



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 19-01555
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

02/26/2020

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On September 27, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on October 16, 2019, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on December 17, 2019, and reassigned to me on January 8, 2020.

The hearing was convened as scheduled on January 15, 2020. Government Exhibits (GE) 1, 4, and 6 through 8 were admitted in evidence without objection. The objection to the three credit reports identified as GE 2, 3, and 5 as cumulative was overruled, and the exhibits were admitted. Applicant testified and submitted Applicant's Exhibits (AE) A through R, which were admitted without objection. The record was held open for Applicant to submit additional information. He submitted documents that I have marked AE S through U and admitted without objection.

Findings of Fact

Applicant is a 30-year-old employee of a defense contractor. He has worked for his current employer since February 2018. He is applying for a security clearance for the first time. He has never married, and he has no children. (Transcript (Tr.) at 36-38, 67-68; GE 1)

Applicant had periods of unemployment and underemployment. He moved to an area that had more opportunities, and he went to community college to learn a trade. He then had an apprenticeship. He used credit, but he had difficulty paying his bills. (Tr. at 30-37; Applicant's response to SOR; GE 1; AE R)

The SOR alleges ten delinquent debts totaling about \$23,750. In his response to the SOR, Applicant admitted owing all the debts, except he indicated that he paid the \$413 debt alleged in SOR ¶ 1.g.

Applicant engaged the services of a debt-resolution company in June 2018. He enrolled ten debts in the company's debt-relief program (DRP). It appears that all but the accounts in SOR ¶¶ 1.a and 1.b were included in the DRP. He agreed to pay the company \$388 per month. The company negotiates settlements with his creditors, and pays the settlement amounts out of the accumulated funds, minus their fees. Applicant did not pay the DRP every month, as he paid other debts some months. Between June 2018 and October 2019, he made nine payments of \$388, for a total of \$3,492. (Tr. at 39-40, 47-48, 60-67; Applicant's response to SOR; GE 1-5; AE A, C, D, P, Q, R)

In July 2018, the company negotiated a payment plan with the law firm collecting a debt for a bank (SOR ¶ 1.g). The bank obtained a \$1,815 judgment against him in August 2018. From July 2018 through September 2019, the company paid the law firm \$1,347. The SOR alleges the debt with a balance of \$413, which was based on an April 2019 credit report. However, the debt was larger before the SOR was issued. The August 2018 credit report lists the balance as \$1,322. The August 2019 credit report lists the balance as \$312. The law firm accepted \$185 in September 2019, as final settlement of the debt. (GE 2, 3, 5, 7; Applicant's response to SOR; AE B, C, J, K, P, Q, R)

Applicant paid \$144 in December 2019 and \$146 in January 2020 to resolve the \$275 medical debt alleged in SOR ¶ 1.a. He also paid other debts outside the DRP. He paid \$313 in September 2019 and \$274 in December 2019 to pay two debts that were not alleged in the SOR. He paid in full two payday loans that were not alleged in the SOR. (Tr. at 36-38, 47-50, 59-61; Applicant's response to SOR; GE 2, 3, 5; AE E, H, I, L, M, N, S, T, U)

In addition to any advice he received from the debt resolution company, Applicant received financial counseling from a company that specializes in military customers. His counselor wrote that Applicant "has shown dedication and perseverance in regards to getting his debt paid off and has continuously updated me on his progress each time he has successfully paid off one of his loans." Applicant finally has a good job

with a bright future. He knows that his job is conditioned on him receiving and maintaining a security clearance, and that he could lose his security clearance and job if he does not continue to pay his delinquent debts. He lives frugally on a budget. He is current on his student loan, which has a workable balance of about \$10,700. He credibly stated that he is committed to paying all his debts and to eventually becoming debt free. (Tr. at 32-33, 40, 51-57, 70-71; Applicant's response to SOR; GE 2, 3, 5; AE D, F, O, R)

Applicant submitted a letter from his supervisor attesting to Applicant's superior job performance. The supervisor described Applicant as "a dedicated, capable, and faithful person." (AE G)

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 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 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 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

Guideline F, Financial Considerations

The security concern 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has a history of financial problems, including delinquent consumer debts and an unpaid medical debt. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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;

(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; and

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

Applicant had periods of unemployment and underemployment. He went to community college to learn a trade, then served an apprenticeship, and finally received a job with his current employer in February 2018.

Applicant engaged the services of a debt-resolution company in June 2018, more than a year before the SOR was issued. Between June 2018 and October 2019, he paid the company a total of \$3,492. Only one debt alleged in the SOR was settled by the company, but Applicant paid at least five other debts outside the DRP, including the medical debt alleged in SOR ¶ 1.a. He credibly stated that he is committed to paying all his debts and to eventually becoming debt free.

A security clearance adjudication is not a debt-collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Applicant has a plan to resolve his financial problems, and he took significant action to implement that plan. He acted responsibly under the circumstances and made a good-faith effort to pay his debts. It may take time, but I am convinced that he will eventually resolve his financial problems.¹ The above mitigating conditions are sufficiently applicable to mitigate financial considerations security concerns.

¹ See ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009) and ISCR Case No. 09-08462 at 4 (App. Bd. May 31, 2011): "Depending on the facts of a given case, the fact that an applicant's debts will not be paid off for a long time, in and of itself, may be of limited security concern."

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.

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 have incorporated my comments under Guideline F in my whole-person analysis. I also considered Applicant's favorable character evidence.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the 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.j:	For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge