



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



In the matter of:)
)
) ISCR Case No. 18-02262
)
Applicant for Security Clearance)

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*
06/18/2019

Decision

HEINTZELMAN, Caroline E., Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns. National security eligibility for access to classified information is denied.

History of the Case

Applicant submitted a security clearance application (SCA) on August 5, 2017. On October 15, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F, Financial Considerations. Applicant answered the SOR on November 13, 2018, and requested a hearing.

I was assigned to the case on January 30, 2019. On April 1, 2019, I issued an order to both parties to produce their documentary evidence by April 29, 2019. On April 8, 2019, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for May 14, 2019. I convened the hearing as scheduled.

Government's Exhibits (GE) 1 through 6 were admitted, without objection. Applicant testified, and Applicant's Exhibits (AE) A through F were admitted, without objection. The record was held open until June 14, 2019, to allow Applicant to submit additional documentation, which is admitted as AE G through I, without objection. I received the transcript (Tr.) on May 29, 2019, and the record is closed.

Findings of Fact

Applicant is 50 years old. He has been married to his wife since 2012, and they have two young children. He received an associate's degree in 2002, a bachelor's degree in 2003, and he attended some courses toward a master's degree. Applicant served in the U.S. Navy from 1988 until 1998, when he was honorably discharged. Applicant has worked for his current employer overseas in Kuwait as a force protection officer since September 2017. He held a top secret clearance while he was in the U.S. Navy, but has not held a clearance since approximately 1998. (GE 1; Tr. 12-15, 22-23)

Applicant worked overseas as a defense contractor from 2009 until May 2013, when he was let go by his employer because he did not have a security clearance. He remained unemployed until May 2014. (Tr. 14-15, 27-28, 30) From May 2014 until September 2017, Applicant was underemployed and did not earn sufficient income to cover his expenses. Additionally, his wife was unemployed for a period of time. (Tr. 26, 30-33, 57) Applicant took the job overseas, in part, to resolve his delinquent debts. (Tr. 27) Applicant has 12 unresolved SOR debts, totaling \$32,800, and he resolved 7 SOR debts, totaling \$17,762.

SOR ¶ 1.a is an auto loan that was charged off in 2014, and the outstanding balance is \$16,889. Applicant testified that he has been making monthly payments of \$66 since November 2018; however, he did not provide documentation to support his claims. (GE 2 at 9; GE 3 at 2; GE 4 at 3; Tr. 35-36, 39, 60)

SOR ¶ 1.b is a personal loan opened in 2013 and charged off in 2014 for \$9,933. Applicant settled this debt in May 2019, shortly before the hearing. (GE 2 at 13; GE 3 at 2; GE 4 at 4; AE A; Tr. 40-42)

SOR ¶ 1.c is a credit-card account that was opened in 2011 and charged off in 2014 for \$3,245. Applicant settled this debt in May 2019, shortly before the hearing. (GE 2 at 13; GE 3 at 2; GE 4 at 5; AE B; Tr. 42-43)

SOR ¶¶ 1.d through 1.h remain outstanding and unpaid. Applicant testified that he was planning to try to resolve several of these debts before the record closed, but did not provide documentation of payment or settlement. (GE 2; GE 3; GE 4; Tr. 44-50, 61)

Applicant paid and resolved SOR ¶¶ 1.i and 1.j in May 2019. (AE C; AE G; Tr. 50-51)

At the hearing, Applicant claimed he paid and resolved SOR ¶¶ 1.k, 1.l, 1.o, 1.q, and 1.r, but he did not provide documentation to substantiate his claims. (Tr. 51-55, 58-59)

Applicant settled SOR ¶ 1.m in May 2019. He paid SOR ¶ 1.p the day of the hearing, and he settled SOR ¶ 1.s in December 2018. (AE D; AE E; AE F; Tr. 54-58)

SOR ¶ 1.n remains unpaid and outstanding. (Tr. 62)

In 2005, Applicant filed for Chapter 7 bankruptcy protection and his debts were discharged a few months later. This bankruptcy was related to a lawsuit that was filed against Applicant for a car accident that occurred while he was on active duty in the U.S. Navy. His insurance company went out of business, and Applicant was held responsible in the lawsuit. (GE 5; Tr. 68-70)

In June 2008, Applicant filed for Chapter 13 bankruptcy protection, to prevent his vehicle from being repossessed. The bankruptcy was dismissed in November 2010, due to Applicant's failure to make payments according to the bankruptcy plan. (GE 6; Tr. 70-72)

Applicant provided an updated credit report, which reflected three new unalleged delinquent debts, totaling over \$1,000. In his post-hearing submission, he provided documentation to show that he paid and resolved an additional unalleged debt. (AE H; AE I) Applicant does not follow a written budget, nor has he received credit counseling. At the time of the hearing he had \$2,900 in savings to resolve his \$32,800 in delinquent alleged debts. (Tr. 32-33, 60)

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 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 concern under Guideline F (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

Applicant's admissions and the documentary evidence establish two disqualifying conditions under AG ¶ 19:

- (a) inability to satisfy debts; and

- (c) a history of not meeting financial obligations.

AG ¶ 20 describes conditions that could mitigate security concerns. The following are potentially applicable in this case:

- (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 provided documentary evidence that he recently resolved 7 of the debts alleged in the SOR. However, he failed to provide substantiation to support his claims of other debt-resolution efforts. The majority of the alleged debts remain delinquent and outstanding. He receives partial mitigation under AG ¶ 20(d).

His two bankruptcy filings demonstrate that his financial issues have been an ongoing issue for a number of years, and they are not isolated to his 2013 to 2017 period of unemployment and underemployment. Applicant's new unalleged debts further demonstrate that his financial issues are an ongoing and unresolved problem. Finally, Applicant failed to demonstrate that he acted responsibly to address his delinquent debts after his employment issues ended in 2017. Mitigation under AG ¶¶ 20(a) and 20(b), was not established.

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. I conclude Applicant did not meet his burden of proof and persuasion. He failed to mitigate the financial considerations security concerns.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b – 1.c:	For Applicant
Subparagraphs 1.d – 1.h:	Against Applicant
Subparagraphs 1.i – 1.j:	For Applicant
Subparagraphs 1.k – 1.l:	Against Applicant
Subparagraph 1.m:	For Applicant
Subparagraphs 1.n – 1.o:	Against Applicant
Subparagraph 1.p:	For Applicant
Subparagraphs 1.q – 1.r:	Against Applicant
Subparagraph 1.s:	For Applicant
Subparagraph 1.t:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest of the United States to grant or continue Applicant's eligibility for access to classified information. Eligibility for access to classified information is denied.

CAROLINE E. HEINTZELMAN
Administrative Judge