



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



In the matter of:)
)
) ISCR Case No. 19-00147
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

07/29/2019

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On February 8, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) 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 adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on March 11, 2019, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government’s file of relevant material (FORM), and Applicant received it on May 7, 2019. He was afforded an opportunity to file objections and submit material in refutation,

extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 9. Applicant did not submit a timely response. There were no objections by Applicant, and all Items are admitted into evidence. The case was assigned to me on July 10, 2019.

Findings of Fact

Applicant admitted all of the SOR allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 44 years old. He earned an associate's degree in 2007 and a bachelor's degree in 2009. He never married. He has three children ages 19, 26, and 4 years old. He served in the military and was honorably discharged. He has been employed by federal contractors since 2007 and the same federal contractor since 2015.

Applicant completed a security clearance application in May 2016. In it, he disclosed that he had delinquent student loans that were in collection status (SOR ¶ 1.a-\$40,114 and ¶ 1.c-\$26,631). He stated: "monthly payment plan in process." He further stated: "I've set up monthly payment plans this will eventually pay this bill off." He also disclosed that he has taken vacations on an island for six to ten days in 2014 and 2015. (Item 2)

Applicant was interviewed by a government investigator in September 2017. He again disclosed his delinquent student loans and told the investigator that he had not made a payment since March 2016, but he was seeking a second job. In October 2018, he was interviewed again and told the investigator that he was initiating a plan to pay his student loans not later than November 2018. He said that he had secured a second job. He attributed his financial problems to a period in 2016 when his children were no longer living with him and his child support payments increased. (Items 3, 4)

Applicant stated in his March 2019 SOR answer, regarding the student loan debts in SOR ¶¶ 1.a and 1.c that he was working on a payment plan with the creditor. He stated: "I don't have the information to send in today, but I will be able to send the information on a later date." Applicant was afforded that opportunity when he received the FORM to provide information. He did not provide additional documentary evidence that he is resolving his delinquent student loans. (Item 1)

In Applicant's answer to the SOR, he provided documentary proof that he paid the collection debt in SOR ¶ 1.b; settled the charged-off debt in ¶ 1.d; paid the past-due amount owed for the debt in ¶ 1.e; and his child support obligation was paid and resolved (¶ 1.f). Applicant also provided a document to show the past-due amount owed for the motorcycle he purchased in December 2015, was paid (¶ 1.g). (Item 1).

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). 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 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states 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 as to obtaining 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 EO 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

Guideline F: Financial Considerations

The security concern relating to the guideline for 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

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

Applicant had numerous delinquent or past-due debts that he has been unable or unwilling to resolve. He also has two student loans that have been delinquent since 2016. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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; and

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

Applicant resolved the smaller delinquent or past-due debts alleged in SOR, but his student loans, totaling approximately \$66,745, have not been resolved. These debts are recent and ongoing. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to an increase in child support payments when his children were no longer living with him in approximately 2016. This was somewhat beyond Applicant's control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly. He repeatedly made statements that he was arranging to pay his delinquent student loans, but failed to provide proof of his actions. AG ¶ 20(b) has partial application.

There is no evidence Applicant has received financial or credit counseling. There are not clear indications that his financial problems related to his student loans are resolved or under control. AG ¶ 20(c) does not apply. There is evidence he paid and resolved the debts alleged in SOR ¶¶ 1.b and 1.d through 1.g. AG ¶ 20(d) applies to those debts.

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 the 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. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is 44 years old. Applicant repeatedly stated that he was working on a payment plan to resolve his significant delinquent student loans. He had an opportunity to provide documentary proof of any action he may have taken, but failed to provide it. At this juncture, Applicant has not met his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraphs 1.d-1.g:	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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge