



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



In the matter of:)
)
) ISCR Case No. 18-00984
)
Applicant for Security Clearance)

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: *Pro se*

12/20/2018

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 15, 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 within the DOD on June 8, 2017.

Applicant answered the SOR on May 29, 2018, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM), and Applicant received it on July 10, 2018. He was afforded an opportunity to file objections and submit material in refutation,

extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 6. Applicant submitted a timely response and his exhibits are marked as Applicant's Exhibits (AE) A through D. There were no objections by Applicant or Department Counsel and all Items and exhibits and are admitted into evidence. The case was assigned to me on October 11, 2018.

Findings of Fact

Applicant admitted all of the SOR allegations except ¶ 1.e. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 35 years old. He served in the military from 2001 to 2005 and was honorably discharged in the paygrade E-3. He attended college at different times and earned an associate's degree in 2015. He married in 2002 and divorced in 2009. He remarried in 2010. He has four children, ages 16, 13, 10 and 9 years old, who live with him. He has another child from a relationship. He pays child support for this child.¹

Applicant was employed from approximately September 2015 until May 2017, when he was laid off. He was unemployed until August 2017, when he began work at a car dealership on commission. He disclosed he was also self-employed as a financial services advisor from May 2017. He attributes his most recent unemployment for his financial issues.²

Applicant's admissions and a consolidated credit report from January 2018 corroborated the SOR allegations. In his answer to the SOR, he stated that after being released from his management position, he was unable to make minimum payments on his debts due to insufficient income. He also stated that when he initially opened certain accounts, he had no intention of defaulting on them.³

In Applicant's response to the FORM, he explained he had previously paid his bills, showing he was financially responsible. He explained that he currently has \$73 a month to repay his delinquent debts. He intends to increase this amount to \$200 in April 2019. After January 2020 he intends to increase it to \$330 and in November 2021 to \$500. He expects all of his debts to be paid by February 2025. He provided a one-page document stating three steps on how to reduce debt. He provided another document listing his debts with proposed minimum payments and proposed payoff dates. He did not provide evidence that he has made any payment or a budget showing his other expenses, income, or ability to make the payments. He explained that his plan did not provide for potential settlement offers that would reduce the amount he would pay and expedite the

¹ Items 3, 4, 5.

² Items 3, 4, 5.

³ Items 3, 4, 5, 6; AE A.

process. He did not mention whether his proposed plan included providing for the amount of debt increasing due to interest.⁴

Applicant acknowledged the debt owed in SOR ¶ 1.a and explained it was for a repossessed vehicle, which he purchased in 2015. His car payments were \$709 a month. When he lost his job, he could not afford the payments. He attempted to trade the vehicle in for a less costly one, but due to the negative equity, he could not. He voluntarily returned the vehicle and then purchased a less expensive vehicle.⁵

Applicant provided a document from the IRS showing that he was entitled to \$5,410 income tax refund. The IRS involuntarily withheld \$1,855 from the refund and applied it to his delinquent child support debt in February 2018. It is unknown what Applicant did with the remainder of the refund.⁶

Applicant denied the debt in SOR ¶ 1.e stating that neither he nor his wife recognized it. It is listed on his credit report. He did not provide evidence of any action he may have taken to dispute it with the creditor or on his credit report.⁷

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (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 "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

⁴ AE A, C, D.

⁵ Items 3, 6; AE A.

⁶ AE B.

⁷ Items 3, 6.

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 is potentially applicable:

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

Applicant has 10 delinquent debts totaling approximately \$32,487. He was unable to pay his debts. 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 has numerous delinquent debts that are recent and ongoing. At this time, only one debt has been paid. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to losing his job in May 2017. This was beyond his control. Applicant has a plan to resolve his debts, but has not implemented it. He did not provide evidence that he has voluntarily made payments towards any of his delinquent debts. For the full application of AG ¶ 20(b), Applicant must have acted responsibly. AG ¶ 20(b) has some application.

There is no evidence Applicant has received financial counseling. Applicant provided a one-page document showing three steps on how to reduce debt. No other evidence was provided. AG ¶ 20(c) does not apply.

The delinquent child support debt alleged in SOR ¶ 1.f was satisfied through an involuntary withholding of a tax refund and application to the debt. This does not constitute a good-faith effort to repay a debt. AG ¶ 20(d) does not apply. The debt is resolved.

Applicant denies the debt in SOR ¶ 1.e, but did not provide evidence of his action to dispute the debt. AG ¶ 20(e) does not apply.

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 35 years old. His financial problems began when he lost his job in May 2017. He is unable to resolve his debts at this time. Although Applicant proposed a plan for how he was going to resolve his delinquent debts, he has not implemented it and has not made any payments. He did not provide evidence that he contacted his creditors and made payment arrangements. He did not provide evidence that he has made any payments towards any of his debts, except as previously noted about his child support payment. At this juncture, Applicant 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 all 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-1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g-1.j:	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