



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



In the matter of:)
)
) ISCR Case: 18-01577
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis, Esquire, Department Counsel
For Applicant: *Pro se*

06/06/2019

Decision

WHITE, David M., Administrative Judge:

Applicant owed more than \$38,500 in delinquent consumer debts. He settled one small credit card account for 45% of the balance due, but demonstrated insufficient efforts or means to resolve his remaining delinquencies or establish rehabilitation. Resulting security concerns were not mitigated. Based upon a review of the pleadings and exhibits, national security eligibility is denied.

Statement of Case

On March 2, 2017, Applicant submitted an electronic questionnaire for investigations processing (e-QIP). (Item 4.) On June 18, 2018, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F: Financial Considerations. (Item 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, that became effective for all Executive Branch agencies on June 8, 2017.

Applicant answered the SOR on July 6, 2018, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 3.) Department Counsel submitted the Government's written File of Relevant Material (FORM), containing eight Items. A complete copy of the FORM was mailed to Applicant on October 24, 2018, and received by him on November 1, 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 his receipt of the FORM. Applicant requested an extension of time to submit his written FORM response until December 17, 2018, and that extension was granted by Department Counsel. Applicant did not submit any other material in response to the FORM, did not file any objection to its contents, and did not request additional time to respond beyond the extended deadline of December 17, 2018. Items 1 through 8 are admitted in evidence.

Findings of Fact

Applicant is 39 years old and married, with twin children who were born in January 2014. He earned a high school diploma in May 1998, and a bachelor's degree from an online university in May 2015. He has been employed by a defense contractor since April 2014, and is seeking to continue the security clearance he has held since 2007 during his employment with several defense contractors. He was honorably discharged in February 2007, after serving for almost eight years in the Marine Corps Reserve. (Item 4.)

Applicant admitted owing the four delinquent credit card and consumer loan debts alleged in SOR ¶¶ 1.a, 1.c, 1.d, and 1.e. These unpaid accounts totaled \$23,361; were opened by Applicant between September 2014 and March 2015; and became delinquent in 2016 or early 2017. (Items 3, 4, 5, 7.)

The fifth SOR-alleged debt (¶ 1.b) involved a contract that Applicant signed in March 2015 for a loan to purchase a car. He denied responsibility for repayment of the loan because, on some unspecified date, another person had "established a simple contract" with him to take possession of the car and make the remaining loan payments. Applicant asserted that this undocumented agreement absolved him of his contractual responsibility to the seller. However, the other person stopped making the loan payments in May 2016, then returned to live with his family in Mexico. The accident-damaged car was eventually located by the lender and repossessed. Applicant offered no evidence that the creditor, from whom he borrowed money to buy the car, agreed to absolve him of his contractual obligations. The charged-off past-due balance of \$15,231 remains unresolved and actively listed on Appellant's most recent credit report. (Items 3, 5, 7.)

On July 5, 2018, the day before submitting his response to the SOR, Applicant made a payment of \$608.68 to the collection agency that had acquired the charged-off delinquent \$1,352 credit card debt from his original major-bank creditor. Applicant opened this account in January 2015, and stopped making his required payments in September 2015. The collection agency accepted Applicant's partial payment in full satisfaction of the debt, which was alleged in SOR ¶ 1.d. This debt is now resolved. (Items 1, 3, 5, 7.)

Applicant attributed his delinquencies to financial strains arising out of his November 2014 marital separation. However, he failed to describe or document any causal relationship between that separation and the debts. He opened the largest unsecured personal loan debt (\$17,149 alleged in SOR ¶ 1.a) in December 2014, which was after the separation had already occurred. His second largest delinquency (the \$15,231 charged-off car loan alleged in SOR ¶ 1.b) was opened in March 2015, some four months after the separation. On his March 2, 2017 e-QIP, Applicant reported his marital status as, "Separated," since, "11/11/2014 (Estimated)." However, he also reported that he had resided in the home he owns since June 2010, which has the same address at which he reported his wife and two children were then living. Applicant provided no evidence of extra expenses from maintaining separate residences, of other costs beyond his control, or of reasonable action to manage such issues. (Item 3.)

Applicant did not document any financial counseling. He did not submit budgetary income or expense figures from which to analyze his future ability to meet family living expenses while resolving his delinquencies. Applicant offered no evidence concerning the level of responsibility his duties entail in his defense contractor work, or his track record with respect to handling sensitive information and observation of security procedures. I was unable to evaluate his credibility, demeanor, or character in person, since he elected to have his case decided without a hearing.

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) 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, "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

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.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *a/so* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to 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.

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

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant incurred more than \$38,500 in consumer debts in late 2014 and 2015 that he stopped paying in 2016 and 2017, despite earning his regular income during and since this period. He provided insufficient explanation or financial information to clarify whether this irresponsibility stemmed from inability or unwillingness to pay these

voluntarily assumed obligations. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate the resulting security concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's admitted financial difficulties:

- (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, 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 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's history of delinquent debt over the past five years is substantial, and his financial irresponsibility is ongoing. His failure to demonstrate substantial progress toward resolving four of the SOR-alleged debts in a meaningful way creates ongoing concerns about his reliability, trustworthiness, and judgment. He offered no reasonable basis to conclude that such problems will not continue or recur. Mitigation was not established under AG ¶ 20(a).

Applicant did not show that either his temporary marital separation or his delinquent debts arose from circumstances beyond his control. Nor did he demonstrate that he acted responsibly under such circumstances, as required for mitigation under AG ¶ 20(b).

Applicant offered no evidence of financial counseling or budget information establishing his solvency going forward. He failed to demonstrate that these problems, in aggregate, are being brought under control; or that a good-faith effort toward resolution has actually been undertaken. After receiving the SOR, he spent \$608.68 to settle a

delinquent credit card debt of \$1,352. That debt is mitigated. His attempt to dispute his ongoing liability for the car loan he opened in 2015 (SOR ¶ 1.b) was neither reasonable nor substantiated by any documentation. Whether believed or not, this proffered explanation casts serious doubt on Applicant's judgment in either event. Accordingly, he did not establish meaningful mitigation of the security concerns under the provisions of AG ¶¶ 20(c), 20(d), or 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. Applicant is a mature adult, who is accountable for his choices. He continues to owe more than \$37,000 in delinquent debt, and has no meaningful track record of being able to resolve them or avoid new problems. The potential for pressure, exploitation, or duress remains undiminished, and rehabilitation was not demonstrated. Overall, the evidence creates significant doubt as to Applicant's judgment, reliability, eligibility, and suitability for a security clearance. He failed to meet his burden to mitigate the security concerns arising under the Financial Considerations guideline.

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

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant a security clearance. National security eligibility for access to classified information or to hold a sensitive position is denied.

DAVID M. WHITE
Administrative Judge