



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



In the matter of:)
)
) ISCR Case: 19-00523
)
Applicant for Security Clearance)

Appearances

For Government: Moira Modzelewski, Esquire, Department Counsel
For Applicant: *Pro se*

January 27, 2020

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of Case

On August 9, 2017, Applicant submitted a security clearance application (SF-86). On June 21, 2019, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. (Item 1.) 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective June 8, 2017.

Applicant answered the SOR on July 16, 2019 (Answer). He admitted all of the SOR allegations concerning his delinquent income tax filings and delinquent debts, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) On August 27, 2019, Department Counsel submitted the

Government's written case. A complete copy of the File of Relevant Material (FORM), containing five Items, was mailed to Applicant on August 28, 2019, and received by him on October 1, 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 responded to the FORM on October 26, 2019 (Response). He did not object to Items 1 through 6. Applicant also submitted additional information in his FORM response, to which Department Counsel had no objection. DOHA assigned the case to me on December 5, 2019. Items 1 through 6 are admitted into evidence. Applicant's response to the FORM (Response) is also admitted.

Findings of Fact

Guideline F – Financial Considerations

Applicant is 52 years old. (Item 3 at page 5.) He is now divorced, with one step-daughter. (Answer at pages 3 and 51~54.)

1.a. Applicant admits that he and his, then, estranged wife failed to file their state and federal income tax returns for tax years 2005~2017, thirteen years. Applicant attributes his failure to file due to lack of cooperation from his estranged wife. He avers that he was unaware that he could separate tax returns. This averment is not credible. Although he has now filed his returns for tax years 2012~2017 (Answer at pages 5~9 and 14~50, and Response at pages 2~4), and realizing the tax authorities can at most go back seven years seeking income tax delinquencies; this does not preclude Applicant from filing for tax years 2005~2011, or from offering evidence as to why he is precluded from filing for those tax years. This allegation is found against Applicant.

1.b. Applicant admits that he is indebted to Creditor B for \$12,191.00, as the result of the repossession of an automobile that he co-signed for with his step-daughter. In his Answer, Applicant avers, "I paid my car off in FEB 2017." However, in his Response Applicant offers evidence showing that as of October of 2019 that the "Remaining Balance due; [was] \$10,049.01." This allegation is found against Applicant, as the debt is not resolved.

1.c. Applicant admits that he is indebted to Creditor C for \$2,499.00. In his Answer, Applicant avers, "I am paying it off through . . . [a fiscal intermediary] giving them \$50.00 per month." This averment is supported by documentation from said fiscal intermediary confirming the receipt of \$250.00. (Response at page 5.) This allegation is found for Applicant.

1.d. Applicant admits that he is indebted to Creditor D for \$209.00. In his Answer, Applicant avers simply "I don't know who to pay." Although the Government did not submit a credit report in support of this allegation, this did not preclude Applicant from

obtaining a credit report and addressing the admitted past-due debt from the information contained therein. This allegation is found against Applicant.

1.e. Applicant admits that he is indebted to Creditor E for \$405.00 for a past-due medical debt. In his Answer, Applicant avers simply "I don't know who to pay." Although the Government did not submit a credit report in support of this allegation, this did not preclude Applicant from obtaining a credit report and addressing the admitted past-due debt from the information contained therein. This allegation is found against Applicant.

1.f. Applicant admits that he is indebted to Creditor F for \$166.00 for a past-due medical debt. In his Answer, Applicant avers simply "I don't know who to pay." Although the Government did not submit a credit report in support of this allegation, this did not preclude Applicant from obtaining a credit report and addressing the admitted past-due debt from the information contained therein. This allegation is found against Applicant.

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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. I have not drawn inferences based 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person applying for national security eligibility seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of EO 10865, “[a]ny determination under this order adverse to an applicant shall be a determination 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 concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 describes four conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant failed to file income tax returns for thirteen years. He also has substantial past-due indebtedness. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged financial difficulties:

(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;

(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;

(f) the affluence resulted from a legal source of income; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

None of these apply. Applicant has yet to file tax returns for tax years 2005-2011. He has also only recently addressed one of his five admitted past-due debts. Financial Considerations is found against Applicant.

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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Overall, the record evidence leaves me with questions and doubts as to Applicant's judgment, eligibility, and suitability for a security clearance. He has not met his burden to mitigate the security concerns arising under the guideline for financial considerations.

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. and 1.b.:	Against Applicant
Subparagraph 1.c. :	For Applicant
Subparagraphs 1.d. through 1.f.:	Against 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 national security eligibility and a security clearance. National security eligibility is denied.

Richard A. Cefola
Administrative Judge