



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



In the matter of:)
)
) ISCR Case No. 19-01774
)
Applicant for Security Clearance)

Appearances

For Government: Eric Price, Esq., Department Counsel
For Applicant: *Pro se*

03/11/2020

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 June 26, 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 within the DOD on June 8, 2017.

Applicant answered the SOR on August 8, 2019, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government’s file of relevant material (FORM), and Applicant received it on January 7, 2020. He was afforded an opportunity to file objections and submit material in refutation,

extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 6. Applicant did not provide a response to the FORM, object to the Government's evidence, or submit documents. Items 1 through 6 are admitted into evidence. The case was assigned to me on March 4, 2020.

Findings of Fact

Applicant admitted all of the SOR allegations, except the allegation in ¶ 1.d. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 60 years old. He earned a bachelor's degree in 2007 and a master's degree in 2014. He never married and has no children. He was employed by a federal contractor from August 2011 to August 2017. He was then unemployed from August 2017 to November 2017. He worked one week in November 2017 for a federal agency and left because it failed to disclose the parking requirements and costs. He was unemployed from November 2017 until he was hired by his current employer, a federal contractor in April 2018. (Items 2, 3, 4)

The SOR alleges five delinquent debts totaling approximately \$40,971. Applicant admitted owing all but the debt alleged in SOR ¶ 1.d (past due \$740). All of the SOR debts are corroborated by credit bureau reports dated May 2019 and April 2018. Applicant was interviewed by a government investigator in July 2018 and August 2018. He was confronted during the first interview with the debt alleged in SOR ¶ 1.a, which was past due at the time. Applicant could not recall any delinquencies on any of his accounts. He was given an opportunity to provide documentation regarding the delinquent account, but did not do so during the first or subsequent interviews to corroborate his disagreement. (Items 3, 4)

In Applicant's August 2019 answer to the SOR, he attributed his financial problems to having two knee surgeries in the past two and half years and a one-week hospital stay for pneumonia. He stated that he has adequate health insurance from his employer, but was liable for a portion of the surgeries and hospital stay that were deemed necessary by his doctors. In 2018, he lost three months of work due to his surgery, which created a financial burden for him. Working overtime was not available until approximately April 2019. Applicant indicated that he is taking advantage of overtime opportunities, which he sees as a long-term solution to him resolving his financial obligations. He indicated that he will continue to pay his accounts.

Applicant stated in his SOR answer that the delinquent debt in SOR ¶ 1.a (\$25,739) that became past due in April 2018, and charged off in June 2018, is no longer delinquent. He provided a document from the collection division of the creditor dated August 2019 that says a repayment agreement is confirmed, and Applicant agrees to make 49 monthly payments of \$514 with the final payment due in August 2023. The outstanding default will continue to be reported to the credit bureaus until the agreement is satisfied. Collection activities will continue if Applicant fails to fulfill the agreement. Applicant provided a letter

from the creditor dated July 27, 2019, authorizing a payment to be processed in July 2019. Applicant did not provide any other documents to corroborate he has made any other payments and is in compliance with the agreement. (Item 2)

Applicant provided a letter from the creditor for the charged-off account alleged in SOR ¶ 1.b (\$9,862). It was dated August 2019 and stated: "Applicant is making payments again on the following account. Last payment processed on July 26, 2019." (Item 2) Applicant did not provide any other documents to corroborate that he has continued to make payments on this debt. (Item 2)

Applicant provided a settlement offer from the creditor for the charged-off account in SOR ¶ 1.c (\$3,283) dated July 2019. It stated that when Applicant completed payments of \$900, due in August 2019, and \$650, due in September 2019, the debt will be settled in full. Applicant did not provide any documents to show he paid these amounts and the debt is settled. (Item 2)

Applicant provided a document from the creditor in SOR ¶ 1.d (\$740 past due, with a total balance of \$2,476). This was a loan from 2015. Applicant paid the debt in July 2019. This debt is resolved. (Item 2)

Applicant provided a payment agreement from the creditor for the collection account alleged in SOR ¶ 1.e (\$1,347). It required Applicant to make bi-monthly payments of \$336 in August and September 2019. The payments were to be received no later than the due dates. Applicant did not provide documentary evidence to corroborate that he made the payments as required. (Item 2)

Applicant provided medical documents to substantiate his medical issues, but not the specific amounts that he was required to pay that he stated impacted his finances. He did not provide any information regarding his current finances, such as his income; overtime pay; savings; investments; expenses; or other financial information to show he has the ability to repay his debts. He did not disclose whether he maintains a budget or has participated in financial counseling. He did not explain why he failed to contact his creditors until after he received the SOR and was on notice that his finances might be an issue when he was interviewed in July 2018.

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handing and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

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

Applicant has delinquent debts that have not been paid or resolved. 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;
- (c) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant admitted he owed all of the debts alleged in the SOR, except the debt in SOR ¶ 1.d, which he denied because he paid it. Applicant provided documents to show he contacted the creditors for the remaining SOR allegations. However, the documents do not confirm that he has made payments toward the delinquent debts, only that he has agreements to pay them in the future. One letter from August 2019, substantiated Applicant had started to make payments again on the debt in SOR ¶ 1.b, but Applicant did not provide sufficient evidence to show he has continued to make payments beyond that date. His delinquent debts remain recent. Without specific information about his current finances and ability to repay his delinquent debts, I am unable to conclude that financial problems are unlikely to recur and do not cast doubts on Applicant's current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to periods of unemployment and medical bills he was required to pay that were not covered by insurance. These circumstances were beyond his control. For the full application of AG ¶ 20(b), Applicant must provide evidence that he acted responsibly under the circumstances. Applicant stated that he had health insurance, but was required to pay for things his doctors prescribed. He did not provide specific information as to the amount he was required to pay and its impact on his finances. Applicant did not provide information on why he failed to contact his creditors until after he received the SOR. He failed to provide corroborating evidence that he is making payments in accordance with any agreements or settlement offers he has with the creditors. There is no evidence he has participated in financial counseling. He did not provide specific evidence about his current finances other than he is now earning overtime pay and will be able to resolve his debts. Applicant provided proof that he resolved the debt in SOR ¶ 1.d. AG ¶ 20(d) applies to that debt. None of the above mitigating conditions apply to the remaining SOR allegations.

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 60 years old. He has been employed since April 2018. He failed to meet his burden of persuasion. The record evidence leaves me with 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 raised 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
Subparagraphs 1.a-1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge