



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



In the matter of:)
)
) ISCR Case No. 18-03009
)
Applicant for Security Clearance)

Appearances

For Government: Erin Thompson, Esq., Department Counsel
For Applicant: *Pro se*

10/29/2019

Decision

BENSON, Pamela C., Administrative Judge:

Applicant made significant progress in resolving his delinquent accounts and mitigated the financial considerations security concerns. National security eligibility for access to classified information is granted.

Statement of the Case

On October 11, 2017, Applicant completed and signed his security clearance application (SCA). On March 8, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (Financial Considerations). The action was taken 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 *National Security Adjudicative Guidelines* (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on March 28, 2019, and requested an administrative decision based on the written record. He denied all of the SOR allegations, and he attached two receipts showing two accounts, alleged in SOR ¶¶ 1.w and 1.x, were paid

in full, and student loan documentation. On April 18, 2019, DOHA Department Counsel submitted the File of Relevant Material (FORM). After the receipt of the FORM, Applicant requested a hearing before an administrative judge. On August 30, 2019, the case was assigned to me. On August 30, 2019, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for September 16, 2019. The hearing was held as scheduled.

During the hearing, Department Counsel offered Government Exhibits (GE) 1 through 4; Applicant testified and offered five documents, Applicant Exhibits (AE) A through E into evidence. I admitted all proffered exhibits into evidence without objection. I held the record open for 30 days in the event either party wanted to submit additional documentation. Applicant timely submitted AE F and G, which I entered into evidence without objection. DOHA received the hearing transcript (Tr.) on September 30, 2019, and the record closed on October 16, 2019.

Findings of Fact

Applicant is 39 years old. He earned an associate's degree in 2012, and claimed he was 20 hours shy of earning a bachelor's degree. He married in 2009, and has three children; a one-year-old son, and two daughters, ages four and seven. Applicant enlisted in the Air National Guard (ANG) in 2006, and he received an honorable discharge in December 2014. He is working as a cybersecurity analyst for a DOD contractor where he has worked since 2017. His annual salary is \$77,810, and his wife earns about \$16,000 annually as a part-time paralegal. Applicant has held a DOD security clearance since 2007. (Tr. 7, 28, 32, 34-39, 54-, GE 1; AE C, AE E)

The SOR alleges 22 delinquent student loans totaling \$60,649, and other two unpaid accounts totaling \$651. In 2010, Applicant enrolled into a technical college and accumulated significant student loan debt. He was unable to pay on his student loans with a growing family and limited income. His employer pays for his medical insurance, but Applicant is fully responsible for his family's medical insurance, which costs approximately \$13,000 annually. In 2019, Applicant and his wife joined a financial counseling course through their church. He has been reading the Dave Ramsey book and learning how to get out of debt, and how he can prepare a college savings plan for their three children. As recommended by the financial course, Applicant and his wife do not possess any credit cards. They pay cash, or use their debit card, for all of their expenses. Applicant and his wife have also learned how they can reduce their expenses and follow a budget. (Tr. 36-38, 43-47, 62, 64-67; GE 1)

SOR ¶¶ 1.a through 1.v allege delinquent student-loan accounts totaling \$60,649, which were referred for collection. Applicant's 2017 Federal tax refund of approximately \$3,400 was intercepted in 2018 and applied to his delinquent student loans. In 2018 Applicant entered into a student loan rehabilitation program with the collection company. He started making \$50 monthly payments, and then he increased his monthly payments to \$121. In April 2019, Applicant's Federal tax refund of \$6,228 was intercepted and applied to his delinquent student loans. Applicant claimed that at the time his 2018 tax refund was intercepted, he had already completed the student loan rehabilitation program

and his student loans were no longer in default. In June 2019, the collection company referred his student loans to a different creditor. During the transfer process, the new creditor required him to make \$5 payments for the months of June and July 2019. (Tr. 21-25, 47-54, 59; SOR response)

The new creditor determined that Applicant was to pay \$695 every month for his rehabilitated student loans. Applicant testified that he could not afford this amount, and asked to be evaluated for an income-driven repayment plan. The new creditor was provided with his tax returns and monthly expenses in order to initiate a new monthly payment schedule. A few days before his August monthly student loan payment was due, Applicant was involved in an auto accident. He requested and received forbearance on his student loan payments until October 2019. At the hearing, he provided documentation that his current student loan balance was \$58,920. Applicant also stated that by the end of the week he expected to receive documentation from the creditor with the new monthly payment schedule. Applicant timely submitted AE F after the hearing, which showed his student loans were in good standing and beginning November 13, 2019, his monthly payments will be approximately \$259. Applicant's student loans are in good standing and he took responsible action with the creditor to obtain an affordable payment plan, as supported by his monthly budget. (Tr. 21-25, 47-54, 59; AE F, AE G)

SOR ¶ 1.w alleges an unpaid medical account for \$337. Applicant believed the military was responsible for paying this expense. He provided documentation with his SOR response that he paid this debt in full in March 2019. This delinquent medical account is fully resolved. (Tr. 45-46; SOR response)

SOR ¶ 1.x alleges a delinquent cable utility account for \$314. Applicant provided documentation with his SOR response that he paid this debt in full in March 2019. This delinquent cable utility account is fully resolved. (Tr. 46; SOR response)

Applicant provided a character-reference letter and his current employee performance appraisal at the hearing. A former supervisor and captain in the ANG reported that Applicant was vital in the success of their unit, and he is reliable and trustworthy. In addition, Applicant's supervisor reported during the most recent appraisal period that Applicant "is by far one of the top performing analysts." (AE D, AE E)

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 list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied 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 access to classified information will be resolved in favor of 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 not drawn 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. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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 Executive Order 10865 provides that 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

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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. . . .

AG ¶ 19 includes two disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability to satisfy debts”; and “(c) a history of not meeting financial obligations.” The evidence of record establishes AG ¶¶ 19(a) and 19(c). Further inquiry about the applicability of mitigating conditions is required.

Five financial considerations mitigating conditions under AG ¶ 20 are potentially applicable:

(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's finances suffered due to limited income and a growing family, as well as the unanticipated expense of maintaining medical insurance for his family. Applicant's inability to pay his significant delinquent student loans in a timely manner caused them to go into default. In 2018, Applicant acted responsibly when he entered into a student loan rehabilitation program and successfully had his student loans taken out of default status. In 2019, he and his wife started financial counseling. They are committed to resolving their financial issues and start saving for their children's college education. For the past two years, Applicant has made significant progress with his student loan debt. He is applying information he learned from his financial counseling classes to reduce unnecessary expenses and maintain a responsible budget. At this time, he does not have any delinquent accounts. Under the current circumstances, there are clear indications that his finances are under control. He documented that two small debts were paid.

Financial considerations security concerns are mitigated. AG ¶¶ 20(a), (b), (c) and (d) apply.

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 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 and the AG ¶ 2(d) factors in this whole-person analysis.

The Federal government must be able to repose a high degree of trust and confidence in persons granted access to classified information. In deciding whether to grant or continue access to classified information, the Federal government can take into account facts and circumstances of an applicant's personal life that shed light on the person's judgment, reliability, and trustworthiness. Furthermore, security clearance decisions are not limited to consideration of an applicant's conduct during work or duty hours. Even if an applicant has a good work record, his off-duty conduct or circumstances can have security significance and may be considered in evaluating the applicant's national security eligibility.

Applicant has made positive changes managing his finances, and he currently has no delinquent debt or defaulted student loans. He is committed to remaining debt-free, and he is applying information he has gained from financial counseling to his lifestyle. I find future financial problems are unlikely to recur. After evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the financial considerations security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a-1.x:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, I conclude that it is clearly consistent with national security to grant Applicant's national security eligibility. Eligibility for access to classified information is granted.

Pamela C. Benson
Administrative Judge