



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



In the matter of:)
)
) ISCR Case No. 18-02158
)
Applicant for Security Clearance)

Appearances

For Government: Andrew Henderson, Esq., Department Counsel
For Applicant: *Pro se*

May 22, 2019

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of the Case

Applicant submitted a security clearance application (SCA) on December 20, 2017. (Item 2.) On September 12, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. (Item 1.) The DOD CAF acted 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) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on September 25, 2018 (Answer), and requested a decision on the record without a hearing. Department Counsel submitted the Government’s written case on October 18, 2018. Soon thereafter, a complete copy of the file of relevant material (FORM) was sent to Applicant, including documents identified as Items 1 through 6. He was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government’s evidence. He received the FORM on October 29, 2018, and on November 8, 2018, submitted a Response. Items 1 through 6, and Applicant’s Response are admitted into evidence. The case was assigned to me on February 6, 2019.

Findings of Fact

Applicant, age 56, is divorced. (Item 2 at page 7, and Response at page 4.) He attributes his financial difficulties to a 2013 divorce, which resulted in the loss of his former spouse's income. (Answer at page 1, and Response at page 1.) In his Answer Applicant admitted all five of the alleged past-due debts.

Guideline F - Financial Considerations

1.a. Applicant admits a "short sale" of his house, which had a loan balance of about \$850,000, for \$795,000. (Answer at page 1, and Response at pages 1 and 3.) As he has offered nothing further as to the \$55,000 delinquency, this allegation is found against Applicant.

1.b. Applicant admits a charged-off "home equity line" debt in the amount of about \$97,000. (Answer at page 1.) As he has offered nothing further as to this admitted delinquency, this allegation is also found against Applicant.

1.c.~1.e. Applicant admits three additional past-due debts totaling in excess of \$714. As he has offered nothing further as to these admitted delinquencies, these allegations are found against Applicant.

Policies

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 (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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, 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 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 EO 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F - Financial Considerations

The concern under this 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. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions, corroborated by his credit reports, establish two disqualifying conditions under this guideline: AG ¶ 19(a) (“inability to satisfy debts”), and AG ¶ 19(c) (“a history of not meeting financial obligations”).

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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; and

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(a) is not established. Applicant's delinquent debts remain unresolved.

AG ¶ 20(b) is not established. While Applicant's divorce and loss of his former spouse's income were conditions beyond his control, he has not acted responsibly to address the resulting debts.

AG ¶ 20(c) and 20(d) are not established. Applicant's Response to the FORM does not demonstrate his efforts to resolve his delinquencies. The record is silent as to his current ability to address his delinquent debts. His financial problems are not under control.

Applicant failed to meet his burden to mitigate the financial concerns set out in the SOR. For these reasons, I find SOR ¶¶ 1.a through 1.e. against Applicant.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common-sense judgment based upon careful consideration of the applicable guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude that has not mitigated the security concerns raised by his financial indebtedness. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraphs 1.a – 1.e: Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to continue Applicant's national security eligibility for access to classified information. Clearance is denied.

Richard A. Cefola
Administrative Judge