



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



In the matter of:)
)
) ISCR Case No. 18-02142
)
Applicant for Security Clearance)

Appearances

For Government: Mary Margaret Foreman, Esq., Department Counsel
For Applicant: *Pro se*

June 26, 2019

Decision

TUIDER, Robert, Administrative Judge:

Applicant failed to mitigate security concerns under Guideline F (financial considerations). Clearance is denied.

Statement of the Case

On February 1, 2018, Applicant submitted a Questionnaire for National Security Positions (SF-86). On September 4, 2018, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F. The SOR detailed reasons why DOD CAF was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

On September 25, 2018, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the file of relevant material (FORM), dated October 15, 2018, was provided to him by letter on October 16, 2018. Applicant received the FORM on October 31, 2018. He was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or

mitigation. Applicant timely submitted a one-page response to the FORM. On December 20, 2018, the case was assigned to me. Department Counsel submitted five documents with his FORM, marked as Items 1 through 5. Applicant's response to FORM is marked Item 6. Items 1 through 6 are admitted into evidence.

Findings of Fact

Background Information

Applicant is a 46-year-old principal engineer employed by a defense contractor since January 2018. (Item 3) He seeks a security clearance in conjunction with his current employment.

Applicant earned his bachelor's degree in May 1996. He married in June 1999, and has two minor children. (Item 3)

Financial Considerations

The SOR alleges eight delinquent consumer accounts totaling \$75,963. In his SOR Answer, Applicant admits each of the debts. These debts are further established by his March 2018 credit report, as well as by his Office of Personnel Management Personal Subject Interview (OPM PSI) conducted in June 2018. (SOR ¶¶ 1.a – 1.h.; Items 1, 2, 4, 5)

In Applicant's SOR Answer, he states these debts arose after he used his personal credit cards to fund a start-up company that he created with another individual. When that individual died unexpectedly in June 2017, the company dissolved. Applicant explained that at the time of his partner's death, the business was working on a medical product. Applicant states, "[w]hen/if [he] is able to produce this product again, [he] will pay these debts through that business." (Items 2, 6)

As noted, the debts alleged are supported by his March 2018 credit report, which reflects that the accounts became delinquent in mid-2017. Applicant reported one delinquent debt in his February 2018 SF-86. He described the debt as an "unsecured credit card," which he estimated at \$20,000, and reported this debt was the result of "reduced income." He also reported that he was "discussing a lump sum payoff with the creditor" and estimated May 2017 as the date the financial issue began. (Item 3)

Department Counsel's FORM discussed specific shortcomings of Applicant's SOR answer, and emphasized long-standing DOHA case law concerning the necessity for applicants to provide mitigating documentation. Applicant's SOR Answer and FORM Response contained no documentation that addressed his SOR debts.

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, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain 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 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

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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 two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts;" and "(b) unwillingness to satisfy debts regardless of the ability to do so." Based on the evidence contained in the record, AG ¶¶ 19(a) and 19(b) are applicable. Further review is necessary.

AG ¶ 20 lists five potentially mitigating conditions under these facts:

(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.

The Appeal Board explained an applicant's responsibility to prove applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

Applicant has not yet established any of these conditions. Although Applicant used his personal credit card to fund his business venture, all of the debts alleged on the SOR are individual credit accounts. The death of his business partner is certainly a circumstance beyond Applicant's control; however, in order for AG ¶ 20(b) to apply, Applicant must demonstrate that he has acted reasonably under the circumstances. Beyond the statement he provides in his SOR answer, the record is unclear when or how Applicant intends to resolve the delinquencies.

In addition to evaluating the facts and applying the appropriate adjudicative factors under Guideline F, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(d). Applicant has been gainfully employed for the majority of his adult life, and he is presumed to be a mature, responsible citizen. Nonetheless, without sufficient information, including corroborating documentation, suggesting that his long-standing financial problems are being addressed, doubts remain about his suitability for access to classified information. Protection of the national interest is the principal focus of these adjudications. Accordingly, those doubts must be resolved against Applicant.

Applicant chose to rely on the written record, but failed to submit sufficient evidence to supplement the record with relevant and material facts regarding his circumstances, articulate his position, or mitigate the financial security concerns. He failed to offer evidence of financial counseling or provide documentation regarding his efforts to address his delinquent debt. By failing to provide such information, financial considerations security concerns remain.

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

Subparagraphs 1.a – 1.h: Against Applicant

Conclusion

In light of the record as a whole, it is not clearly consistent with the national interest to grant Applicant national security eligibility. Clearance is denied.

ROBERT TUIDER
Administrative Judge