



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



In the matter of:)
)
) ISCR Case No. 18-02987
)
Applicant for Security Clearance)

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*
06/28/2019

Decision

HEINTZELMAN, Caroline E., Administrative Judge:

Applicant mitigated the financial considerations security concerns. National security eligibility for access to classified information is granted.

History of the Case

Applicant submitted a security clearance application (SCA) on November 17, 2016. On January 4, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F, financial considerations. Applicant answered the SOR on January 30, 2019, and requested a hearing before an administrative judge. The Government was ready to proceed on February 21, 2019, and the case was assigned to me on March 11, 2019. On April 3, 2019, I issued an order to both parties to produce their 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 15, 2019. I convened the hearing as scheduled.

Government's Exhibits (GE) 1 through 5 were admitted. Applicant testified and Applicant's Exhibits (AE) A through O were admitted, without objection. I received the completed transcript (TR) on June 3, 2019. I held the record open until June 7, 2019, to allow Applicant to submit additional documentation. He timely submitted AE P through AE EE, which I admitted without objection, and the record is closed.

Findings of Fact

Applicant is 39 years old. He received an associate's degree in 2013 and a bachelor's degree in 2016. He expects to receive a master's degree in business administration in December 2020. He was married to his first wife from 2006 until they divorced in 2008. Applicant married his second wife in 2010, and she has an adult daughter. He has two minor children with women with whom he was not married. He served on active duty in the U.S. Army from 2010 until 2014 when he was medically retired and received an honorable discharge. Applicant currently works for his brother's truck company and as a carpenter. (GE 1; GE 2 at 5-6; AE N; AE U; Tr. 11-15, 27, 52-55)

While Applicant was serving on active duty in the U.S. Army, he injured his back and refused to make airborne jumps. His command believed he was malingering, and as a result, he received nonjudicial punishment three times, was reduced in rank from an E-4 to an E-1, and experienced the subsequent pay losses. Applicant's interim secret security clearance was also denied in 2013 due to his financial issues. Most of the debts alleged in the SOR became delinquent while he was on active duty. (GE 2 at 9; GE 5; AE DD; Tr. 14-16, 25-27, 44, 46-49, 51-52, 56-57)

As noted above, Applicant was medically retired from the U.S. Army in 2014, and was not in fact malingering. (Tr. 14-16, 25-27, 44, 46-49, 51-52, 56-57) He was originally granted an 80% disability rating from the Department of Veterans Affairs (VA), but in May 2018, his rating was reduced to 50%. Applicant appealed this change and was recently awarded a 100% disability rating. (Tr. 14-16, 25-27, 44, 46-49, 51-52, 56-57)

After he was discharged from the U.S. Army in 2014, Applicant had a difficult time finding gainful employment, which negatively impacted his finances. He chose to go back to school due to these issues. (GE 2 at 4; Tr. 28)

Applicant and his current wife have been living separately since approximately December 2016. He still provides his wife some financial support, but he has been living with his mother. At the hearing, he testified that he financially supported his wife's family while he served on active duty which contributed to his financial issues. He also believes his wife and her sister have opened accounts in his name without his consent and knowledge. As a result, Applicant uses a company to monitor his credit history. (GE 1 at 6; Tr. 27-32, 72-73, 80-82) In March 2019, Applicant was in a car accident, which has negatively impacted his finances this year. (AE V; AE W; AE X; AE Y; AE Z; AE AA; AE CC; Tr. 84, 90-91, 95-96)

Starting in 2016, Applicant has attended extensive credit counseling to resolve his debts, and he continues to attend classes. In conjunction with these classes, Applicant has made considerable and diligent efforts to resolve his delinquent debts and to improve his finances. (Tr. 37-42, 78-79)

Applicant did not sign the purchase agreement for the vehicle loan alleged in SOR ¶ 1.a. With the assistance of an Army attorney, Applicant disputed this debt while he was on active duty, and it was removed from his credit report. (GE 2 at 16; Tr. 58-65)

Applicant used the loan alleged SOR ¶ 1.b to purchase a vehicle for his wife in May 2016. She failed to make the payments as she promised, which is one of the reasons why they separated in December 2016. Applicant testified that he has been in contact with the lender and intends to settle the debt. (GE 2 at 12; GE 3 at 2; Tr. 65-67, 89)

Applicant paid, settled, and resolved the following SOR allegations: ¶¶ 1.c, 1.d, 1.g, 1.h, 1.j, 1.l, 1.n, 1.p, 1.r, 1.s. He paid and resolved most of these debts before the SOR was issued. (GE 2 at 10-13, 16; AE A; AE B; AE C; AE D; AE E; AE F; AE G; AE H; AE I; AE J; AE P; AE R; AE S; AE BB; AE EE; Tr. 67-71, 74-80, 83, 86)

Applicant disputed the following SOR allegations, as they are not his debts: ¶¶ 1.f, 1.i, 1.k, 1.m, and they have been removed from his most recent CBR. (GE 2 at 10, 15-16; Tr. 40, 71-73, 77-80; AE Q; AE EE)

SOR ¶ 1.e is an open account, and it is current. (Tr. 43, 71; AE O at 8; AE EE at 10)

Applicant has attempted to settle SOR ¶¶ 1.o and 1.q, but these accounts and SOR ¶¶ 1.t, 1.u, are outside of the statute of limitations and negotiations have been difficult. (GE 2 at 12-13; AE O; AE EE; Tr. 83-89)

Applicant's current finances are in good standing, and his state and federal taxes are current. His \$350 and \$250 monthly child support payments are current, and he follows a written budget. (Tr. 33, 43, 50, 55-56, 90-92)

Applicant received the following awards and decorations related to his military service: Army Good Conduct Medal; National Defense Service Medal; Global War on Terrorism Service Medal; and Army Service Ribbon. Applicant also provided several letters of recommendation recognizing that he is responsible, reliable, and trustworthy. (AE L; AE T; Tr. 24, 49)

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

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.

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;
- (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.

Applicant experienced personal financial issues related to his Army service, separation from his wife, and difficulty in finding gainful employment. In 2016, two years before the SOR was issued, he started working with credit counselors to address his delinquent debts, and he has consistently and diligently worked to address his financial obligations. His efforts demonstrate a good-faith effort to resolve his debts, and the record evidence demonstrates that the debts are either resolved or under control.

Applicant follows a written budget and pays his current financial obligations. He is willing and able to live within his means, which is reflected in the testimonial and documentary evidence. Mitigation under AG ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(e) are 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 also considered Applicant's favorable character evidence.

I conclude Applicant met his burden of proof and persuasion. He mitigated the financial considerations security concerns and established his eligibility for a security clearance.

Formal Findings

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

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a to 1.u: For Applicant

Conclusion

I conclude that it is clearly consistent with the interests of national security of the United States to grant or continue Applicant's eligibility for access to classified information. Eligibility for access to classified information is granted.

CAROLINE E. HEINTZELMAN
Administrative Judge