



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



In the matter of:)
)
) ISCR Case No. 19-02231
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

04/15/2020

Decision

LYNCH, Noreen A., Administrative Judge:

This case invokes security concerns raised under Guideline F (Financial Considerations). Applicant presented insufficient evidence to mitigate the financial security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On August 30, 2019, in accordance with DoD Directive 5220.6, as amended (Directive), and the Adjudicative Guidelines (AG), effective June 8, 2017, 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 that it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant timely answered the SOR, and requested a review based on the written record in lieu of a hearing. (Answer.) The case was assigned to me on April 7, 2020. Department Counsel submitted a File of Relevant Material (FORM), dated January 30, 2020. The Government submitted five Items for the record. Applicant did not respond to the FORM to provide additional information.

Findings of Fact

Applicant, age 38, is single after two marriages and has two children. He graduated from high school in 2000. He enlisted in the military (United States Marine Corps) in July 2000 but in February 2001, he received a discharge under medical conditions which prevented him from completing training. Applicant completed a security clearance application on July 16, 2018. (Item 3) He is currently working for a federal contractor, which he started in 2018. He seeks to obtain a security clearance.

The SOR alleges that Applicant has three delinquent debts. The first two are child support arrears in two states totaling approximately \$82,000. (Item 1). The third is a telecommunications collection account in the amount of \$836. Applicant admits the alleged delinquent debts (SOR paragraphs 1.a through c.) (Item 2) His 2019 credit report confirms the three SOR allegations. (Item 5)

Applicant attributes the child support arrears to insufficient income since 2006. (Item 3) He did not have enough money to pay the full amount of child support, which is \$100 monthly for each state. His wages have been garnished since 2013, but arrears still exist. He noted the amount of \$60,000 on his security clearance application. He worked with Lexington Law to help repair his credit, but he stopped working with them in 2018. (Item 4)

Applicant reported one period of unemployment from July 2012 to February 2013. He has worked steadily since that time. He has lived with his parents from February 2013 until August 2018. He now lives with his sister. (Item 3)

Applicant presented no information as to the current status of any of the debts alleged. He did not report any contact with the creditor for the collection account. He intends to pay his bills in the future. He provided no information or documentation of any payments he may have made regarding child support. In his subject interview, he disclosed that he had about \$3,000 in medical debt. (Item 4) He stated that he plans to set up payment arrangements.

There is no information in the record concerning his earnings or that he uses a budget or that he is now seeking financial counseling. He described his financial situation as "fair." (Item 4)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) 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, these guidelines are applied 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. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. 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 or sensitive information. Finally, as emphasized in Section 7 of EO 10865, "Any determination under this order adverse to an applicant shall be a determination 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 concern under this guideline 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

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

Applicant's acknowledgements, corroborated by his credit report establishes two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"), AG ¶ 19(c) ("a history of not meeting financial obligations").

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's child support arrears have been garnished beginning in 2013. He did report a period of unemployment but did not provide a nexus between that period of unemployment and his child support issues stemming from 2006. He owes a substantial amount of child support, and claims it is based on low income but provided no information concerning his wages. His monthly obligation was \$200 for the two states involved. The record is not clear as to when, if ever, he was making voluntary payments and how the arrearage reached such a substantial amount.

He failed to produce any explanation or documentation as to his efforts to address his financial issues. Little weight is given to the garnishment since there is no evidence that he ever voluntarily paid child support. He has failed to show a track record of any payments or that his financial situation is under control. The record is devoid of any evidence of mitigation. Applicant has not met his burden of proof in this case.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall commonsense judgment based upon careful consideration of the applicable guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, including his period of unemployment, I conclude that Applicant has not mitigated the security concerns raised by his financial indebtedness. He did not present any evidence of good-faith efforts in this case. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a-c:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to grant Applicant's eligibility for access to classified information. Clearance is denied.

Noreen A. Lynch
Administrative Judge