



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



In the matter of:)	
)	
)	ISCR Case No. 19-01973
)	
Applicant for Security Clearance)	

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: *Pro se*

05/04/2020

Decision

MURPHY, Braden M., Administrative Judge:

Though some of Applicant’s SOR debts have been recently resolved, most of them remain unpaid. Applicant has yet to establish a sufficient track record of payments towards his debts to fully mitigate financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On July 26, 2018, Applicant submitted a security clearance application (SCA). On August 19, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The DOD CAF took the action 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 September 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 12, 2019. On January 14, 2020, DOHA issued a notice scheduling the hearing for February 3, 2020.

The hearing convened as scheduled. At the hearing, Department Counsel offered documents that were marked as Government Exhibits (GE) 1 through 4. Applicant testified and offered documents that I marked as Applicant's Exhibits (AE) A through M. All exhibits were admitted without objection. A document Applicant attached to his answer was marked and admitted as Answer Attachment (Ans. Att.) 1. I held the record open after the hearing to allow Applicant the opportunity to submit additional documents. He timely submitted documents which I marked as AE N (a performance evaluation) and AE O (various letters of recommendation). DOHA received the hearing transcript (Tr.) on February 13, 2020. The record closed on February 24, 2020.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a, 1.c, 1.d, 1.e, and 1.g. He denied SOR ¶¶ 1.b and 1.f. His admissions and explanations are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 41 years old. He graduated from high school in 1997 and joined the Navy. He served in the Navy as a jet engine mechanic from 1997 to 2010, and was honorably discharged as an E-5, with severance pay. He held a clearance in the Navy. He and wife have been married for almost 20 years. She is a homemaker. They have two children, now ages 18 and 17. (GE 1; Tr. 29-30, 42-43, 103-104, 116) Their son is in college, and Applicant helps with his expenses. (Tr. 102-103)

Applicant testified that after he left the Navy, he was unemployed for about 18 months. (Tr. 45) Between April 2011 and mid-2012, he worked overseas on several brief contracts. (Tr. 45-48) Between these contracts, he was unemployed. (GE 1) From about July 2012 to November 2015, Applicant worked for a large defense contractor at a job in his home state. He was terminated after a dispute with his supervisor over the quality of his work. (GE 1; Tr. 31-32, 50)

For much of the next three years, Applicant then worked for an aviation company in another part of the state, several hours' drive from his home. He would return home on weekends. In that job, he made less money, and had more expenses in gas and food, since he was living away from home. At times during that job, he lived in his car. (Tr. 34-38, 113-115)

Applicant held that job until June 2018, when he began working for his current employer and clearance sponsor, another defense contractor. (Tr. 29; GE 1) In Applicant's most recent work evaluation, for 2018, he either met or exceeded expectations in all respects. (AE N) In April 2019, he took a new position with the

company, which increased his annual salary from \$60,000 to \$73,000. (Tr. 29-36, 125-126; AE I)

Applicant testified that his financial problems initially began when he was unemployed after leaving the Navy. They worsened after he was terminated. (Tr. 31-33, 37-38, 44) When he fell behind on his debts, Applicant worked with credit agencies (debt-resolution companies) to address his debts but “all they did was take money.” (Tr. 58, 97)

The SOR debts total about \$22,186. They are established through Applicant’s credit reports from September 2018 and March 2019. (GE 2, GE 3) He also disclosed several of his debts on his SCA and discussed them in his background interview. (GE 1, GE 4)

SOR ¶ 1.a (\$14,038) is a charged-off debt to a credit union. Applicant opened the account in 2011 and the date of last activity was September 2014. (GE 2) Applicant said the account was a consolidation loan that he took out to help get his bills under control. (Tr. 52-57) The debt remains listed as charged off on more recent credit reports. (AE B at 17; AE L at 43) Applicant has contacted the creditor but has not arranged a payment plan. (Tr. 59-60, 70-72) The account is not resolved.

SOR ¶ 1.b is an auto loan alleged as past due in the amount of \$456. Applicant documented that the account has been current for several months, with a \$238 monthly payment. (AE C; AE M; Tr. 61-64) The account is current and being resolved.

SOR ¶ 1.c (\$2,506) is a charged-off debt to a bank. The debt was charged off in June 2014. (GE 2) It remains past due, and Applicant has not attempted to repay it. (Tr. 64-67; AE K at 38; AE L at 13) The account is not resolved.

SOR ¶ 1.d (\$2,117) is a debt placed for collection by a bank. Applicant established that the account has been settled for \$1,270 and paid. (AE B; Tr. 65-69) The account is resolved.

SOR ¶ 1.e (\$1,963) is a charged-off debt to the same creditor as for SOR ¶ 1.a. The debt, which Applicant incurred when he was still in the Navy, has a date of last activity of July 2014. (GE 2) It remains charged off and unresolved. Applicant intends to pay it. (AE K at 19-20; AE L at 19; Tr. 65, 69-75) The account is not resolved.

