



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No: 18-02467
)
)
Applicant for Security Clearance)

For Government: Dan O'Reilley, Esq., Department Counsel
Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

07/02/2019

Decision

DAM, Shari, Administrative Judge:

Applicant sufficiently mitigated his delinquent debts and the resulting financial security concerns. National security eligibility for access to classified information is granted.

Statement of the Case

On December 21, 2018, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. Applicant answered the SOR in writing (Answer) on February 19, 2019, and requested a hearing before an administrative judge.

On April 5, 2019, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. On April 26, 2019, DOHA issued a Notice of Hearing setting the case for May 31, 2019. The case was heard as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 6 into evidence. Applicant testified and offered

Applicant Exhibits (AE) A through U into evidence. All exhibits were admitted. DOHA received the hearing transcript (Tr.) on June 13, 2019. The record remained open until June 21, 2019, to give Applicant an opportunity to submit evidence. He timely submitted another exhibit, which I marked as AE V and admitted into evidence without objection.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a, 1.b, 1.d, 1.e, 1.f, 1.h, and 1.i. He denied the allegations SOR ¶¶ 1.c and 1.g. His admissions are incorporated into these findings.

Applicant is 32 years old and married for three years. He has three stepchildren, ages 19, 18, and 15. Applicant has some college credits, but has not yet completed a degree. In January 2007, he enlisted in the Army and served until June 2018, when he was medically discharged as an E-4. He received three Army Commendation Medals, and two Army Achievement Medals. He was selected as Soldier of the Quarter and Soldier of the Year. He was deployed to the Middle East for 18 months between 2007 and 2009. (Tr. 36-40) He held a security clearance while serving. (GE 1) He started his current employment with a defense contractor in July 2018, immediately after leaving military service. (Tr. 44)

Applicant said his delinquent debt problems started seven or eight years ago when he was financially helping his family and friends. As a consequence, he did not monitor his own finances or have enough money to pay his bills. (Tr. 42-43; GE 2).

During an interview in February 2018, Applicant discussed his delinquent debts with an investigator. He stated that he intended to begin addressing them. He said he took a financial class through the military to learn about budgeting and how to repay his debts. He said he was following his budget. (GE 2)

Based on credit bureau reports (CBR) from May 2017 and June 2018, the SOR alleged nine debts that became delinquent between 2012 and 2016, and totaled \$21,295. (GE 4, 5) The status of each debt is as follows:

1. (1.a) The \$10,730 charged-off account is for an automobile car lease. The car was repossessed in 2013. He said he was unaware of the debt until he received the SOR. He thought his friend had assumed the lease. On May 15, 2019, Applicant sent a letter to the creditor inquiring about a settlement. The creditor agreed to a final payment of \$2,682, which Applicant paid on May 24, 2019. The debt is resolved. (Tr. 50-57; AE L, M, N, O)
2. (1.b) The \$5,231 debt owed to a military credit union since 2015 was settled for \$1,569 and paid on May 29, 2019. Applicant had been making small payments on it for a period of time before it became delinquent. It is resolved. (Tr. 60-61; AE H)

3. (1.c) The \$2,222 delinquent debt is unresolved. Applicant does not know the name of the original creditor. He tried calling a number that was listed for the collection agency, but was unsuccessful in reaching it. On May 15, 2019, Applicant sent the creditor a settlement offer, proposing to resolve the debt for \$555. The creditor received the letter on May 22, 2019. (Tr. 64; AE C)
4. (1.d) The \$1,060 credit card debt owed to a creditor is unresolved. Applicant had been making automatic payments on the account until he separated from the Army. (Tr. 66)
5. (1.e) The \$537 debt owed to a wireless company was for a family plan Applicant had with his mother and sister. His mother failed to pay the bill. He sent a letter to the creditor on May 15, 2019, offering to settle the debt for \$137. This debt is unresolved. (Tr. 68-69; AE)
6. (1.f) The \$527 debt owed to the same wireless company named above, is for a different account. He sent a letter on May 15, 2019, to the creditor offering to settle it for \$131. The debt is unresolved. (Tr. 69-71)
7. (1.g) The \$378 debt is owed to the same creditor mentioned in 1.c above. On May 15, 2019, Applicant sent the creditor a settlement offer, proposing to resolve the debt for \$94. This debt is unresolved. (Tr. 72; AE B)
8. (1.h) The \$306 debt owed to a cable company is unresolved. Applicant is disputing it because he said he returned the company's equipment. He sent a letter on May 15, 2019, to the creditor offering to settle it for \$76. (Tr. 72-73; AE I)
9. (1.i) The \$304 debt owed to a cable company was settled for \$197 and paid on May 14, 2019. It is resolved. (Tr. 75; AE P)

Applicant submitted his budget. His net monthly income is \$2,500; his wife's net income is about \$2,400 each month. They share expenses. Sometimes they have money remaining after paying bills, depending on unforeseen expenses. (Tr. 43-44, 76-79; AE R) He said he does not have any delinquent debts not listed in the SOR. He and his wife review their budget every two weeks. (Tr. 81-82) His wife does not receive child support for her children. (Tr. 37) Applicant said that he withdrew \$6,800 from his 401(k) in May 2019, to pay some SOR debts. He is aware of the tax consequences. (Tr. 80)

Applicant stated that in November or December 2018 his wife became seriously ill. She was hospitalized and then placed in an acute rehabilitation facility. He said that she was in either the hospital or facility for over three months. He said she was unable to work some of that time. His wife was helping him address the delinquent debts until she became ill. In May 2018, they began sending letters to creditors in an attempt to settle debts. (Tr. 54-58; AE V)

Along with his answers to interrogatories in August 2018, Applicant submitted two letters of recommendation. A colleague, who previously worked with Applicant as a military liaison for a department, stated that Applicant is a capable, reliable, and dedicated employee. A career specialist commended Applicant for his superior work ethic and leadership abilities. (GE 3)

Policies

This case is adjudicated under Executive Order 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG) effective within the DOD on June 8, 2017.

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying and mitigating conditions, which are useful 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.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states that 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 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 information.

Section 7 of Executive Order 10865 provides that an adverse decision 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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline F: Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18:

Failure or inability 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 information. Financial distress can also be caused by 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 acts to generate funds.

AG ¶ 19 sets out disqualifying conditions that could potentially raise security concerns. Two are potentially applicable in this case:

- (a) inability to satisfy debts; and

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

Applicant had a history of not resolving debts that became delinquent between 2012 and 2016. He began addressing them in 2018. The evidence is sufficient to raise the above disqualifying conditions.

After the Government produced substantial evidence of the disqualifying conditions, the burden shifted to Applicant to produce evidence and prove mitigation of the security concerns. AG ¶ 20 sets out four conditions that could potentially mitigate those financial security concerns under this guideline:

(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, or 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; and

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

Some of Applicant's delinquent debts had been ongoing for at least three or four years before he began to address them in 2018. AG ¶ 20(a) does not apply. Applicant admitted that early in his Army career he made a poor decision when he began helping family members with their financial problems, instead of managing his debts. That decision was a circumstance within his control. He did not attempt to responsibly manage the delinquent debts until he began the security clearance process. The evidence does not establish mitigation under AG ¶ 20(b).

Applicant received financial counseling through a program with the military. Recently, he paid three debts, totaling \$16,265, demonstrating that they are now under control. He established mitigation under AG ¶ 20(c) as to those debts. Within the past two months, he initiated a plan to resolve the remaining six debts, totaling \$5,030, by submitting proposals to the creditors for settlements. His recent efforts are not construed as having been fully made in good faith, and thus, establish limited mitigation under AG ¶ 20(d).

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) 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 include 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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is an intelligent 32-year-old man, who honorably served in the Army for 11 years, including one extended deployment. Since 2018, he has worked for a defense contractor, who strongly supports his request for a security clearance. Applicant testified candidly about his delinquent debts. He and his wife review their budget every two weeks, and monitor their finances. He acknowledged that it took him time to address his debts, but, with his wife's assistance, he established a plan that resolved three large debts and will help resolve the remaining six debts. After listening to his testimony and observing his demeanor, I believe that he will continue to address the six outstanding debts that total \$5,030, and will manage his finances responsibly in the future. The record evidence leaves me without concerns as to Applicant's judgment and suitability for a security clearance. Applicant mitigated the security concerns arising under the financial considerations guideline.

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:

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|--------------------------------|---------------|
| Paragraph 1, Guideline F: | FOR APPLICANT |
| Subparagraphs 1.a through 1.i: | For Applicant |

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. National security eligibility for access to classified information is granted.

SHARI DAM
Administrative Judge