



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



In the matter of:)
)
) ISCR Case No: 18-01121
)
Applicant for Security Clearance)

Appearances

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

02/11/2019

Decision

DAM, Shari, Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns related to his history of delinquent debts. Based upon a review of the pleadings and exhibits, national security eligibility for access to classified information is denied.

Statement of Case

On April 30, 2018, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F (Financial Considerations). Applicant answered the SOR on June 25, 2018, and requested his case be decided by an administrative judge on the written record without a hearing (Answer). On July 27, 2018, Department Counsel submitted the Government’s written case. A complete copy of the File of Relevant Material (FORM), containing five Items, was mailed to Applicant on August 2, 2018, and received by him on August 16, 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 receipt of the FORM. Applicant did not submit a response to the FORM or object to the Government’s evidence. Items 1

through 5 are admitted into evidence without objection. The Defense Office of Hearings and Appeals (DOHA) assigned this case to me on December 13, 2018.

Findings of Fact

Applicant admitted the seven delinquent debts alleged in the SOR. (Item 1) His admissions are incorporated into these findings.

Applicant is 46 years old, a high school graduate, and never married. He has three children. He lives with his girlfriend. In January 2013, he began a position with a defense contractor. In June 2016, he submitted a security clearance application (SCA). (Item 2)

Based on credit bureau reports (CBR) from August 2016, and January 2018, the SOR alleged seven debts that became delinquent between 2010 and 2016, and totaled \$173,885. They included an automobile repossession, an unpaid credit card, two delinquent time-share debts Applicant purchased in 2006, an unpaid cell phone bill, and two delinquent student loans that he co-signed for his sister. (Items 4 and 5)

In September 2017, prior to the issuance of the April 2018 SOR, a government investigator interviewed Applicant about his delinquent debts. Applicant stated that he was no longer responsible for his sister's student loans. He said he had been paying the delinquent credit card for a period of time, but then fell behind. He thought the time-share debts were resolved because he no longer heard from the person who sold them to him and his girlfriend. He indicated that he was working with the cell phone company to resolve its debt. He said he was still making payments on it. He stated that he had not participated in credit counseling. (Item 3)

In his Answer, Applicant explained that he fell behind on his debts in 2016 after he was hospitalized for two to three weeks. He also noted that he was unable to pay all of his debts because his hours were reduced, and he was not working overtime at his last job. (Item 1)

Applicant did not include any evidence confirming his assertions that he was no longer responsible for the student loans or timeshares, or that any of the other debts had been resolved. He did not provide a current budget or other information related to his financial status from which to determine his current financial reliability or his ability to pay the large debts.

Policies

This case is adjudicated 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 *National Security Adjudicative Guidelines for*

Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position (AG), effective within the DOD on June 8, 2017.

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the pertinent AG. In addition to brief introductory explanations of the security concern, the guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person applying for national security eligibility seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information.

Analysis

Guideline F: Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.¹

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

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

Based on his admissions and CBRs, Applicant has a history of being unable to meet financial obligations, which began in 2010 and continues into the present. The evidence raises security concerns under the above disqualifying conditions, and shifts the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial problems. Five 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;

¹ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

(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, or 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 debt; 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 record evidence to establish full mitigation under any of the above mitigating conditions. The seven delinquent debts alleged in the SOR arose between 2010 and 2016 and remain unresolved. The evidence does not establish mitigation under AG ¶ 20 (a). Applicant attributed his financial problems to a hospitalization and reduction of work hours in 2016, which were circumstances beyond his control. However, that situation does not address delinquent debts that arose prior to 2016. He did not provide evidence that he attempted to responsibly manage his financial obligations. AG ¶ 20(b) partially applies. There is no evidence that Applicant participated in credit or financial counseling, and that his delinquent debts are being resolved and are under control. AG ¶ 20(c) does not apply. He did not provide evidence that he has made-good faith efforts to repay or resolve any debts. AG ¶ 20(d) does not apply. Although Appellant said he is no longer responsible for some debts, he did not submit evidence to prove his assertions and establish mitigation under AG ¶ 20(e).

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility by considering the totality of the applicant's conduct and all relevant 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent 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 a mature individual, who has been working for a defense contractor since 2013. During a September 2017 background interview, he discussed his delinquent debts. In the April 2018 SOR, the Government placed him on notice that his debts raised security concerns. After reviewing his Answer to the SOR, Department Counsel notified him in the FORM that he failed to submit sufficient documentation to address the status of the debts and to mitigate the financial allegations. Despite that notice, he did not provide evidence to confirm that he had resolved any of the debts, including the large student loans totaling over \$148,000. At this time, he has failed to present evidence of mitigation, including a track record of responsibly managing debts and financial obligations. He failed to meet his burden to mitigate the security concerns arising under the guideline for financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.g:	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 interest to grant Applicant access to classified information. National security eligibility is denied.

SHARI DAM
Administrative Judge