SOR ¶ 1.f (\$643) is a charged-off credit account to an auto shop. Applicant denied the debt, asserting that it had been removed from his credit report. He also did not recognize it. (Tr. 76-77, 82-84) The credit reports in the record all show a balance of \$479 (not the \$643 alleged) but the account remains past due. The date of last activity is July 2014. (GE 2, GE 3, AE K at 29; AE L at 3) The account is not resolved.

SOR ¶ 1.g (\$463) is a charged-off debt to a bank. The date of last activity is July 2014. (GE 2) It remains past due. (Tr. 98-99; AE K at 12) The account is not resolved.

Applicant testified that he intends to pay all of his delinquent debts. He was told by his bank to “pay off anything that’s actionable now, that’s current now, your credit cards, your collections” so he could get them to a manageable debt level before addressing older debts. He intends to address his debts in this manner going forward, (Tr. 59, 70) He has contacted all the creditors for the debts he owes. (Tr. 84-85)

Applicant now earns about \$3,800 per month, a salary allowing him more ability to pay his debts. (Tr. 113, 118-119). He talked to his bank about financial counseling and learned to set aside money in envelopes to pay for certain budgeted items. He says this process is helping him control his expenses. (Tr. 88-94)

Applicant currently has five credit cards, but carries little to no balance on any of them. He has had some of the cards for many years. Other, newer cards have small credit limits in order to boost his credit. (Tr. 86-88, 109-112; AE D – AE H)

Applicant provided several recommendation letters from references. (AE O) His employer’s facility security officer (FSO), who was involved in Applicant’s hiring process, found him to be easy to work with, patient, respectful, and with a positive outlook. Another reference, a retired Army command sergeant major who recruited Applicant for his current employer, finds Applicant knowledgeable, loyal, and dedicated to his employer’s mission, his family and community. Both references endorse Applicant’s ability and willingness to protect national security. (AE O)

A current supervisor asserts that Applicant has a strong and ethical character and is “trusted to always do the right thing, even when no one is looking.” He is hardworking and trustworthy, dependable, honest, responsible, and courteous. (AE O) Applicant volunteers in his local community, and a leader of the volunteer program attested that Applicant has a great attitude and a good moral character. (AE O)

A former co-worker with the aviation company attested that Applicant had been his “right-hand man.” Applicant exceeded expectations in the job, provided excellent technical expertise, and was a valuable employee. The reference offered strong support for Applicant’s eligibility for a clearance. (AE O)

Policies

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

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

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. 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. Applicant has had financial delinquencies since he left the Navy. The following AGs are applicable in this case:

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

Conditions that could mitigate 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, or 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 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.

SOR ¶ 1.b, Applicant's car payment, was briefly past-due and is now current. SOR ¶ 1.d has been paid. The other debts in the SOR remain ongoing and unresolved. AG ¶ 20(a) does not apply.

After leaving the Navy, Applicant worked overseas for a time on brief contracts that offered little job stability. These were conditions beyond his control. However, the debts in the SOR became delinquent later, in mid-2014, according to his credit reports. Applicant was employed at the time, and it is unclear why he stopped paying on his debts when he did. He was not terminated until November 2015, after a dispute with a supervisor over the quality of his work.

After he was terminated, Applicant then took a job several hours' drive away from home to make ends meet, and lived for a time in difficult circumstances while in that position. AG ¶ 20(b) therefore has some application. He is now in a better-paying job closer to home, a job that affords him the opportunity to better address his debts. However, as only two of the SOR debts are resolved or now current, he has yet to establish sufficient evidence that he has put his plan into place.

Most of Applicant's SOR debts have remained unresolved for several years, and he only recently took steps to resolve them. Applicant testified that he consulted with his bank and was advised to pay "active" debts before those that have been charged off.

Whether or not this is a reasonable plan, Applicant has not established a track record of payments towards his past-due debts, charged off or otherwise, to show sufficient good faith, or that his past-due debts are being resolved or are under control. He did not provide sufficient evidence that AG ¶¶ 20(b), 20(c), or 20(d) should fully apply. Applicant has not mitigated the financial security concerns over his delinquent debts.

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(c):

- (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.

I credit Applicant's 13 years in the Navy, with a security clearance, and his efforts to pursue employment, often in locations away from home. I also credit his character witnesses, from both his personal life and his job, all of whom vouch for him and testified consistently and credibly to Applicant's loyalty, dedication, reliability, and trustworthiness. But Applicant's debts have been delinquent for several years, and he did not establish that he undertook efforts until recently to resolve them. While he is now in a better position to do so than in the past, he still needs to take concrete steps towards resolving his debts in order to fully mitigate financial security concerns. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not provide sufficient evidence to mitigate financial 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:	AGAINST APPLICANT
Subparagraphs 1.a, 1.c, 1.e-1.g:	Against Applicant
Subparagraphs 1.b, 1.d:	For Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Braden M. Murphy
Administrative Judge