



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



In the matter of:)
)
) ISCR Case No. 19-01433
)
Applicant for Security Clearance)

Appearances

For Government: Erin P. Thompson, Esq., Department Counsel
For Applicant: *Pro se*

March 17, 2020

Decision

TUIDER, Robert, Administrative Judge:

Applicant mitigated security concerns regarding Guideline F (financial considerations). Clearance is granted.

Statement of the Case

On December 1, 2017, Applicant submitted a Questionnaire for National Security Positions (SF-86). On May 23, 2019, the Department of Defense (DOD) Consolidated Adjudication Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F. The SOR detailed reasons why DOD CAF was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

On August 30, 2019, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the file of relevant material (FORM), dated September 26, 2019, was provided to him by letter on September 27, 2019. Department Counsel attached six exhibits to the FORM marked as Items 1 through 6. Applicant received the FORM on October 1, 2019. He was

afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant timely submitted additional information marked as Item 7. I received Items 1 through 7 into evidence. On November 21, 2019, the case was assigned to me.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a through 1.f, 1.h, and 1.i, and denied ¶ 1.g stating that the alleged account was paid in full. Additional findings of fact follow.

Background Information¹

Applicant is a 56-year-old foreman inspector employed by a defense contractor since July 1982. He seeks to retain his security clearance, which is a requirement to maintain his current employment. His SF-86 indicates that he has successfully held a security clearance since at least August 2002. The FORM does not contain any information about his educational background. Applicant married in September 1987 and has two adult children.

Financial Considerations

Applicant's nine SOR debts total \$82,051 and are established in part by his SOR Answer, his February 14, 2018 and May 9, 2019 credit reports, and his September 6 and 11, 2018 Office of Personnel Management Personal Subject Interviews (OPM PSI). (SOR ¶¶ 1.a – 1.i; Items 2, 4 - 6)

Department Counsel's FORM noted that it is not clear from the record exactly when or how Applicant's financial problems began, apart from his statement in his SOR Answer that his delinquent debts "snowballed." (Item 4) He added in his post-FORM submission that he "got [himself] in financial trouble." To regain financial responsibility, Applicant retained the services of a debt-relief law firm, entering into a contract with them dated July 29, 2017. (Items 2, 6, 7) The debt-relief law firm provided him with financial counseling as well as a plan to place all of his debts in a debt negotiation program. (Item 2, 6, 7)

Since September 2017, Applicant has been paying the debt relief law firm \$1,100 a month by direct debit. His SOR Answer and post-FORM submission confirmed that he has been making timely payments to the debt-relief law firm per their agreement. (Items 2, 7) He noted in his SOR Answer that his largest debt of \$27,479 was paid in full, presumably settled for a lesser amount. (Item 2) With the elimination of this debt, his total SOR debt amount was reduced to \$54,572. This revised amount does not provide the current state of Applicant's debt liability.

¹ The limited background information regarding Applicant was derived from the FORM and was the most current information available.

Applicant's contract with the debt-relief law firm estimates that he will be debt-free in 48 months. Applicant stated that he hopes by his documented corrective action it will be evident that he is doing the right thing and will be out of debt in the near future. (Item 7)

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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 to be 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, administrative judges apply the guidelines 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. 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."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the 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." The applicant has the ultimate burden of persuasion to obtain a favorable clearance 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible

extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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 two disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability to satisfy debts;” and “(c) a history of not meeting financial obligations.” The evidence of record establishes security concerns under AG ¶¶ 19(a) and 19(c). Further review is necessary.

AG ¶ 20 lists five potentially applicable mitigating conditions:

(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.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sep. 24, 2013).

Applicant's conduct does not warrant full application of AG ¶ 20(a) because there is more than one delinquent debt and his financial problems are not isolated. His debt remains a "continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). AG ¶¶ 20(b) and 20(e) are not applicable.

AG ¶¶ 20(c) and 20(d) are fully applicable. Applicant recognized that his finances had gotten out of control and entered into a contract with a debt-relief law firm on July 29, 2017, which was before he completed his SF-86 on December 1, 2017, and long before his SOR was issued on May 23, 2019. Since September 2017, he has been making \$1,100 monthly payments to the debt-relief law firm by direct debit. Although the circumstances that gave rise to his financial difficulties are unclear, his subsequent corrective action reflects a desire on Applicant's part to right the ship and regain financial responsibility.

Of the nine debts alleged, the largest debt of \$27,479 has been paid in full leaving a maximum balance of \$54,572 owed on the remaining eight debts. I recognize that this amount owed cannot be current given the \$1,100 monthly payments Applicant

has been making since September 2017. While this is not a small number, the adjudicative guidelines do not require that an applicant be debt-free. The Appeal Board has established the following basic guidance for adjudications in cases such as this:

an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payments of such debts one at a time.

ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations 32(?) and quotations omitted). When considering the entirety of Applicant's financial situation, I view Applicant's corrective action to be reasonable. He has initiated a pragmatic approach to the repayment of his eight remaining SOR debts and is making a good-faith effort to resolve those debts. If the estimate provided by the debt-relief law firm of 48 months proves to be accurate, Applicant will be debt-free in approximately September 2021.

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(a):

(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.

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. AG ¶ 2(c). The discussion in the Analysis section under Guideline F is incorporated in this whole-person section. However, further comments are warranted.

Both the mitigating conditions under Guideline F and the whole-person analysis support a favorable decision. Applicant is a 56-year-old foreman inspector employed by a defense contractor since July 1982. There is no evidence of any security violations during those 37 plus years. He has spent his adult working life in furtherance of supporting the Government's mission and those years of service warrant consideration. Applicant understands what he needs to do to establish and maintain financial responsibility. His efforts at debt resolution have established a "meaningful track record" of debt repayment.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole-person factors and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the adjudicative guidelines.

Formal Findings

The formal findings on the SOR are as follows:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a – 1.i:	For Applicant

Conclusion

In light of all of the record as a whole, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Clearance is granted.

ROBERT TUIDER
Administrative Judge