



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



In the matter of:)
)
-----) ISCR Case No. 18-01232
)
Applicant for Security Clearance)

Appearances

For Government: Raashid S. Williams, Esquire, Department Counsel
Andre Gregorian, Esquire, Department Counsel
For Applicant: *Pro se*

03/15/2019

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On May 4, 2018, the Department of Defense (DOD) Consolidated Adjudication Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct).¹ In a response notarized on June 4, 2018, Applicant admitted all but one of the allegations. He also requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. I was assigned the case on January 24, 2019.

A hearing originally scheduled for December 5, 2018, was cancelled due to inclement weather. A December 12, 2018, notice, setting the hearing for January 24, 2019, was issued. The hearing was convened as scheduled.

¹ 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 Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on or after September 1, 2006. Subsequently amended, the AG applied here are applicable for any adjudication on or after June 8, 2017.

The Government offered three documents, accepted into the record without objection as exhibits (Exs.) 1-3. Applicant gave testimony and proffered three exhibits, accepted without objection as Exs. A-C. The record was held open through February 8, 2019, so that additional materials could be offered. The transcript (Tr.) was received on February 5, 2019. With no supplemental materials received, the record was closed on February 8, 2019. Based on the testimony, materials, and record as a whole, I find Applicant failed to mitigate the security concerns.

Findings of Fact

Applicant is a 59-year-old data center technician who has worked for the same employer for about three years. He is currently earning about \$68,000 a year. He came to that job in 2015, after a colleague helped him find a new position when his former job's salary was cut from \$86,000 a year to \$40,000 due to a contract renegotiation. He has maintained some level of security clearance since 1992. Applicant completed two years of college before earning a degree from a technical school as an electronic technician. Widowed over a decade ago, he has two grown children: a son, currently supported in part by Applicant while he completes college, and a daughter, who has completed college and presently living at home. (Tr. 14)

In the past several years, Applicant has acquired debts which have become delinquent. He experienced a period of unemployment from May 2013 to September 2013.² He has been trying to earn supplementary income by driving for a car service part time. (Tr. 18) Because he has owned his home for 25 years, he has built up notable equity. He is in the process of refinancing the home in order to satisfy the debts at issue. (Tr. 18-19) No documentary evidence of negotiations related to this effort was presented. The debts at issue in the SOR are:

1.a – Student loan collection account (\$17,744) – *Unpaid*. Applicant promised his late wife that he would make sure their children were educated. Applicant took special care to make sure his daughter went to college because she has a learning disability. (Tr. 17) Applicant took this loan for her education between 2010 and 2012, and ultimately another loan for his son. Applicant reported that he has spoken to the lender about his financial situation and his strategy for resolving his debt, he but provided no documentary evidence reflecting such communication. (Tr. 19-20) The loan balance remains unaddressed. (Tr. 18)

1.b – Charged-off account (\$8,063) – *Unpaid*. This credit card debt was incurred when Applicant's children were in college. The last activity on this account was from 2013, the year Applicant's son started college. Applicant does not recall the circumstances under which this debt became delinquent. (Tr. 23) He is hoping to address this debt with his home refinancing proceeds as well. (Tr. 23)

² This was Applicant's most significant period of unemployment. He had shorter lapses of unemployment between contracts over his career that "lasted no more than approximately a month or two." (Tr. 36)

1.c – May 2015 judgment related to a pest control service (\$1,043) – *Unpaid*. Applicant testified that he made two \$150 payments in mid-2018 toward this delinquent debt, but was unable to provide documentation to that effect.

1.d – Telecommunication collection account (\$1,712) – *Unpaid*. This debt is related to a cell phone service plan from about 2013. The charges on the phone had become unwieldy. When this provider would not reduce his charges or his terms, he accepted an offer from another company which said it would “take care” of this bill. (Tr. 32) He believed this satisfied the balance. Only later did he learn the balance was still owed. The debt remains unpaid. (Tr. 33)

1.e – Collection account (\$6,185) – *Unpaid*. This account is related to a timeshare property for which Applicant used to pay \$240 a month. It was acquired in about 2003 or 2004. Applicant testified that he has been paying on this delinquent debt balance since 2017 through payroll deductions. (Tr. 38) Applicant provided no documentation reflecting such deductions or payments.

1.f – Medical collection (\$135) – Applicant believes this may actually be related to a jewelry store account. He thought the debt was paid, but failed to provide any documentary evidence reflecting that status.

In May 2016, Applicant executed an Electronic Questionnaire for Investigations Processing (e-QIP). He answered “no” in response to “Section 26 – Financial Record – Delinquency Involving Routine Accounts Other than previously listed, have any of the following happened? . . . In the past seven (7) years, you defaulted on any type of loan? . . . In the past seven (7) years, you had bills or debts turned over to a collection agency? . . . In the past seven (7) years, you had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed?” He similarly answered “no” in response to “Section 26 – Financial Record – Delinquency Involving Enforcement Other than previously listed, have any of the following happened to you? . . . In the past seven (7) years, you had a judgment entered against you?” As noted above, the answer to both queries should have been “yes,” as Applicant later admitted in his SOR response.

