



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



In the matter of:)
)
) ISCR Case No. 18-01145
)
Applicant for Security Clearance)

Appearances

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

01/02/2019

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is granted.

Statement of the Case

On April 27, 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 23, 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 7, 2018. The Government offered

exhibits (GE) 1 through 4. Applicant testified and offered Exhibits (AE) A through E. There were no objections and the all exhibits were admitted into evidence. The record was held open until December 20, 2018, to allow Applicant to submit additional documents. He provided documents AE F through P, which were admitted without objection, and the record closed.¹ DOHA received the hearing transcript on November 16, 2018.

Findings of Fact

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

Applicant is 46 years old. He is divorced with no children. In 1994, two months after completing his bachelor's degree at a prestigious university, he enlisted in the Army. The Army paid his college student loans. He served as an Army Ranger and was honorably discharged in 2000 in the paygrade of E-6. He has been employed since approximately September 2014. He estimated his take-home salary is about \$66,000.²

Applicant was preparing to attend graduate school in 2001 when he was contacted by his former Army Ranger commander. The commander was soliciting former Rangers to reenlist after the 9/11 terrorist attacks. Applicant testified, he had a choice of going to graduate school or going back on active duty to serve his country. He chose the latter. He served from January 2002 until he was discharged in November 2007 in the paygrade E-7.³

While serving in the Army, Applicant was deployed to Iraq four times. He earned three Bronze Star Medals. His first Bronze Star was for service from July 2004 to November 2004. He was the senior communications soldier for Special Forces Group and participated in sensitive site exploitation and multiple sniper missions in support of the coalition operations within Al Fallujah and during the offensive in An Najaf.⁴

The second Bronze Star was for service from December 2005 to April 2006, as the communications chief for an operational base in Iraq, during Operation IRAQI FREEDOM. His unrelenting dedication, professionalism, and competence throughout the deployment led to successful command and control over 84 combat missions against time-sensitive mid to high-level targets. He deployed into insurgent-held territory with assault forces on 45 direct action raids in order to provide security for the command and control element and maintain communications. These raids resulted in the capture of 171 insurgents to include the successful rescue of an Iraqi General. He was chosen as the primary

¹ Hearing Exhibit (HE) I is Government Counsel's discovery memorandum. HE II through V are email correspondence and responses from Government Counsel noting there were no objections to any of Applicant's additional exhibits.

² Tr. 17-19, 21-23.

³ Tr. 19-23.

⁴ Tr. 23; AE A.

communicator for a combat search and rescue team supporting the visit to Iraq of the Vice President of the United States.⁵

The third Bronze Star is listed in Applicant's DD 214 discharge documents. He stated that he did not have a copy of the write-up and had ordered it from the military records repository, but had not received it before the record closed. He stated this Bronze Star was for running combat operations and intelligence assets. Other awards Applicant received were the Army Commendation Medal; Army Achievement Medal (three awards); Navy Unit Commendation Medal; Army Good Conduct Award (three awards); National Defense Service Medal; Armed Forces Expeditionary Medal; Global War on Terrorism Expeditionary Medal; Global War on Terrorism Service Medal; Iraq Campaign Medal; Non Commissioned Officer Professional Development Ribbon (third award); Army Service Ribbon; Combat Infantryman Badge; Special Forces Tab; Expert Infantryman Badge; Pathfinder Badge; Master Parachutist Badge; Senior Parachutist Badge; Military Free Fall Parachutist Badge; Basic Parachutist Badge; and the Royal Thai Army Airborne Wings.⁶ Applicant also received the Army Valorous Unit Award, the second highest unit award, given for extraordinary heroism in action against an armed enemy of the United States in a single action or short period of time. It is the unit award equivalent of earning a Silver Star for an individual action.⁷

After being discharged from active duty, Applicant resumed his education and attended graduate school from 2009 to 2011, earning a master's degree. He funded his post-graduate education through the GI Bill. Applicant was then accepted into a prestigious foreign university where he had the opportunity to complete his master's in business degree in one year. He chose this university because of the quality of education and because most domestic programs were two years long. Part of his tuition was funded through the GI Bill, but he also obtained student loans.⁸

