



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



In the matter of:)
)
) ISCR Case No. 18-02587
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: Leon Schachter, Esquire

02/25/2020

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On December 18, 2018, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). The action was taken under Executive Order 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 or after June 8, 2017.

In a response notarized on January 16, 2019, Applicant admitted six of seven allegations. He also requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. I was assigned the case on April 4, 2019.

On June 10, 2019, a notice was issued setting the hearing for July 3, 2019. The hearing was convened as scheduled. The Government offered 11 exhibits, marked as Gov’t. Exs. (GE) 1-11. Each of those exhibits was accepted over Applicant’s objections. Applicant presented 56 documents, marked as App. Exs. (AE) 1-56. With no objections, all exhibits were accepted into the record. Applicant was granted through July 19, 2019,

to submit any additional materials, with leave to request an extension into the beginning of the autumn 2019 academic term. The transcript (Tr.) was received on July 18, 2019. Applicant submitted additional documentation in January 2020. On February 4, 2020, the Government noted no objection and the items were accepted as AE 57-59. The record was then closed. Based on the testimony, materials, and record as a whole, I find Applicant mitigated financial considerations security concerns.

Findings of Fact

Applicant is a 39-year-old compliance specialist who has worked in that capacity for nearly two years. He has earned a bachelor's degree in business administration and an associate's degree in management. He is currently working toward a master's degree. (Tr. 34) Applicant is well-regarded amongst his professional and work peers, and recently received a sizeable salary raise. He served in one branch of the United States military on active duty, then in another branch as both a reservist and on active duty. This occurred between 1998, shortly after his high school graduation, and 2003. In the interim, while living independently and away from home for the first time, he lived beyond his means. This led him to file for Chapter 13 bankruptcy protection in 2002, while still in his early 20s. In 2003, he received a general discharge from the military "not for the performance of [his] work, [but] for not being able to sustain [his] financial obligations." (Tr. 51-52)

Today, Applicant is married. The couple has two preteen children. Both children experienced differing allergic conditions from birth to about age two, requiring special care and products that adversely impacted Applicant financially during intermittent periods of employment and of unemployment. (Tr. 31-32).

In 2006, Applicant filed for Chapter 13 bankruptcy protection, which included the rollover of the 2002 bankruptcy petition which had been dismissed in June 2004. (Tr. 53) He did so on the advice of counsel. This included debts related to the couples' necessities, medical services, and other obligations accrued during periods of unemployment or underemployment by one or both of the spouses. Without thus resorting to bankruptcy, he had been unable to maintain payment arrangements or otherwise meet his obligations despite taking a secondary job. (Tr. 53) Ultimately, that bankruptcy action was dismissed in October 2006 for failure to make timely payments.

In about October 2009, Applicant filed for Chapter 7 bankruptcy regarding his personal debts. The bankruptcy was discharged in January 2010, giving him a clean slate. He was unemployed for two six-month periods in 2009 and 2011. He then lost health insurance coverage in 2012, leading to a period of inadequate coverage from 2012 to 2017, during which his children suffered their allergy problems. (Tr. 71)

In September 2015, however, the couple filed for Chapter 13 bankruptcy, which included mostly medical bills and related debts. (Tr. 57) Some of those medical bills were new, were for addressing the children's allergy needs, or for his wife's medical treatments during periods of unemployment (2009 and 2011). He failed to make or was late making payments in January 2016, October 2016, July 2017, October 2017, November 2017,

January 2018, August 2018, and September 2018. Some of these payments were interrupted because the family incurred additional debt for child care and education in preparation for a relocation. (Tr. 77) To date, however, they have paid about \$30,000 toward the bankruptcy petition balance with a current balance remaining of under \$11,000 to be paid by October 2021. (Tr. 58-59) The payment schedule and balances due are manageable.

At present, Applicant is living within his means. Each month, after all expenses and obligations, he has a net remainder of about \$3,200, and he has a \$5,000 promotion anticipated in the foreseeable future. (Tr. 36-37) He is current on his credit cards. The family has not had any extravagant expenses or vacations in recent times. They actively contribute to a savings account and a 401k account. (Tr. 42) Applicant has two late model vehicles (2008 and 2011) included in his bankruptcy petition. His wife works as an office manager. (Tr. 38) Applicant's wife manages the household accounts. A balance owed to an academic institution for contested fees in the amount of \$6,479 has been satisfied. (AE 57-59)

Applicant had a past-due amount of \$1,099 due on a total balance of \$16,360. This was for a new vehicle bought in 2017 to replace an unreliable car his wife had been using for transporting the children. That account is now current. (Tr. 65-66; Ex. 9)

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. 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 variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that any 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.

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, and transcends duty hours. The Government reposes a high degree of trust and confidence in those granted such access. Decisions necessarily include consideration of the possible risk an applicant may deliberately or inadvertently fail to safeguard such information. Decisions shall be in terms of the national interest and do not question the loyalty of an applicant.

Analysis

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that failure or inability 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.

Here, the Government offered documentary evidence reflecting that Applicant has numerous delinquent debts. This is sufficient to invoke financial considerations disqualifying conditions:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the ability to do so;
and

AG ¶ 19(c): a history of not meeting financial obligations.

Under these facts, three conditions could mitigate related security concerns:

AG ¶ 20(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;

AG ¶ 20(c) the individual has received or is receiving financial counseling for the problems 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 under control; and

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Over the years, varying reasons contributed to Applicant's acquisition of delinquent debt, ranging from youthful naiveté, unexpected medical care or needs, and periods of unemployment or underemployment, to insufficient regular income to provide for his growing family's needs. Those unforeseeable conditions concerning medical care and

employment potentially raise AG ¶ 20(b). The evidence shows that he attempted to seek bankruptcy protection on multiple occasions and also took on a second job. While bankruptcy is not the preferred method for addressing one's financial issues, it is a legally accepted tool for finding financial relief, it also includes required financial counseling. Moreover, Applicant showed he has learned from both his past mistakes and his past financial mishandling. He has matured. He is now current on his debts and bills, apparently benefitted from his most recent financial counseling, in timely repayment on his Chapter 13 bankruptcy petition, and has satisfied his academic fees. Consequently, AG ¶ 20(b) - AG ¶ 20(d) apply.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of his conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d). Here, I have considered those factors. I am also mindful that, under AG ¶ 2(a), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

At the cusp of age 40, Applicant has grown from a raw military recruit fresh from high school with little life experience to a maturing father of two. Along the way, he has faced various financial obstacles, such as breaks in income, variances in the levels of the household coffers, and unexpected financial obligations. His income and his needs are now in synch, helped by improvement in his family's health issues, his wife's employment, and a higher, consistent salary. He has satisfied some of his older debts. Going forward, he is addressing his remaining debts through his Chapter 13 bankruptcy petition, on which he is making timely and regular payments. The required payments are realistic, the balance owed can be reasonably satisfied given his income and resources, and is committed to resolving his financial situation. While financial counseling would greatly benefit him given the fact he still uses credit cards, it is clear he has his finances under control. Consequently, I find Applicant has mitigated 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.g:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

Arthur E. Marshall, Jr.
Administrative Judge