt at this time, but had contacted the creditor and advised them he would pay it. He admits the debt in SOR ¶ 1.o has been delinquent since about 2015, and was not paid.¹¹ The debts in SOR ¶¶ 1.g and 1.o are unresolved.

The debts alleged in the SOR are corroborated by Applicant's admissions, documents, and credit reports from September 2017 and October 2018.¹²

Applicant testified that he is attending school so he can get a better job and earn more money. He has approximately \$41,000 in student loans that are deferred. He began incurring the student loans in 2008.¹³

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the 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

⁹ At the hearing, Applicant testified he purchased the vehicle in 2013 or 2014. GE 3, a September 2017 credit report shows the account was open in 2011.

¹⁰ Tr. 51-55. GE 2, 3, 4.

¹¹ Tr. 82-88; GE 2.

¹² GE 1, 2, 3, 4; AE A, B, C, D.

¹³ Tr. 88-97.

“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. 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. Directive ¶ E3.1.15 states 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 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

The security concern relating to the guideline 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. 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.

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

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

Applicant has numerous delinquent debts that began accruing in approximately 2013 and continue to date. He also has two child-support arrearages. 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 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.

Applicant attributed his financial problems to a serious accident that occurred in January 2016 while at work. There was a dispute about his medical coverage. Applicant

settled with his employer and received a payment. The settlement waived Applicant's claim regarding past or future medical debts. Applicant got behind on his child support payments during this period. However, prior to the accident, Applicant had other delinquent debts beginning in 2013 that he had not paid. Applicant's debts are recent and ongoing. AG ¶ 20(a) does not apply.

Applicant's accident was beyond his control. The issues with his employer's medical insurance coverage were also beyond his control. Applicant had numerous delinquent debts prior to his accident. Those were within his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant accepted a settlement agreement for his medical debts. He said he used some of the settlement to pay child-support arrearages. Some of his debts were incurred years before his accident. He did not provide sufficient evidence to show he is resolving most of his delinquent debt. He did provide some evidence to show he has made payments toward one child-support arrearage, but each month he is delinquent on the other. AG ¶ 20(b) has some application.

Applicant did not provide evidence that he has participated in financial counseling or that he established a budget from which to determine financial stability. There are not clear indications that the financial problems are under control. AG ¶ 20(c) does not apply. Applicant provided proof that he made two payments in September 2018 on the debt in SOR ¶ 1.e, but there is still a balance owed. He also provided proof that he made a partial payment on the debt in SOR ¶ 1.q in May 2018, but no further payments were made. As the result of Applicant's inconsistent payments, AG ¶ 20(d) does not apply to these debts. Applicant has been making consistent payments toward one child's support arrearages, indicating a good-faith effort to resolve that debt. AG ¶ 20(d) applies to SOR ¶ 1.a. He continues to be delinquent each month on his other child-support payments. AG ¶ 20(d) does not apply to the other debts.

Applicant disputed the debts in SOR ¶¶ 1.h, 1.j, 1.k, 1.l, and 1.m, which are reflected as such on his October 2018 credit report. AG ¶ 20(e) applies to these debts.

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 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(d) were addressed under that guideline, but some warrant additional comment.

Applicant is 44 years old. He has debts for a repossessed vehicle and early termination for a lease that occurred in approximately 2013 or 2014, before his accident. He agreed to a settlement from his employer which waived their responsibility to pay his past or future medical debts. He disputed some debts on his credit report. His child-support arrearages continue to be a concern. Although he stated that he intends to resolve his delinquent debts in the future, at this juncture, he has an unreliable financial track record. He has not met 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 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
Subparagraphs 1.a:	For Applicant
Subparagraphs 1.b-1.g:	Against Applicant
Subparagraphs 1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraphs 1.j-1.m:	For Applicant
Subparagraphs 1.n-1.q:	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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge