



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



In the matter of:)
)
) ISCR Case No. 19-01955
)
Applicant for Security Clearance)

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: Kyle D. Clark, Esq.

05/04/2020

Decision

MURPHY, Braden M., Administrative Judge:

Applicant’s debts arose largely after his marriage ended and he experienced low income during periods of employment instability. His debts are now largely resolved and are under control. Applicant provided sufficient evidence to mitigate financial security concerns. Applicant’s eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on November 9, 2017. On July 31, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations, due to his delinquent debts. The DOD CAF issued the SOR under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, (AG) effective June 8, 2017.

Applicant answered the SOR on August 30, 2019, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on December 11, 2019. On January 16, 2020, DOHA issued a notice of hearing scheduling Applicant's case for February 6, 2020.

Applicant's hearing was held as scheduled. Department Counsel submitted Government's Exhibits (GE) 1 through 3. Applicant submitted Applicant's Exhibits (AE) A through R. He submitted AE A through AE D with his Answer. All exhibits were admitted without objection. Applicant and one other witness testified. I held the record open to allow Applicant the opportunity to submit additional documentation. His post-hearing documents were marked as AE S through AE Y and admitted without objection. DOHA received the transcript of the hearing on February 19, 2020. The record closed on February 20, 2020.

Clerical Amendment to the Statement of Reasons

While drafting this decision, I noticed that the case number in the SOR and the Answer (ISCR Case No. 19-01775) is incorrect. This is likely due to a drafting error. The hearing notice and the transcript reflect the correct case number, ISCR Case No. 19-01955, as does the rest of the case file. *Sua sponte*, I amended the caption of the SOR to reflect the correct case number. It is also reflected in the caption of this decision, above.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a-1.d, and denied SOR ¶¶ 1.e and 1.f, all with explanations. I incorporate his admissions and explanations into the findings of fact. After a thorough and careful review of the pleadings and the record evidence, I make the following findings of fact.

Applicant is 33 years old. He has been married twice. He was married for less than a year in 2008-2009. He remarried in 2012, but he and his second wife soon separated. Their divorce became final in January 2015. He has no children. (Tr. 42-43, 80-82, 84-86; GE 1; AE C; AE K)

Applicant graduated from high school in 2006. He spent about 20 months in the Army (2008-2009) before he was honorably discharged after a service-related injury, with 60% disability. (Tr. 30, 49-50, 82-83; AE P) Between 2009 and 2012, he held several jobs as a security officer. (Tr. 36; AE D, AE Q)

Applicant testified that he was working long hours, with low pay. (Tr. 30-32) This led him to decide to earn his commercial driver's license (CDL), which he hoped would lead to better income. He financed his training himself. (Tr. 50; AE D, AE Q)

Applicant was an independent truck driver for about two years, from 2012 to 2014. His truck broke down several times, which led to increased expenses and lower income.

At one point, he was stranded in a city far from his home state for several months. He left that position in December 2013. He was terminated from his next trucking job, per company policy, after he was in an accident in the middle of the night, in September 2014. (GE 1; Tr. 31-32, 53-55, 78-79) Applicant was not making much income, and his truck driving job took him far from home. The marriage quickly foundered and Applicant fell behind on his debts. After their marriage failed, they sold the home. (Tr. 31-32, 35-36)

Applicant then worked as a technician for a telecom company from October 2014 to August 2015. From fall 2015 to spring 2017, he returned to school, earning associate's degrees in cyber security. (AE D, AE Q) He was then unemployed from May to November 2017. He submitted his SCA in November 2017 for his current clearance sponsor. He has worked on unclassified assignments but his full employment has been "on hold" pending resolution of his clearance eligibility. (Tr. 68-69; GE 1 at 14) Since then he held several jobs in the defense industry, in his field of cyber security. (AE V, AE W, Tr. 102-110) In the meantime, he is doing contract work as a satellite technician. (Tr. 94-95)

Applicant earned very little income in 2014 and 2015. His tax returns reflect adjusted gross income of less than \$10,000 each year. (AE S, AE T, AE U) From 2015 to 2017 he was in school, not making much money. (Tr. 98-99) Since then, his income has improved. A 2018 tax return shows income of about \$34,000. (AE V) He had multiple employers in 2019, both in the defense industry and with the satellite company. His W-2 forms show a combined income of about \$42,400. (AE W)

The six debts alleged in the SOR total \$18,585. They are established by credit reports from January 2018 and April 2019. (GE 2, GE 3) Applicant disclosed two past-due debts on his SCA. (GE 1)

SOR ¶¶ 1.a (\$6,235) and 1.b (\$5,125) are charged-off debts to a credit union. After they married in 2012, Applicant and his second wife moved into a new home. These accounts were for furniture and home improvements. Applicant fell behind on these and other accounts because his priority was to save the home from foreclosure. (Answer; Tr. 31-32, 48-49, 53-56, 86) The debts have now been settled and paid. (AE G, AE H, AE I)

SOR ¶ 1.c (\$5,459) is a charged-off debt to a different credit union. The debt concerns a car Applicant purchased for his wife in 2012, so she could get to work. She assumed responsibility for this debt, but did not make payments after they separated. (AE J) She was also responsible for the debt in their divorce stipulation. (Answer; AE C) She stopped making payments on the car after it was totaled. (Tr. 37-40, 43, 86-87; Answer) Applicant is considering pursuing his former wife in court to get her to pay the account, as agreed. (AE M) However, Applicant admits the debt and has assumed responsibility to pay it. (Tr. 32-33, 43-45, 51, 57-59, 86-88; AE N, AE O) He has arranged a \$300 a month payment plan with the creditor. As a result, a garnishment of his wages by the creditor has been released. (AE Y) The debt is being resolved.

SOR ¶ 1.d (\$1,016) relates to a home alarm system Applicant and his second wife installed at their home. (Answer) Documentation from the creditor shows they are no longer collecting on the account. (Tr. 33, 46-48, 60-63, 88-89; AE E; AE L) It is resolved.

SOR ¶ 1.e (\$526) is a debt placed for collection by a bank. Applicant denied the debt, asserting that it is being paid. (Answer) He submitted post-hearing documentation that the account was satisfied in December 2018. (AE X; Tr. 34, 63-66, 89)

SOR ¶ 1.f (\$224) is a debt placed for collection by a cable company. Applicant believes the debt belongs to a former tenant. (Answer) He believes it is no longer listed on his credit reports. He was unable to provide documentation of its resolution. (Tr. 34, 66-68, 89-91)

Applicant retained a credit counselor in November 2019. His budget indicated \$4,500 in income from his job, and \$1,100 a month in disability pay. (AE F) He lives with his grandmother and pays \$250 in rent, and \$460 in utilities. (Tr. 74-77; AE F) He has a \$619 monthly truck payment and a \$360 motorcycle payment. His budget shows a monthly surplus of almost \$3,000. (AE F; Tr. 45-46, 51, 83-84)

A co-worker and personal friend testified for Applicant. He testified that he and Applicant met in 2017 while taking a course together. They worked together at a computer “help desk” at a prior employer for about six to eight months, in 2018 and 2019. The witness was Applicant’s supervisor, and has a clearance. Applicant was conscientious and a hard worker. He is also smart. The witness attested to Applicant’s judgment, trustworthiness, and reliability. (Tr. 102-110)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court has held, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

The adjudicative 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(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.”

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

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 handling and safeguarding classified information. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

AG ¶ 19 provides conditions that could rise security concerns. Disqualifying conditions AG ¶¶ 19(a): “inability to satisfy debts”; and 19(c): “a history of not meeting

financial obligations” are applicable, given the record evidence of Applicant’s history of delinquent debts.

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 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 good-faith effort to repay overdue creditors or otherwise resolve debts.

The debts at SOR ¶¶ 1.a and 1.b are settled and resolved. SOR ¶ 1.d is resolved, and SOR ¶ 1.e is paid. Applicant is paying on SOR ¶ 1.c, even though his wife is responsible for it, Only SOR ¶ 1.f, a small past-due cable bill, remains unaddressed. The fact that at least some of Applicant’s debts remain precludes full application of AG ¶ 20(a), since some of the debts are ongoing.

Applicant’s debts occurred due to several circumstances, but chiefly, they resulted during a period of personal and financial instability. He was not earning a good living as a security officer, so he began a second career as a truck driver. That job came with unexpected expenses that impacted his income. It also put a strain on his marriage, as he was often far from home. While he was able to keep his home from foreclosure, he fell behind on other debts. Most of the SOR debts were incurred during this period, and are due to conditions beyond his control. He gave up the trucking job and returned to school, earning associate’s degrees in cyber security. His income has increased in recent years, and he has paid or is paying most of the debts in the SOR. He has undertaken reasonable, good-faith efforts to resolve his delinquencies, and his finances are under control. AG ¶¶ 20(b), 20(c), and 20(d) 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

