



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 18-01993 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Benjamin R. Dorsey, Esq., Department Counsel
For Applicant: *Pro se*

02/28/2019

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On August 13, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on August 24, 2018, and requested a hearing before an administrative judge. The case was assigned to me on November 1, 2018.

The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 5, 2018, scheduling the hearing for December 19, 2018. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 3 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through D, which were admitted without objection. The record was held open for Applicant to submit additional information. He submitted documents that I have marked AE E through O and admitted without objection.

Findings of Fact

Applicant is a 31-year-old employee of a defense contractor. He has worked for his current employer since March 2018. He has a bachelor's degree, which was awarded in 2010. He is single without children.¹

Applicant was unemployed for about six months after he graduated college, for several months in 2014, and for about three weeks in 2016. He also had periods of underemployment wherein he was unable to find full-time work. He was unable to pay all his bills, and a number of debts became delinquent.²

The SOR alleges three delinquent bank or credit union debts totaling \$21,750; a \$145 debt to a cable company; a \$288 medical debt; and three defaulted student loans. However, the \$570 defaulted student loan alleged in SOR ¶ 1.f is a duplicate of one of the other two defaulted student loans. The total of those two loans is \$4,952. The non-duplicate allegations are established through credit reports and Applicant's admissions.

Applicant contracted with a credit-counseling company in about August 2018. He enrolled four debts in the company's debt-management program (DMP), including the debts alleged in SOR ¶¶ 1.c (\$4,810), 1.d (\$288), and 1.e (\$145). The fourth debt of \$1,451 is to his state, which Applicant said was for overpaid unemployment compensation. Applicant testified that he was paying \$235 a month to the DMP. The DMP documentation calls for Applicant to pay \$169 per month, which the company disburses to the four creditors, minus a \$22 maintenance fee. Applicant paid an initial fee of \$75 in September 2018. He made \$169 payments in September and October 2018; followed by \$57 payments in November 2018, December 2018, and January 2019; and a \$46 payment in February 2019.³

Applicant paid \$256 on January 29, 2019, outside the DMP, to resolve the remainder owed on the \$288 medical debt alleged in SOR ¶ 1.d.⁴

Applicant thought that he was paying \$120 per month through the DMP toward the \$8,476 delinquent credit card debt alleged in SOR ¶ 1.a. He was informed that the debt was not one of the four debts in the DMP. He then stated that the debt was being paid outside the DMP to a collection company on behalf of the creditor, and later that he was unsure whether the debt was being paid. He did not provide any supporting documentation or additional information about the status of the debt.⁵

¹ Tr. at 20-21; GE 1.

² Tr. at 17, 21-30; GE 1.

³ Tr. at 33-37, 46-51, 63-67; AE B, F, G, I.

⁴ AE K.

⁵ Tr. at 33-40.

Applicant and the creditor for the \$8,464 debt alleged in SOR ¶ 1.b agreed to settle the debt for \$2,539. Applicant agreed to pay \$105 per month until July 2020. He established through documentation that he made \$105 payments in August 2018, November 2018, and December 2018.⁶

The defaulted student loans alleged in SOR ¶¶ 1.g (\$3,555) and 1.e (\$1,397) are paid. Applicant provided documentation of payments of \$2,237 in March 2017; \$2,138 in March 2018; and \$815 in August 2018.⁷

Applicant stated that his current finances are better since he has a stable job with a good salary. He credibly stated that he intends to pay his debts.⁸

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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 to be 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, administrative judges apply the guidelines 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 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."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate,

⁶ Tr. at 42-46; AE C, D, H.

⁷ Tr. at 52-61; Applicant's response to SOR; GE 2, 3; AE A, L, M.

⁸ Tr. at 30-32, 60-61, 68-69.

or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

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 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has a history of financial problems and delinquent debts. The evidence is sufficient to raise the above disqualifying conditions.

The \$570 defaulted student loan alleged in SOR ¶ 1.f is a duplicate of one of the two defaulted student loans alleged in SOR ¶¶ 1.g and 1.h. When the same conduct is

alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005). SOR ¶¶ 1.f is concluded for Applicant.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant had periods of unemployment and underemployment wherein he was unable to find full-time work. Those conditions were beyond his control.

The student loans alleged in SOR ¶¶ 1.g (\$3,555) and 1.e (\$1,397) were resolved through payments of \$2,237 in March 2017; \$2,138 in March 2018; and \$815 in August 2018, which indicates that Applicant started addressing his financial problems more than a year before the SOR was issued. He contracted with a credit-counseling company in about August 2018. He enrolled four debts in the company's DMP, including the debts alleged in SOR ¶¶ 1.c (\$4,810), 1.d (\$288), and 1.e (\$145). He is also paying a \$1,451 debt to his state for overpaid unemployment compensation through the DMP. He completed the payment of the \$288 medical debt alleged in SOR ¶ 1.d outside the DMP. He is making payments toward the \$8,464 debt alleged in SOR ¶ 1.b.

Applicant does not present a perfect case in mitigation, but a security clearance adjudication is not a debt-collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

I believe Applicant is honest and sincere in his intentions to address all his debts. I find that he has a plan to resolve his financial problems, and he took significant action to implement that plan. He acted responsibly under the circumstances and made a

good-faith effort to pay his debts. It may take time, but I am convinced that he will eventually resolve his financial problems.⁹ The above mitigating conditions are applicable.

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 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.

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.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial considerations 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:

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| Paragraph 1, Guideline F: | For Applicant |
| Subparagraphs 1.a-1.h: | For Applicant |

⁹ See ISCR Case No. 08-06567 at 3 (App. Bd. Oct 29, 2009) and ISCR Case No. 09-08462 at 4 (App. Bd. May. 31, 2011): "Depending on the facts of a given case, the fact that an applicant's debts will not be paid off for a long time, in and of itself, may be of limited security concern."

Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge