



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 19-02315
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

03/04/2020

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On September 17, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on September 27, 2019, and requested a hearing before an administrative judge. The case was assigned to other administrative judges on November 27, 2019, and December 3, 2019, and reassigned to me on January 8, 2020.

The hearing was convened as scheduled on January 14, 2020. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through F, which were admitted without objection. The record was held open for Applicant to submit additional information. He submitted documents that I have marked AE G through J and admitted without objection.

Findings of Fact

Applicant is a 38-year-old employee of a defense contractor. He has worked for his current employer since August 2018. He is applying for a security clearance for the first time. He has a bachelor's degree that was awarded in 2003 and a master's degree that he earned in 2009. He completed additional courses toward a doctorate, but he did not earn a PhD. He has never married, and he has no children. (Transcript (Tr.) at 48-51, 58-60; GE 1, 2)

Applicant financed his education through student loans. He was unemployed and underemployed after he completed his education. He worked as a taxi driver from 2014 to 2016. He was arrested for an alcohol-related driving offense in September 2016. He lost his taxi job after his driver's license was revoked. He was unemployed again for an extended period. (Tr. at 57-58; GE 1, 2)

The SOR alleges 15 defaulted federal student loans totaling about \$195,000; a defaulted \$16,721 private student loan; and a charged-off \$2,384 credit card account. Applicant admitted owing all of the student loans and the credit card debt.

Applicant paid \$253 toward his federal student loans in February 2019. The IRS withheld \$3,413 from his income tax refund the same month and applied it to his student loans. He entered into a loan rehabilitation agreement for his 15 federal student loans in March 2019. The balance of the loans at that time was \$237,123. The monthly payment was \$253. He made all of the required monthly payments through October 2019, and his loans were considered rehabilitated and in good standing. (Tr. at 25-28; Applicant's response to SOR; AE A, B, G, J)

In December 2019, Applicant was approved for a Revised Pay As You Earn Repayment Plan (REPAYE Plan)¹ for his rehabilitated federal student loans. His monthly payment will be based on his income. His current monthly payment is \$72, but will be revised in March 2020. He expects the payments to be about \$300 per month. If he makes the required payments for 25 years, any remaining balance will be forgiven. The balance of the 15 loans was about \$204,200. The difference from the \$237,123 figure appears to be from payments and the elimination of some fees and penalties after the loans were rehabilitated. (Tr. at 25-28; Applicant's response to SOR; AE C)

Applicant paid \$1,913 in January 2020 as settlement in full for the \$2,384 charged-off credit card account. His grandfather managed and paid the \$16,721 private student loan until he passed away in 2015. Applicant settled the loan in January 2020 for \$6,643, which will be paid by a \$277 payment, followed by 23 monthly payments of \$276. (Tr. at 30-39, 42-47; Applicant's response to SOR; AE D, G, H, I)

Applicant admitted that he was somewhat cavalier about his student loans. He realizes that he could have started the process years ago, but he was unfamiliar with his options. He received financial counseling through his employer. He credibly testified that

¹ See <https://studentaid.gov/manage-loans/repayment/plans/income-driven>.

he intends to continue to pay his student loans. He will always be able to pay his federal student loans because the payments are based on his income. He knows that the loans have to be paid, and that failure to do so could adversely affect his security clearance and his job. His finances are otherwise in order. (Tr. at 24-29, 52-56, 60-62, 70-72; Applicant's response to SOR; GE 2-4)

Applicant submitted letters attesting to his moral character and superior job performance. He is praised for his work ethic, professionalism, reliability, trustworthiness, and adherence to rules and regulations. (AE F)

Policies

This case is adjudicated under Executive Order (EO) 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 the adjudicative guidelines (AG), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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 eligibility for access to classified information.

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 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 Directive ¶ E3.1.14, the Government must 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." 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.

Section 7 of 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 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.

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

- (a) inability to satisfy debts; and

- (c) a history of not meeting financial obligations.

Applicant has a history of financial problems, including defaulted student loans and a delinquent credit card debt. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the 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, 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 had periods of unemployment and underemployment. However, some of the unemployment was due to his alcohol-related arrest. He should have been more diligent about his student loans. Nonetheless, he consistently paid his federal student loans under the rehabilitation program; and he now has an income-based repayment plan. If he makes the required payments for 25 years, any remaining balance will be forgiven. He settled and paid the consumer debt, and he settled the private student loan. He has a strong incentive to continue to pay his student loans, and he credibly testified that he intends to do so. There are clear indications that his financial problems are being resolved and are under control. AG ¶ 20(c) is applicable. The other mitigating conditions are partially applicable.

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 have incorporated my comments under Guideline F in my whole-person analysis. I also considered Applicant's favorable character evidence.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: For Applicant

Subparagraphs 1.a-1.q: For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge