



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



In the matter of:)	
)	
)	ISCR Case No. 18-01744
)	
Applicant for Security Clearance)	

Appearances

For Government: Allison Marie, Esq., Department Counsel
For Applicant: *Pro se*

01/15/2019

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 debt. National security eligibility for access to classified information is denied.

Statement of the Case

On July 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 8, 2018, 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 August 27, 2018. Applicant received it on September 10, 2018. The Government's evidence is identified as Items 1 through 7. 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 7 are admitted into the record. The case was assigned to me on January 8, 2019.

Findings of Fact

Applicant admitted all of the allegations in the SOR. The credit reports dated May 17, 2018, and July 13, 2016, establish the allegations. (Item 6; Item 7.) After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is 50 years old. He served honorably in the Air Force from 1988 to 2008. He is married to his second wife. He has one adult child, two teenage children, and an adult stepchild. He has been employed by a government contractor since April 2016. He was employed by a different government contractor from May 2011 to April 2016, but was laid off from that position in April 2016. (Item 4.)

Applicant attributed the alleged delinquent debts to the layoff. He was unemployed for approximately two weeks. When he was hired by his current employer, it was at a lesser rate of pay. He intends to satisfy his debts when he is able. (Answer.)

Applicant is indebted on a charged-off credit card account in the amount of \$16,281, as stated in SOR ¶ 1.a. This debt became delinquent in 2016. In his Answer, Applicant claimed to be in the process of enrolling this debt in a debt management program. He provided no documentation to substantiate this claim. He did not document any payments on this delinquent debt. It is unresolved. (Answer; Item 5; Item 6.)

Applicant is indebted on a delinquent student loan account in the amount of \$14,630, as stated in SOR ¶ 1.b. This debt has been delinquent since February 2017. In his Answer, Applicant explained that this "student loan is currently being garnished from my paycheck . . . I have contacted them and am currently enrolled in the Loan Rehabilitation Program." Documentation from the creditor and Applicant's payroll statement show that his pay was being involuntarily garnished at the rate of 15% of his disposable earnings on a semi-monthly basis, beginning August 8, 2018. His Answer also includes a letter from this creditor to Applicant acknowledging his attempts to set up a payment plan. However, that letter noted Applicant "objected to the monthly rehabilitation payment amount based on [his] family size and adjusted gross income." (Answer; Item 6.)

Applicant is indebted on six additional student loan accounts, all held by the same creditor, in the total amount of \$2,198, as stated in SOR ¶¶ 1.c through 1.h. These loans became delinquent in August 2017. Applicant indicated in his Answer that he was

negotiating a payment plan to rehabilitate these loans. He provided nothing further in that regard. These debts are unresolved. (Answer; Item 6.)

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 over \$33,000 in delinquent debt, which became delinquent between 2016 and 2017. He claims he has insufficient income to address these 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 insufficient income to meet all of his financial obligations. One student loan is being repaid through garnishment, but the other six student loans and the credit card account remain delinquent. There is no evidence that he will be able to avoid delinquent accounts in the future. His debt is ongoing. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to two weeks of unemployment and a subsequent reduction in pay. Those are circumstances beyond his control. However, he has been fully employed since May 2016, and continues to be unable to meaningfully address his delinquent accounts. The record lacks documentation to show he reasonably and responsibly addressed his delinquencies. Mitigation under AG ¶ 20(b) is not fully established.

Applicant provided no documentation of financial counseling. There is minimal evidence to conclude that his financial problems are under control. He has not established voluntary payment agreements for his student loans or for his credit card. While he indicated he was seeking help from a debt management program, he provided nothing further in that regard. He is repaying the largest student loan through garnishment, but that action is involuntary and does not demonstrate good faith. 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. 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 military service. However, he failed to meet his burden to show he is reasonably and responsibly addressing his debts. Future financial problems are likely. He may be eligible for national security eligibility in the future if he is able to document responsible actions to maintain solvency, but the record at this time is absent of such evidence. 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:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	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