



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



In the matter of:)
)
) ISCR Case No. 19-01887
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: *Pro se*

December 16, 2020

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of the Case

On December 20, 2019, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline F. The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant’s security clearance.

Applicant answered the SOR on January 29, 2020, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on June 4, 2020. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 30, 2020, scheduling the hearing for November 5, 2020. The hearing was convened as scheduled. The Government offered Exhibits (GXs) 1 through 10, which were admitted in evidence. Applicant testified on his own behalf. Applicant offered six documents, which I marked Applicant’s Exhibits (AppXs) A through F, which were admitted into evidence. The record was left open until December 4, 2020, for receipt of

additional documentation. On December 4, 2020, Applicant offered two additional documents, which were admitted into evidence as AppXs G and H. DOHA received the transcript of the hearing (TR) on November 13, 2020.

Findings of Fact

Applicant admitted to the allegations in SOR ¶¶ 1.a.~1.d. He denied SOR allegation ¶ 1.e. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 52-year-old employee of a defense contractor. He has been employed with the defense contractor “for over 30 years,” and has held a security clearance for those 30-plus years. (TR at page 19 line 18 to page 21 line 4.) He is recently divorced, and has three adult children. (TR at page 21 line 14 to page 24 line 8.) Applicant attributes his financial difficulties to his divorce, when his former spouse “walked out” of their marriage, leaving all of the alleged past-due debts, save the last one, to Applicant. (TR at page 23 line 4 to page 24 line 5.)

Guideline F - Financial Considerations

1.a. Applicant admits a former past-due credit-card debt, incurred by his former spouse without his knowledge, in the amount of about \$30,000. (TR at page 28 line 17 to page 30 line 21.) Through the auspices of a legal mediator; he paid this debt in August of 2020, as evidenced by documentation from this legal mediator (AppX F at page 2.)

1.b. Applicant admits a former, past-due debt to Creditor B in the amount of about \$3,492. (TR at page 31 line 16 to page 32 line 21.) Through the auspices of the same legal mediator noted above; he paid this debt in January of 2020, as evidenced by documentation from this legal mediator (AppX F at page 2.)

1.c. Applicant admits a former, past-due debt to Creditor C in the amount of about \$4,648. (TR at page 32 line 22 to page 35 line 2.) Through the auspices of the same legal mediator noted above; he paid this debt in November of 2018, as evidenced by documentation from this legal mediator (AppX F at page 2.)

1.d. Applicant admits a past-due debt on a second mortgage in the amount of about \$58,000. (TR at page 26 line 22 to page 27 line 4, and at page 34 line 20 to page 36 line 8.) Through the auspices of the same legal mediator noted above, Applicant is making monthly payments of \$1,824 towards this debt, which will be paid off on March 1, 2021. (TR at page 38 line 24 to page 39 line 9.) This is evidenced by documentation from this legal mediator (AppX D.)

1.e. Applicant denies his ex-spouse’s medical debt in the amount of about \$1,047. (TR at page 22 line 17 to page 34 line 19.) This debt also does not appear on Applicant’s most recent October 2020 credit report. (GX 10.) I find that Applicant is not responsible for this debt.

Policies

When evaluating an applicant's 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 to be used in evaluating an applicant's national security eligibility.

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(a), 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies for access to classified information seeks to enter 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 protect or 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 Executive Order (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 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.

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

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

Applicant had significant, past-due debt, and also a second mortgage towards which he is still making payments. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 20 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 20 including:

- (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 has addressed admitted financial difficulties, which he can attribute to a divorce. Only one past-due debt remains that will also soon be paid. He has demonstrated that future financial problems are unlikely. Mitigation under AG ¶ 20 has been established. Financial Considerations are found for Applicant.

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 considered the potentially disqualifying and mitigating conditions in light of all 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 those guidelines, but some warrant additional comment. Applicant is well respected in the work place, as evidenced by six letters of recommendation. He also lives within his means as reflected by a monthly budget. (AppX H.)

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, 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 ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a.~1.e.: 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 national security eligibility for a security clearance. Eligibility for access to classified information is granted.

Richard A. Cefola
Administrative Judge