



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



In the matter of:)
)
) ISCR Case No. 19-01489
)
Applicant for Security Clearance)

Appearances

For Government: Mary M. Foreman, Esq., Department Counsel
For Applicant: *Pro se*
02/20/2020

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On May 20, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. 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 the adjudicative guidelines (AG) effective on June 8, 2017.

Applicant answered the SOR on July 29, 2019, and requested a hearing before an administrative judge. The case was assigned to me on October 7, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 25, 2019. I convened the hearing as scheduled on January 15, 2020. The Government

offered exhibits (GE) 1 through 4. Applicant testified and did not offer any exhibits. There were no objections to the Government's exhibits, and they were admitted into evidence. The record was held open until January 29, 2020, to allow Applicant to submit additional documents, which he did. They were marked as Appellant Exhibits (AE) AE A through D and admitted into evidence without objection. (Hearing Exhibit I) DOHA received the hearing transcript on January 24, 2020.

Findings of Fact

Applicant admitted both of the allegations in SOR. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 39 years old. He is a high school graduate and earned a technical degree in 2006. He never married. He has a 17-year-old child from a previous relationship. He presently works as a software engineer. He estimated his current salary to be around \$78,000. He does not have any savings. He is current on his monthly expenses. (Tr. 16-18, 29-31)

The SOR alleges Applicant has two delinquent debts. The debt in SOR ¶ 1.b is a collection account for an apartment lease. In his answer to the SOR, Applicant stated that he had a dispute with the landlord about the plumbing in his apartment. He was not going to pay the amount owed due to the dispute, but then decided to resolve it, concluding his job was a higher priority. He stated he did not think this should have an impact on his security clearance eligibility. He provided proof that he paid this debt. It is resolved. (Tr. 18-22; AE B, D)

The debt in SOR ¶ 1.a alleges that Applicant is indebted to State A in the approximate amount of \$71,053 for child support arrearages. Applicant admitted the allegation in his answer to the SOR, but stated that for the first five years of his child's life he lived with his son and his son's mother and provided financial support. (Record)

Applicant was interviewed by a government investigator in October 2018. He was confronted by the investigator about his child support arrearages. Applicant said he was aware of the debt, but did not agree with the past-due amount because he was currently paying his child support obligation that is automatically deducted from his pay. (GE 2)

Applicant testified that his son was born in State A and Applicant lived with his son and mother for about four years. Applicant then moved to another state for a year before returning to State A. When he returned, he did not live with his son and the mother. He did not go to court to determine his child support obligation, but said the mother may have gone to court, but he does not know. He testified that he has been aware that he was delinquent in his child support payments from the time the delinquency began accruing. He estimated he has been in arrears for at least 10 years. He believes he learned of the arrearages from a letter he received from State A or when he viewed State A's website about his child support obligation. (Tr. 22, 33)

Applicant presently has his current child support payments withdrawn directly from his paycheck. He said he was current with his bi-monthly payments. He assumed that State A would garnish additional amounts from his paycheck to pay his arrearages or withhold any tax refund he may be due to pay the arrearages. He expected that through these means, the amount would eventually be paid. He has not contacted State A to make arrangements to pay the arrearages. He explained the only time he did not pay his child support was when he did not have a job or had no money. He could not provide more specifically what period of time that he was unable to pay. (Tr. 22, 26, 37-38)

In his answer to the SOR, Applicant stated that he pays his current child support payments and sends extra money and gifts to his son. He further stated: "I am not worried about this debt and do not believe owing child support should be an issue or taken into consideration." (Record)

Applicant testified: "But I still send the child money and buy [him] gifts and stuff like that. So I don't really like, I'll pay off the debt. I don't think it is a big deal." (Tr. 25) He said that he provides for his son when his son needs it. When asked how much he pays in monthly child support, he said he did not know and that he does not look at his paycheck. He thought he paid about \$500 a month. In post-hearing documents, he provided a copy of his pay stub that shows he pays \$257 per pay period, which is twice a month. He said "They just take the money out of my paycheck and I'm just going to pay it until it's paid off." (Tr. 24) He reiterated that he was not worried about it. As far as any payments made toward the balance in arrears, he stated that his tax refunds are withheld, but no other payments are made. He confirmed that he has not contacted State A to increase his payments to address the arrearage. (Tr. 23-29; AE C)

When Applicant was asked what his intent was regarding his child support arrearages, he stated his number one priority was to give his son money directly and provide for him (Tr. 38-40) He stated:

I think I will try and increase it or see exactly what I can do. But I will have to check that out and see what I can do. I could, you know, I guess I will call them and try to see if I could make a plan or get online and see if I could make a plan with them. Like, the mom doesn't really care. So, I don't, so I haven't really tried to do much. She's kind of happy just the way things are. So, but I will make an effort to pay this off. (Tr. 40)

In Applicant's post-hearing exhibit, he stated he would contact the state to try and arrange a payment plan to resolve the debt. He intended to pay all of his debts in full, including his child support. He intended to help his child with whatever the child needs and help him with college or anything else. He said he intended to pay his child support debt. (AE A)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. 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(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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states 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 as to obtaining 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 as to 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

The security concern relating to the guideline for financial considerations is set out in AG ¶ 18:

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 conditions that could raise security concerns. The following are potentially applicable:

- (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 has delinquent child support that began accumulating at least 10 years ago that he has been unable and unwilling to pay. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (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; and

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

Applicant was aware he had delinquent debts for some time. He resolved the delinquent debt owed for his apartment. AG ¶ 20(d) applies to this debt. Applicant has not resolved his child support arrearages that he has been aware of since they began, at least 10 years ago. He has not contacted the state to make arrangements to pay, although in his post-hearing documents he said he would. He said he did not pay his child support when he was unemployed or did not have enough money, but he was unable to provide a specific time period. These factors were beyond his control, but there is no evidence he acted responsibly when he regained employment. Since being employed, he failed to provide evidence as to why he did not pay or arrange a payment plan to satisfy the arrearages. AG ¶ 20(b) has minimal application. This debt has been ongoing and remains unresolved. His failure to understand the importance of resolving his obligation over the years and refusal to take any substantive action on it continues to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

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 guidelines and the whole-person concept.

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

Applicant is 39 years old. He owes more than \$70,000 in arrearages to State A for delinquent child support. He has been aware of his obligation since the obligation became delinquent years ago. He does not seem to appreciate the gravity of his obligation and delinquency and has made no attempt to pay it or reduce it. In his post-hearing statement, he said that he intends to contact the state to make payment arrangements. Intentions to pay debts in the future are not a substitute for a track record of responsible actions. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013).

The record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

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
Subparagraph 1.b:	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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge