



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



In the matter of:)	
)	
)	ISCR Case No. 19-01136
)	
Applicant for Security Clearance)	

Appearances

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

03/30/2020

Decision

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

Statement of the Case

On May 1, 2019, 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 June 12, 2019, Applicant answered the allegations raised in the SOR and requested a decision based on the written record by a Defense Office of Hearings and Appeals (DOHA) administrative judge. The Government's written brief with four supporting documents (Items 1-4), known as the File of Relevant Material (FORM), was submitted by Department Counsel on July 10, 2019.

A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM and timely submitted a narrative and

three packets of materials, accepted without objection as Applicant exhibits (AE) 1 to 3. I was assigned the case on September 26, 2019. One additional packet of information was offered by Applicant and forwarded to me on October 1, 2019. Noting no objection, it was accepted as AE 4 and the record was 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 60-year-old communications specialist who has worked in the same position since mid-2017. He completed some postsecondary coursework in the past decade. He honorably served on active duty in the U.S. military from 1979-1983, then again from 1987-2003, before accepting a position as a contractor serving with the U.S. military. Applicant married in 2003 and has two children in their early teens. He first was awarded a security clearance while serving in the military. He has held a security clearance without adverse incident.

In late 2017, Applicant discovered his wife had a gambling problem, expending about \$7,000 that preceding year. (FORM, Item 4 at 1) As a contractor, Applicant's salary was affected each time a new company won his employment contract. Each time, this resulted in a pay reduction. His salary was thus reduced by over \$23,000 in the past decade. (Response to FORM, at 2)

At issue in the SOR are four financial situation:

First (1.a), is a charged-off account for approximately \$12,712 for an automotive debt which arose after Applicant's 2010 bankruptcy petition. Applicant's credit report notes a date of last activity on this account as October 2017. (FORM, Item 4) In May 2019, Applicant negotiated a payment plan on this balance. After his third timely payment plan, he satisfied the debt balance in August 2019. (AE 1, 1-2) This debt was resolved and SATISFIED with the help of funds received from a bank settlement. (AE 1a, 2; 1b)

Second (1.b) and third (1.c), are student loan collection accounts for about \$28,660 and \$22,253, respectively. They predate his 2011 bankruptcy petition, survived that action, and then were forgotten or overlooked. They have been rehabilitated and are now subject to a regular repayment plan. Evidence of the established repayment plan and regular payments started in July 2019 were presented. (AE 2) IN REPAYMENT

Fourth (1.d), in September 2010, Applicant filed for Chapter 7 bankruptcy protection and claimed approximately \$481,180 in outstanding liabilities. He attributed his need for bankruptcy largely to "various and cumulative issues." (FORM, Item 3, Personal Interview at 4, 8) Specifically, he cited to a poor choice in financing his home with an Adjustable Rate Mortgage (ARM) in 2005, and a subsequent, rapid increase in mortgage payments. In addition, he also cited to an estimated \$20,000 salary cut he

took to stay on his employment contract. (FORM, Item 3, Personal Interview at 4, 8) That bankruptcy was discharged in around January 2011. Elsewhere, he mentioned his wife had had a gaming problem.

Today, Applicant is living within his means and his salary is stable. There are no other delinquent debts at issue. His student loan payments are reasonable and manageable. He is contrite that the delinquent debts at issue were not previously noted and honored. Applicant is proud to be continuing to serve in furtherance of the U.S. government and military.

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 had multiple delinquent debts and filed for bankruptcy in 2010. 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.

Beyond Applicant's control, in terms of financial issues affecting his financial status were his wife's gambling problem and a notable reduction in income situations – both adversely affecting his ability to make payments on an unwieldy ARM mortgage and other expenses. When his debt became uncontrollable, he filed for bankruptcy, which would have included the required financial counseling component. Nearly a decade later, he was faced with three comparatively fresh delinquent debts – an automotive collection, plus two student loan collection accounts that became overlooked when they failed to qualify for inclusion in Applicant's 2010 bankruptcy petition. Once apprised of these debts, he quickly satisfied the automotive collection, and rehabilitated his student loans so as to now be in regular payment status. Consequently, I find 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.

With almost two decades of honorable military service to his credit, Applicant is presently a 60-year-old communication specialist who has worked in the same position since mid-2017. He has completed some postsecondary coursework in the past dozen years. Applicant is married with two children in their early teens. He has successfully maintained a security clearance without adverse incident for many years, except for the SOR concerns. His income is currently stable and he is living within his means.

Unable to adjust to the reductions in government contractor salaries near the beginning of this century, along with broad variances in ARM percentage payments and his wife's gambling, Applicant resorted to bankruptcy protection in 2010 to achieve a fresh start. That petition a decade ago, however, did not include the automotive debt and two student loans now at issue. When apprised that these accounts were existent and delinquent, he quickly satisfied the former, then rehabilitated his delinquent student loans to the point they are now in a reasonable, regular repayment plan. He did so expediently after receiving the SOR, and he did so without either hesitation or financial difficulty. Proud of his past years of honorable military service, Applicant was eager to meet his obligations and contrite over the existence of these financial blemishes. Living within his means today, Applicant is able to care for his family and honor his creditors going forward. While repeated financial counseling could benefit in terms of unusual or unexpected contingencies in the future, 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.d:	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