



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



In the matter of:)
)
) ISCR Case No. 18-00793
)
Applicant for Security Clearance)

Appearances

For Government: Mary Margaret Foreman, Esq., Department Counsel
For Applicant: *Pro se*

01/07/2019

Decision

BENSON, Pamela C., 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 April 22, 2017, Applicant submitted a security clearance application (SCA). On March 23, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. 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 Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*; and the National Security Adjudicative Guidelines issued by the Director of National Intelligence, effective within the DOD on or after June 8, 2017.¹

¹ GE 1, 3.

Applicant answered the SOR on April 11, 2018. He admitted SOR ¶¶ 1.g and 1.h. He denied SOR ¶¶ 1.a through 1.f, claiming “identity fraud.” He did not submit any documentation. He requested that his case be decided by an administrative judge on the written record in lieu of a hearing.²

On May 9, 2018, Department Counsel submitted the Government’s written case. A complete copy of the File of Relevant Material (FORM), containing six items, was mailed to Applicant on July 10, 2018. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant did not respond to the FORM. He did not object to Items 1 through 6, which I marked as Government Exhibits (GE) 1-6, and admitted into evidence. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on September 14, 2018.

Findings of Fact

Having thoroughly considered the evidence in the record, including Applicant’s admissions, I make the following findings of fact: Applicant is 36 years old. He has been employed full time with a Federal contractor since March 2013. He is divorced and has no children. He is requesting national security eligibility.³

Applicant reported two of the alleged SOR delinquent debts on his April 2017 SCA; the debt at ¶ 1.f, which he listed as “opened without his knowledge,” and the debt at ¶ 1.g, a delinquent medical account he overlooked and intended to pay. During his background interview conducted in December 2017, Applicant reported to the investigator that he had been a victim of identity theft that occurred in December 2016. At that time he was made aware that there were several accounts opened under his name that were delinquent. Applicant claimed these accounts were related to the identity theft and he would take action with the creditors and credit reporting agency to prevent additional fraudulent activity.⁴

Financial Considerations

The SOR alleges eight delinquent accounts totaling approximately \$21,463.00, which are supported by credit reports submitted by the Government.⁵ The record establishes the status of Applicant’s accounts as follows:

SOR ¶ 1.a alleges a credit card debt charged off in the amount of \$10,879. In his response to the SOR, Applicant denied this account and listed “Identity Fraud.” He

² GE 2.

³ GE 3.

⁴ GE 1, 3, 4.

⁵ GE 5, 6.

failed to provide any documentation to support his claim. This debt has not been resolved.

SOR ¶ 1.b is a credit card debt charged off in the amount of \$2,686. In his response to the SOR, Applicant denied this account and listed "Identity Fraud." He failed to provide any documentation to support his claim. This debt has not been resolved.

SOR ¶ 1.c alleges a credit card debt charged off in the amount of \$2,458. In his response to the SOR, Applicant denied this account and listed "Identity Fraud." He failed to provide any documentation to support his claim. This debt has not been resolved.

SOR ¶ 1.d alleges a credit card debt charged off in the amount of \$2,110. In his response to the SOR, Applicant denied this account and listed "Identity Fraud." He failed to provide any documentation to support his claim. This debt has not been resolved.

SOR ¶ 1.e is a credit card debt charged off in the amount of \$1,212. In his response to the SOR, Applicant denied this account and listed "Identity Fraud." He failed to provide any documentation to support his claim. This debt has not been resolved.

SOR ¶ 1.f alleges a delinquent account referred for collection in the amount of \$1,543. In his response to the SOR, Applicant denied this account and listed "Identity Fraud." He made the same assertion in his SCA. He failed to provide any documentation to support his claim. This debt has not been resolved.

Applicant admitted SOR ¶ 1.g, an unpaid medical account referred for collection in the amount of \$475. He did not provide any information to indicate that he is either paying, paid, or in the process of resolving this debt. This debt has not been resolved.

Applicant also admitted SOR ¶ 1.h, a utility account referred for collection in the amount of \$100. In his response to the SOR, Applicant listed that this account was paid. The debt is supported by a 2017 and 2018 credit bureau reports. Applicant failed to provide evidence to show that this debt is paid. The debt has not been resolved.

Department Counsel noted in her brief, in bold print, that: **"It is the Applicant's burden to mitigate the security concerns established by the disqualifying conditions above. In order to do so, the Applicant must provide documentary evidence..."** Despite the clear warning to Applicant, he did not submit any mitigating documentation within the 30-day time period after receipt of the Government FORM. He did not provide documentation sent to the credit reporting companies or creditors showing he disputed the negative entries. He did not provide copies of police reports documenting claims of identity theft. He did not provide information concerning a budget

or other information related to his financial obligations from which to determine his current financial circumstances.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG 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 "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 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 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 approximately \$21,000 of delinquent debt that is unpaid and unresolved, as shown on his credit reports. In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government’s obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

The above disqualifying conditions apply.

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.

There is insufficient evidence to apply any of the mitigating conditions. Applicant disputed six of the eight delinquent accounts alleged in his SOR due to claimed identity theft in about December 2016. Despite a clear statement to Applicant in the Government's brief, he did not provide any supporting documentation to verify his claim. Applicant has not provided any evidence to show that his disputes with creditors are legitimate, or provide proof of his communication with these creditors in an effort to resolve the fraudulent accounts. Applicant admitted responsibility for two debts (SOR ¶¶ 1.g-1.h), and he listed that the last account had been paid. He failed to provide any evidence to show that he is paying, resolving, or has paid either of those debts. There is no evidence to show Applicant received financial counseling or that he acted responsibly under the circumstances in dealing with his creditors.

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 those guidelines, but some warrant additional comment.

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 terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a position of trust with the Government. An applicant is not required to be debt-free, but is required to manage his finances to meet his financial obligations.

Applicant claims that he is a victim of identity theft. He failed to provide supporting documentation and he failed to demonstrate that he acted reasonably under the circumstances in dealing with his creditors. There is no showing by Applicant of any effort to pay, legitimately dispute, or otherwise resolve any of the financial security concerns. Applicant has not provided a financial plan or a detailed budget of his current financial circumstances.

Overall, the record evidence leaves me with doubts as to Applicant's good judgment, reliability as well as eligibility and suitability for a security clearance. Because protection of the national interest is the principal focus of these adjudications, any unresolved doubts must be resolved against the granting of eligibility to classified information.

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.h: | 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 national security eligibility. Eligibility for access to classified information is denied.

Pamela C. Benson
Administrative Judge