



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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ISCR Case No. 19-01963

Applicant for Security Clearance

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: *Pro se*

February 25, 2020

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of the Case

On July 26, 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 national security eligibility.

Applicant answered the SOR on August 21, 2019, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on October 31, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 14, 2019, scheduling the hearing for December 9, 2019. The hearing was convened as scheduled. The Government offered Exhibits (GXs) 1 through 5, which were admitted into evidence. Applicant testified on his own behalf. Applicant offered a packet of documents, which I marked Applicant's Exhibits (AppXs) A through O, and admitted into evidence. The record was left open until January 31, 2020, for receipt of

additional documentation. Applicant offered two additional packets of documents, which were marked as AppXs P and Q and were admitted into evidence. DOHA received the transcript of the hearing (TR) on December 17, 2019.

Findings of Fact

Applicant admitted to the allegations in SOR ¶¶ 1.a, and 1.b, with the caveat that they were based on identity theft. At his hearing, the SOR was amended to add allegation 1.c, a past-due student loan debt to Creditor C in the amount of about \$43,870. (TR at page 21 line 1 to page 22 line 4.) He denied SOR allegation ¶ 1.c, again averring identity theft. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 72-year-old employee of a defense contractor. (GX 1 at page 5.) He has been employed with the defense contractor for “19 years.” (TR at page 38 line 7 to page 41 line 17.) Applicant is also retired from the U.S. Air Force. (*Id.*) He has held a security clearance since 1969. He is married, and has one daughter, who inadvertently caused the identity theft.

Guideline F - Financial Considerations

The SOR alleges three past-due student loan debts: \$78,909 owed to Creditor A; \$21,060 owed to Creditor B; and \$43,870 owed to Creditor C. The genesis of these student loans is detailed in an affidavit from Applicant’s daughter. (AppX P at page 2.) She avers: “Since my father had agreed to cosign on the first two student loans, I believed he would agree to cosign on my other education loans. From October 2006 to April 2008 his information was used on the documents for seven more loans.” (*Id.*) Applicant did not agree to; and was unaware of, these additional student loans, three of which are alleged in the SOR. (TR at page 41 line 18 to page 46 line 19, and AppX B.) This is further supported by an affidavit from Applicant’s wife who avers: “About November of 2015 we started to receive calls from debt collectors asking about payments on student loans. This is when my husband became aware of all the loans our daughter had taken out without his knowledge.” (AppX Q at page 1.)

Applicant’s daughter is currently involved in a lawsuit against Creditor C. Her attorney avers “[Applicant . . .] is not a party to this lawsuit.” (AppX P, emphasis in original.) This gives further credence to the above averments.

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. Three are potentially applicable in this case:

- (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.

None of these apply. Applicant was unaware of his daughter's past-due student loans. He has not shown poor judgment, unreliability or untrustworthiness. Financial Considerations is 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. 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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	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