



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



In the matter of:)
)
) ISCR Case No. 19-00485
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: *Pro se*

07/29/2019

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On April 8, 2019, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD acted 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 on June 8, 2017.

Applicant answered the SOR on April 24, 2019, and he requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 29, 2019, and the hearing was convened as scheduled on June 3, 2019. Applicant voluntarily consented to proceed with his hearing without the 15 days' notice described in the Directive. The Government offered exhibits

(GE) 1 through 6, which were admitted into evidence without objection. The Government's exhibit list and discovery letter were identified as hearing exhibits (HE) I and II. Applicant testified but did not offer any exhibits. Attachments to Applicant's SOR answer were considered. The record remained open until June 14, 2019, to allow Applicant to submit documentary evidence. He submitted AE A through C, which were admitted without objection. Email correspondence with Applicant concerning his post-hearing submission is reflected by HE III. DOHA received the hearing transcript (Tr.) on June 13, 2019. (Tr. 6-8)

Findings of Fact

In his SOR answer, Applicant denied all the allegations. After a review of the pleadings and evidence, I make the following findings of fact.

Applicant is a 39-year-old employee of a defense contractor. He began working at his present job in May 2016. He is a senior information systems (IT) storage consultant. He experienced unemployment from March 2016 until May 2016. He worked for various private sector employers from July 2010 to March 2016 providing IT services. He has a bachelor's degree. He is single, never married and has a four-year-old child, for whom he pays child support. (Tr. 8-9, 21-22; GE 1)

The SOR alleged three delinquent debts (a consumer debt, child support arrearage, and a lodging debt) totaling approximately \$57,204. The debts were listed in credit reports from August 2016, August 2017, February 2019, and May 2019 (SOR ¶¶ 1.a – 1.c). (AE 4-6)

Applicant pointed out that he is a good citizen who pays his taxes and has no criminal history. He also has family members who served in the military. Applicant's child support debt arose because he disputed that the state child support enforcement division could require him to pay child support without a judge's order. He does not dispute that the child is his. The consumer debt of approximately \$25,000 was incurred in 2016, when Applicant received a loan after he purchased his home in the state where he was living at the time. After he lost his job he defaulted on the loan. The final debt was for a contracted living arrangement that Applicant was in when he moved to a new state. He moved out early because the noise was too much for him to handle and management did not respond to his numerous complaints. The Government conceded this may be a case of constructive eviction. SOR ¶ 1(c) is resolved for Applicant. (Tr. 22-24, 38-40; GE 2)

The status of the remaining SOR debts is as follows:

Consumer debt (SOR ¶ 1.a). This debt went delinquent in August 2016. Applicant told a defense investigator in July 2018 that he would call the creditor and start making payments on the account. There is no documentary evidence to support that Applicant took any action at that time. Applicant admitted this debt in his testimony. He stated that he had no communication with the creditor for the past 18 months. Post-hearing (June 2019), Applicant documented that he contacted the collection agency

servicing this debt. He was offered two payment options. He failed to produce evidence that he accepted either of the proposed options. Applicant also indicated that he received proceeds of approximately \$65,000 from the sale of his home in another state. He used the proceeds to pay his child support arrearage and buy some land in another state for investment purposes. He did not apply any of the proceeds toward this debt. This debt is unresolved. (Tr. 23-25, 35; GE 2, 4; AE A, C)

Child Support (SOR ¶ 1.b). Applicant documented that he paid his child support arrearage in March 2019. He also documented that his ongoing support payments are being deducted from his paycheck in the amount of \$678 every two weeks. The debt is resolved. (Tr. 26-27; Answer (attachments); AE A-B)

Applicant did not produce a budget and there is no evidence that he sought financial counseling.

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 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.

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 about 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

AG ¶ 18 expresses the security concern for financial considerations:

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.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (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.

Applicant had three delinquent debts. One he legitimately disputed, one he paid, and one remains unpaid or unresolved. I find all the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

(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 debts are recent and, although he resolved his child support arrearage, he has not resolved his consumer debt, which exceeds \$20,000. He failed to produce evidence showing that recurrence of his financial problems is unlikely. AG ¶ 20(a) is not applicable.

Applicant's short period of unemployment can be considered a circumstance beyond his control. However, he did not act responsibly by failing to take any action to resolve the debt listed in SOR ¶ 1(a) before his hearing even though he had the resources to do so from the proceeds of his home sale. Overall, the record evidence does not support that Applicant acted responsibly under the circumstances. AG ¶ 20(b) is partially applicable.

Although Applicant paid his child support arrearage and is making his required monthly support payments, he did not present evidence of financial counseling. Given the unpaid status of the remaining consumer debt, Applicant's financial problems are not under control and good-faith efforts to pay or resolve the remaining debt is lacking. AG ¶¶ 20(c) and 20(d) do not apply. Applicant credibly disputed SOR ¶ 1.c and AG ¶ 20(e) applies to that debt.

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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant 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.

I considered Applicant's federal contractor service and the circumstances surrounding his indebtedness. However, I also considered that he has made insufficient efforts to resolve his debts. He has not established a meaningful track record of debt management, which causes me to question his ability to resolve his debts.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the financial considerations security concerns. (I considered the exceptions under Security Executive Agent Directive (SEAD) 4, Appendix C, dated June 8, 2017, and determined they are not applicable in this case.)

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
Subparagraphs: 1.b – 1.c:	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 grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge