



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



In the matter of:)
)
) ISCR Case No. 19-00053
)
Applicant for Security Clearance)

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro Se*

08/21/2019

Decision

HEINTZELMAN, Caroline E., Administrative Judge:

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

History of the Case

Applicant submitted a security clearance application (SCA) on June 14, 2017. On January 31, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F, Financial Considerations. Applicant answered (Answer) the SOR on February 17, 2019, and requested a decision on the record without a hearing.

On April 17, 2019, a complete copy of the File of Relevant Material (FORM), containing six Items, was mailed to Applicant. He received the FORM on April 22, 2019. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant did not respond to the FORM. The case was assigned to me on June 20, 2019. Items 1 through 6 are admitted into evidence without objection.

Findings of Fact

Applicant is 40 years old and has worked as manufacturing engineer for a defense contractor since April 2017. He has been married since 2000, and he and his wife have five children. Applicant received an associate's degree in 1998. (Item 3)

Applicant was unemployed from May 2001 to August 2001, September 2002 to November 2002, January 2003 to March 2003, December 2011 to January 2011, and April 2013 to February 2014. Additionally, at an undisclosed date he took a reduction in pay from \$72,000 to \$55,000 to keep a former position and prevent unemployment. Finally, Applicant had a significant medical bill from June 2011 that was not covered by his insurance. (Item 3; Item 6; Answer)

The SOR alleged that Applicant has twenty delinquent debts, totaling almost \$35,000. The debts became delinquent between approximately 2009 and May 2018. Applicant admitted all of the alleged debts in his Answer. (Answer; Item 3; Item 4; Item 5; Item 6)

SOR 1.a. Applicant asserted in his Answer that he reduced the outstanding \$3,332 judgment to \$100. He did not provide supporting documentation. (Answer, Item 4; Item 5; Item 6)

SOR 1.c. Applicant originally fell behind on his home mortgage in 2014 as a result of a period of unemployment. He was able to refinance his home in February 2016, and resolved the outstanding balance of almost \$9,000. However, the November 2018 credit bureau report showed that the account was past due in the amount of approximately \$3,026, and the total outstanding balance was \$135,384. In his Answer, Applicant asserted that he had reduced the past due amount to \$894, but he did not provide supporting documentation. (Answer; Item 2; Item 3; Item 6)

SOR 1.i. This \$4,486 medical debt was not covered by Applicant's insurance company due to a preexisting condition. It was incurred in approximately June 2011. (Answer; Item 3; Item 5)

In his Answer, Applicant provided no additional information regarding the remaining SOR allegations, but stated that the delinquent and outstanding debts were the result of periods of unemployment and a reduction in pay, as discussed above. He did not provide any supporting documentation in his Answer, nor did he respond to the FORM.

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(a), 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 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.

Under Directive E3.1.14, the Government must 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 that an applicant may deliberately or inadvertently fail to 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 Exec. Or. 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* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F: Financial Considerations

The security concern under Guideline F 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 record evidence establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"), and AG ¶ 19(c) ("a history of not meeting financial obligations").

AG ¶ 20 describes conditions that could mitigate those security concerns. The following 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; and

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

Over the years, Applicant has experienced several professional setbacks that were beyond his control. His medical debt is not an example of reckless or irresponsible spending, or poor financial habits. However, he still has a responsibility to pay debts that he incurred, and he failed to meet his burden of production and persuasion to show he paid the debts as he claimed. There is no record evidence that he has made payments toward the alleged debts. Therefore, Applicant has not demonstrated that he has made a good-faith effort to repay his overdue creditors or resolve his debts.

There is insufficient evidence to show that his finances are in good standing and he acted responsibly to address numerous delinquent debts. Applicant provided no evidence of credit counseling. Mitigation under AG ¶ 20(a), 20(b), and 20(d) was not established.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security

must be an overall common sense judgment based upon careful consideration of the applicable guidelines, each of which is to be evaluated in the context of the whole person.

An 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.

I have incorporated my comments under the guideline at issue in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under this guideline, and evaluating all the evidence in the context of the whole person, I conclude that Applicant has not mitigated the security concerns at issue. The record lacks sufficient evidence to demonstrate that he has resolved the alleged delinquent debts. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the interests of national security of the United States to grant him eligibility for access to classified information.

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:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a – 1.t:	Against Applicant

Conclusion

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

CAROLINE E. HEINTZELMAN
Administrative Judge