



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



In the matter of:)
)
) ISCR Case No. 18-01518
)
Applicant for Security Clearance)

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: *Pro se*

02/05/2019

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations. He failed to provide sufficient documentation to establish mitigation with respect to his delinquent consumer debts and student loan. National security eligibility for access to classified information is denied.

Statement of the Case

On June 13, 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 Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (December 10, 2016), implemented effective June 8, 2017.

Applicant submitted an Answer to the SOR on August 25, 2018 (Answer), and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted its file of relevant material (FORM) on September 6, 2018. Applicant received it on September 14, 2018. The Government's evidence is identified as Items 1 through 6. 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 submitted no response to the FORM. Items 1 through 6 are admitted into the record. The case was assigned to me on January 16, 2019.

Findings of Fact

Applicant admitted all of the allegations in the SOR, with clarifications. Applicant's April 2017 security clearance application (Item 3), and the credit reports dated June 1, 2017 and April 17, 2018, establish the allegations. (Item 5; Item 6.) After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is 43 years old. He earned an associate's degree in 1995, and financed that education with student loans. He is unmarried, but has one minor child from a previous relationship. He has worked for his current employer, a government contractor, since January 2017. He was employed by a different government contractor from October 2013 to January 2017. He was laid off from his previous employer in October 2017. However, it is unclear from the record how long Applicant was unemployed. He also experienced a period of unemployment in March 2009 through May 2010 due to his employer closing his place of employment. (Item 3.)

Applicant is indebted on a delinquent student-loan account in the amount of \$18,266, as stated in SOR ¶ 1.a. Applicant attributed his inability to resolve this debt to his layoff. Applicant's August 2018 credit report reflects Applicant made a \$719 payment on this account in February 2018, but that no further payments had been made through August 2018, despite being employed during that time. This debt is unresolved. (Answer.)

Applicant is indebted on a collection account in the amount of \$529, as stated in SOR ¶ 1.b. Applicant identified this debt as a credit-card account on his security clearance application. This debt has been delinquent since May 2017. He explained that he was living "paycheck to paycheck" and planned to resolve the debt "as [he] just got a good job." (Item 3.) In his Answer, he asserted this debt "has fallen off [his] credit report." It does not appear on his August 2018 credit report. However, he failed to resolve the debt in a responsible manner. (Answer; Item 3; Item 5.)

Applicant is indebted on a delinquent child-support account in the amount of \$206, as stated in SOR ¶ 1.c. On his security clearance application, Applicant explained that he fell in arrears on his child-support obligation when unemployed in 2009 to 2010. He indicated he was resolving the arrears through payments of \$84 per month. The August 2018 credit report that accompanied his Answer reflected Applicant made regular payments on this debt from August 2016 through July 2018. Applicant is resolving this debt. (Answer; Item 3.)

Applicant was indebted on a collection account in the amount of \$66, as stated in SOR ¶ 1.d. This debt was incurred after Applicant moved out of an apartment he previously leased. Applicant's August 2018 credit report reflects this debt is "paid, closed." It is resolved. (Answer; Item 3.)

Applicant is indebted on a collection account in the amount of \$280, as stated in SOR ¶ 1.e. This debt became delinquent in 2016. On his security clearance application, Applicant explained that this was for a cell phone bill that he incurred when he "switched lines." (Item 3.) He indicated he attempted to resolve this account. However, it remains unresolved. (Item 5.)

Applicant is indebted on a collection account in the amount of \$198, as stated in SOR ¶ 1.f. This debt has been delinquent since 2011. On his security clearance application, Applicant explained that he fell into arrears on this cable bill, but planned to pay it off soon. In his Answer, Applicant explained that this debt "dropped off" his credit report. It is unresolved. (Answer; Item 3; Item 5.)

Applicant is indebted on a collection account in the amount of \$174, as stated in SOR ¶ 1.g. This debt was for another delinquent phone bill. It was placed for collections in 2015. Applicant's August 2018 credit report reflects this debt remains past due. (Answer.) It is unresolved.

Policies

When evaluating an applicant's national security eligibility, 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 AG ¶ 2 describing 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 states 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 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.

Finally, Section 7 of EO 10865 provides that adverse 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 under the financial considerations guideline 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 accumulated approximately \$20,000 in delinquent debt. His debts became delinquent between 2009 and present. Despite being fully employed since 2017, he has taken little action to address the majority of liabilities. There is sufficient evidence to establish disqualification under AG ¶¶ 19(a) and 19(c).

The guideline also includes conditions that could mitigate security concerns arising from Applicant's 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 been unable to meet all of his financial obligations. There is no evidence that he will be able to avoid delinquent accounts in the future, despite obtaining a higher-paying job in 2017. He remains indebted on his student loans and several consumer accounts. His debt is ongoing. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to unemployment and underemployment. These were circumstances beyond his control. However, he failed to provide evidence that he addressed his remaining delinquent accounts in a reasonable and responsible manner once he was hired by his present employer at a higher income. He is credited with his payments on his child-support obligation, a \$719 payment on his student loan, and with the resolution of his \$66 collection account. However, his failure to continue to make payments on his largest debt, the student loan, suggests that he is not

acting responsibly under the circumstances. Mitigation under AG ¶ 20(b) is not fully established.

Applicant provided no documentation of financial counseling. The record lacks evidence to suggest that his financial problems are under control, as there is no evidence of a payment on his largest debt since February 2018 and four other debts remain unresolved. While he has documented payments on his child-support arrearage and one consumer debt, the evidence does not establish full mitigation under AG ¶¶ 20(c) or 20(d).

Applicant did not claim to dispute any of his alleged delinquencies. He admitted all of the allegations on the SOR, despite noting that some of his debts no longer appear on his credit report due to the passage of time. 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 national security eligibility 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 pertinent facts and circumstances surrounding this case. Applicant is credited with his payments on his student loan and one consumer debt. However, he failed to present evidence of a developed track record of repayment. He may be eligible for national security eligibility in the future if he is able to document reasonable and responsible actions to maintain solvency. 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.

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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 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.

Jennifer I. Goldstein
Administrative Judge