Upon completion of his master's in business, Applicant returned to the United States and attempted to find a job. He testified that despite the publicity about hiring veterans, he was unable to find a job. He explained that many employers did not know how to interpret his military experience. He was unemployed for over 17 months. He worked in a factory earning minimum wage. He was forced to live a meager existence. He could not pay his student loans. He used credit cards to provide for his necessities. He contacted a military friend who took Applicant's resume to a former group commander and was hired as a government contractor and moved to the new location. He admitted he was overwhelmed by his debts. He testified he eventually realized he needed to get his life in order.⁹

⁵ AE A.

⁶ AE A, J.

⁷ AE A, L; HE VI.

⁸ Tr. 26-29.

⁹ Tr. 26-31, 42-43.

The debts alleged in the SOR are supported by Applicant's admissions and credit reports from October 2015 and March 2018.¹⁰

Applicant enrolled in a rehabilitation program for his student loan debt alleged in SOR ¶ 1.a. He now has an automatic monthly repayment plan where he pays \$499 a month, which began in November 2018. He is resolving his student loans.¹¹

The debts in SOR ¶¶ 1.b and 1.c are credit cards Applicant used when he was unemployed. He testified he paid them for as long as he could, but then could no longer afford to make the payments. He has since consolidated the debts and arranged automatic monthly payments of \$895. He began these payments in July 2018. He provided proof of payments.¹²

Applicant recently made arrangements with the creditor in SOR ¶1.d to make automatic monthly payments of \$300. He provided proof of the agreement.¹³

Applicant is looking for a second job as a consultant to supplement his income and expedite his repayment of his debts. He provided copies of outstanding evaluations from his job. He accepts full responsibility for failing to timely address his delinquent debts. He explained that in addition to his unemployment, he was overwhelmed with the amount he owed. He credibly testified that this debt has left a "stain" on his life and he committed to resolving it.¹⁴

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

¹⁰ GE 1, 2, 3, 4.

¹¹ Tr. 34-41; AE D, M, O, P.

¹² Tr. 31, 44-46; AE C, F, P.

¹³ Tr. 32-33. AE G, N, P.

¹⁴ Tr. 23, 40-41, 46; AE E.

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 delinquent debts and student loans that he failed to pay for several years. 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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant has several delinquent debts and student loans that are recent and ongoing. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to his inability to find a job commensurate with his education after completing his schooling. He was paid minimum wage and could not afford to pay his living expenses or begin to repay his student loans. Despite his veteran status and prestigious educational resume, it was not until he contacted a friend from the military that he was hired for a job that had better pay. These

were conditions beyond Applicant's control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly. He began working at a better paying job in late 2014. He did not begin to resolve his delinquent debts and student loans until 2018. He was understandably overwhelmed by the amount of money he owed, but did not act responsibly after he was employed. AG ¶ 20(b) has some application.

There is no evidence Applicant received financial counseling. AG ¶ 20(c) does not apply. Applicant is repaying all of the SOR debts. He completed a rehabilitation program for his student loans and has an automatic monthly payment arrangement. He also has automatic monthly payment arrangements for the other debts alleged in the SOR. AG ¶ 20(d) applies.

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 46 years old. He had difficulty finding a job after completing a post-graduate degree, accumulated credit card debts, and was unable to pay his student loans. I have considered his debts were not for living beyond his means, but rather for necessities. It is apparent that the amount he owed was overwhelming. Applicant now has payment plans for all of his debts and student loans and for more than minimal amounts. I found Applicant's testimony credible and believe he is committed to resolving all of his debts. I have given considerable weight to Applicant's interrupted career path and life choices made after 9/11 to serve our country, thereby postponing potential career opportunities. I do not believe that Applicant's finances are a security concern. He has

met his burden of persuasion. The record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated 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: FOR APPLICANT

Subparagraphs 1.a-1.d: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge