



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No: 18-02535
)
)
Applicant for Security Clearance)

For Government: Liam Apostol, Esq., Department Counsel
For Applicant: *Pro se*

06/24/2019

Decision

DAM, Shari, Administrative Judge:

Applicant has a history of failing to resolve student loans and delinquent debts. He did not mitigate the resulting financial security concerns. National security eligibility for access to classified information is denied.

Statement of the Case

On October 31, 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 December 28, 2018, 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 May 6, 2019, DOHA issued a Notice of Hearing setting the case for May 28, 2019. The case was heard as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 6 into evidence. Applicant testified and offered

Applicant Exhibit (AE) A into evidence. All exhibits were admitted. At the end of the hearing, the record closed. DOHA received the hearing transcript (Tr.) on June 5, 2019.

Findings of Fact

Applicant admitted all of the allegations in the SOR, with explanations. His admissions are incorporated into these findings.

Applicant is 59 years old and single. He has a bachelor's degree that he earned in 1983. He has worked for federal contractors since the 1980s and held security clearances during some of that time. He has worked for his current employer, a federal contractor, for the past 11 months. Prior to this position, he worked for a different federal contractor for a year and a half. He had been unemployed for a year and a half before he found that position. He said that since September 11, 2001, he experienced several periods of unemployment that contributed to his financial difficulties. For example, since 2010 he has been unemployed four to five times. In 2011, 2012, and 2015, he was unemployed for eight months each year because he could not secure a federal contract. (Tr. 26-31, 35-36)

In October 2016, Applicant submitted a security clearance application (SCA) for re-investigation and renewal. In December 2017, a government investigator interviewed him about matters in his 2016 SCA, including delinquent debts and student loans. (GE 1, GE 2)

Applicant testified that in 1994 he lost his security clearance for having delinquent debts and student loans. He thinks he owed about \$30,000 in student loans at the time. After entering into a rehabilitation plan and bringing the student loans into a current status, his security clearance was reinstated in 1998. He said he originally took out about \$40,000 to \$50,000 in student loans to obtain his bachelor's degree in the early 1980s. He acknowledged that his current delinquent student loan balance includes some of those unpaid loans. He said he has been unable to pay them because he has experienced periods of unemployment over the years. (Tr. 58-60, 66-69)

Applicant's annual salary is about \$100,000, which is approximately the same amount he has received on most contracts throughout the past few years. He said he generally spends between three and six months locating a new work contract after he completes one. (Tr. 32, 37) His net monthly income is about \$7,000, and his monthly expenses are between \$4,000 and \$5,000. He has some money in a 401(k) retirement account, but does not have a savings account. He consulted a financial counselor twice in the last six to eight months. He is working on a budget with the counselor. (Tr. 61, 69-72)

Based on credit bureau reports (CBRs) from July and August 2017, and August 2018, the SOR alleged nine debts that became delinquent between 2013 and 2017, and totaled \$33,745. Applicant repeatedly stated that he was unaware of the debts until he received the SOR. (Tr. 55; GE 2, 3, and 5) The status of each debt is as follows:

1. (1.a) In October 2016, Applicant submitted a SCA. Prior to that, he had stopped paying his student loan debt for two or three years. In December 2017, he initiated a loan-rehabilitation process and started making nominal payments of \$5 a month for nine months. In September 2018, he completed that process and began making monthly payments of \$150. The SOR listed the debt as \$15,717; however, according to AE A, the total amount is \$19,925, and includes two loans. Although he is now paying them again, he has not made sufficient progress on reducing the debt, given the number of years he has failed to address them. They are unresolved. (Tr. 37-44; GE 6; AE A)
2. (1.b) The \$14,926 unpaid debt owed to an apartment complex became delinquent in 2013. It was settled for \$5,224 and paid in November 2018. It is resolved. (Tr. 49; Answer: Ex. B)
3. (1.c) The \$854 debt owed to a credit card company became delinquent in 2013 and was paid in 2018. It is resolved. (Tr. 52; Answer: Ex. C)
4. (1.d) The \$380 debt owed to a credit card company became delinquent in 2013 and was paid in November 2018. It is resolved. (Tr. 50; Answer Ex. D)
5. (1.e) The \$295 debt owed to a credit card company became delinquent in 2013 and was paid in November 2018. It is resolved. (Tr. 53; Answer: Ex. E)
6. (1.f) The \$94 debt owed to an insurance company is paid. (Tr. 53-54)
7. (1.g) The \$675 debt owed to a credit union was paid in November 2018. It had been owed for five or six years. It is resolved. (Tr. 54; Answer: Ex. G)
8. (1.h) The \$637 debt owed to a cable company was paid in January 2018. It is resolved. (Answer: Ex. H)
9. (1.i) The \$167 debt owed to a cable company was paid in January 2018, along with the debt listed in No. 8, above. It is resolved. (Tr. 56; Answer: Ex. H)

Applicant submitted a partial credit report from May 2019. It indicates that he has a credit score of 741. (AE A)

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 three disqualifying conditions that could potentially raise security concerns in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Based on his admissions and credit reports, Applicant accumulated nine delinquent debts totaling over \$34,000, which he did not begin to address until sometime in 2018, after he completed his 2016 SCA or received the 2018 SOR. The record evidence establishes AG ¶¶ 19(a) and 19(c). He has had sufficient income over the years to maintain some amount of payment on his student loans, but has chosen to ignore the loans that he obtained for his bachelor's degree. The evidence establishes AG ¶ 19(b).

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.

Applicant began accumulating delinquent accounts in about 2013, which he did not address until 2018, after he reapplied for a security clearance. He did not begin to resolve his delinquent \$19,000 student loan debt until near the time he was interviewed about his debts in December 2017. Given his history of failing to manage his debts and student loans, there is sufficient evidence to conclude that similar problems are likely to recur, casting doubts as to his reliability. AG ¶ 20(a) does not apply.

Applicant attributed his financial delinquencies to sporadic periods of unemployment between contracts over the years. Those circumstances may have been partially beyond his control, but were regular and foreseeable consequences of his chosen profession. He did not establish full mitigation under AG ¶ 20(b) because he failed to provide evidence that he responsibly managed his debts under those circumstances. He was aware that delay in finding a new contract was expected, but he failed to budget and plan for that expected event. Applicant stated he recently started participating in financial counseling and was working on a budget, but did not provide a copy of that budget. He provided proof that he fully resolved eight of the nine debts by the end of 2018, such that those debts are now under control. There is evidence to establish some mitigation under AG ¶ 20(c), as to all debts other than his student loans. In December 2017, he took steps to rehabilitate his student loans through nominal monthly payments. He had not made payments on these loans for two or three years prior to that. In November 2018, he began making monthly payments of \$150 on the loans, which now total about \$20,000. There is insufficient evidence to conclude that Applicant made a good-faith effort to resolve his student loans, based on the proximity of his financial actions and his request to renew his security clearance. The evidence establishes minimal mitigation under AG ¶ 20(d), as to his student loans. **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 educated man who has worked for federal contractors since the 1980s and held security clearances in the past. He also has a long history of failing to pay his bills and student loans. In 1994, he lost his clearance because of unpaid debts and delinquent student loans. He did not obtain another clearance for four years as a consequence. In 2018, the DOD CAF initiated a second investigation based on his delinquent debts and old student loans. He resolved most of the delinquent debts after he received the SOR. He started addressing his student loan debt in December 2017, around the time of his interview. That debt totals almost \$20,000 and has remained unresolved for many years, despite the fact that he previously lost his clearance for four years for having delinquent loans and debts. The record evidence leaves me with serious doubts as to Applicant's commitment to resolve his student loans, as well as his judgment and suitability for a security clearance. Applicant failed to mitigate all of 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: | AGAINST APPLICANT |
| Subparagraph 1.a: | Against Applicant |
| Subparagraphs 1.b through 1.i: | For Applicant |

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to renew Applicant's security clearance. National security eligibility for access to classified information is denied.

SHARI DAM, Administrative Judge