With regard to the first inaccurate answer, Applicant’s explanation was that he was “terrified” about his debts and “made a bad error in judgment,” for which he humbly apologizes. (Tr. 41) He was “overwhelmed and scared at the time [that he would lose his security clearance and job]. . . .” (Tr. 45) He remains worried about his poor judgment in this matter. With regard to the second inaccurate answer, however, Applicant “didn’t really know what a judgment is. . . . I had no idea really.” (Tr. 45)

Currently, Applicant earns a net monthly income of about \$3,600 a month. He continues as a part-time driver intermittently, which can supplement his income with an additional \$300-\$400 a month. Such surplus funds are generally applied to everyday needs, such as groceries. (Tr. 44) He is current on his mortgage payments. He expends a lot of money on prescription co-pays due to health problems including diabetes, high blood pressure, and optical issues. After he pays all of his monthly bills, he retains some

money “every blue moon,” which he sends to his son. (Tr. 49) His daughter helps contribute toward household expenses. Applicant has about \$50 in his savings account and no retirement or 401k retirement account. He has not received financial counseling. Applicant concedes that he is living paycheck to paycheck. (Tr. 57)

A co-worker and friend of Applicant noted that Applicant is dedicated to his job and this country. He cited Applicant’s commitment to his children and his child mentoring as a coach. He applauded Applicant’s resilience over the past few years with regard to his fluctuations in salary. (Ex. A) A former supervisor of Applicant’s noted that Applicant’s friendly and energetic personality helped keep his grueling workdays positive and upbeat. (Ex. B) He further wrote that Applicant is personable, pleasant, honest, and a “stand-up guy”. (Ex. B) Another colleague expressed that Applicant is a trustworthy and able professional capable of safeguarding information. (Ex. C)

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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 after a conscientious scrutiny of a number of variables known as the “whole-person concept.

The protection of the national security is the paramount consideration. Any doubt concerning personnel being considered for national security eligibility and 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 record evidence. Under the Directive, the Government must present evidence to establish controverted facts alleged in the SOR. Under the Directive, 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 to obtain a favorable security decision.

A person seeking access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. This relationship transcends normal duty hours. The Government reposes a high degree of trust and confidence in those to whom it grants access to classified information. Decisions include consideration of the possible risk an applicant may deliberately or inadvertently fail to safeguard classified information. Decisions are in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant.

Analysis

Guideline F, Financial Considerations

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that failure or inability 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.

Here, the Government offered documentary evidence reflecting that Applicant has numerous delinquent debts and an adverse judgment. This is sufficient to invoke financial considerations disqualifying conditions:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the inability to do so; and

AG ¶ 19(c): a history of not meeting financial obligations.

Four conditions could mitigate the finance related security concerns posed here:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit counseling service, and there are clear indications that the problem is being resolved or is under control; and

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

There are multiple delinquent debts at issue. There is no documentary evidence reflecting any payments made, or efforts to settle or address any of the debts at issue in the SOR. While a part-time job was an effective way to increase his income to some degree, the proceeds from that job were used to pay for everyday expenses, not pay

down delinquent debt. Regardless, I find AG ¶ 20(b) applies in part with regard to the creation of these delinquent debts noted in the SOR.

With regard to the actual delinquent debts at issue, they have been neglected or unaddressed for some time. His assertion that he made a couple of payments on the debts at 1c and 1.f, and was in repayment through payroll deduction on the debt at 1.e was not substantiated by documentary evidence. Moreover, there is no documentary evidence reflecting that his plan to satisfy these debts by refinancing his home has been implemented or is financially manageable. Without such documentation, none of the available mitigating conditions apply.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified or sensitive information.

Here, Applicant failed to disclose delinquent accounts and an adverse judgment on his eQIP. Therefore, if Applicant's answers were intentionally false or meant to mislead or misrepresent, the following disqualifying condition could apply:

AG ¶ 16(a) deliberate omission, concealment or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant admitted that he provided a false answer with regard to eQIP Section 26 – Financial Record – Delinquency Involving Routine Accounts because he was scared. While he has most contritely apologized, he remains scared about his false answer, an issue he did not immediately correct. This admission raises AG ¶ 16(a) and, given the facts here, obviates application of any of the mitigating conditions at AG ¶ 17. However, he was very credible in his admission that he was then unaware of what a judgment was, leading him to a negative answer with regard to Section 26 – Financial Record – Delinquency Involving Enforcement on the eQIP. In finding no falsity or intent to mislead in this answer, I find that AG ¶ 16(a) does not apply to allegation 2.b.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of his conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d). Here, I have considered those factors. I

am also mindful that, under AG ¶ 2(a), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

Applicant is a 59-year-old data center technician who has worked for the same employer for about three years, currently earning about \$68,000 a year. He came to that job in 2015, after suffering a large drop in income (from \$86,000 to \$40,000) due to a contract renegotiation. He has maintained some level of security clearance since 1992. Applicant completed two years of college before earning a degree from a technical school. He is a widower with two grown children. He occasionally helps his son financially when he can. His son is away at college and his daughter, a college graduate, currently lives with him and contributes toward household expenses.

The main source of Applicant's financial distress is hard to determine, but meeting his promise to his late wife to make sure the children were college educated has taken an economic toll. At present he owes about \$35,000 in delinquent debts, nearly half of which is comprised of delinquent student loans. Applicant believes he has made some payments on at least three of the six accounts at issue, but he provided no documentary evidence reflecting such efforts. While he has devised a plan to address his debts by seeking a home refinance, no documentation was provided reflecting such a plan has been initiated, implemented, or is manageable. Meanwhile, Applicant has conceded that he is presently living paycheck to paycheck. Consequently, it is unclear how any efforts to address these delinquent debts might be initiated in the near future.

Applicant contritely confessed that he misrepresented the truth on his 2016 eQIP when he denied having had any bills or debts turned over to collection, charged off, or in default in the preceding seven years. Under the facts offered, this falsity cannot be mitigated. However, his denial of having any adverse judgments against him in the same time period was based on confusion and not an intent to mislead. Taking all these factors together, I find that Applicant failed to mitigate both financial considerations and personal conduct security concerns.

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.f:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For 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 a security clearance. Eligibility for access to classified information is denied.

Arthur E. Marshall, Jr.
Administrative Judge