



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



In the matter of:)
)
) ISCR Case No. 19-02345
)
Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Esq., Department Counsel
John Lynch, Esq., Department Counsel

For Applicant: *Pro se*

11/02/2020

Decision

Curry, Marc E., Administrative Judge:

Applicant mitigated the financial considerations security concerns, but failed to mitigate the personal conduct security concern. Clearance is denied.

Statement of the Case

On September 27, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, and Guideline E, personal conduct, explaining why it was unable to find it clearly consistent with the national interest to grant security clearance eligibility. The DOD CAF took the action 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 National Adjudicative

Guidelines (AG). On October 21, 2019, Applicant answered the SOR, admitting subparagraphs 1.a through 1.d, 1.h, and 1.i. He denied the remaining allegations.

On July 2, 2020, the Defense Office of Hearings and Appeals issued a notice of hearing, scheduling Applicant's case for August 14, 2020. The hearing was held as scheduled. I received five Government exhibits (GE) 1 – GE 5 and seven Applicant's exhibits (AE) A - AE G, together with the testimony of Applicant. Also, I received a copy of Department Counsel's discovery letter to Applicant (Hearing Exhibit (HE) I). At the close of the hearing, I left the record open at Applicant's request, to allow him the opportunity to submit additional exhibits. Within the time allotted, he submitted three exhibits, which I incorporated into the record as AE H through AE J. The transcript (Tr.) was received on August 26, 2020.

Findings of Fact

Applicant is a 27-year-old single man. He has a high school education and has earned some college credits. For the past eight years, he has been working for a defense contractor as a system administrator. (Tr. 20)

Over the years, Applicant has incurred approximately \$45,000 of delinquent debt, as alleged in the SOR. The delinquency alleged in SOR subparagraph 1.a, totaling \$24,506, constitutes the balance of a car note that was due in 2017 after Applicant was in a car accident. Although Applicant had gap insurance, the insurance company refused to reimburse him, contending that he was contributorily negligent. (Tr. 22) In July 2020, Applicant contacted the creditor who agreed to settle the account for \$5,000. (AE A at 2) He made his first payment, totaling \$900, the day he negotiated the settlement. (AE A at 1) On August 7, 2020, he made a payment of \$1,100. (AE J) The current balance is approximately \$3,000.

The delinquency alleged in SOR subparagraph 1.b is a delinquent car note, totaling \$14,459. This stems from another car accident. As in subparagraph 1.a, the delinquency constitutes the balance due on a car that Applicant totaled in an accident. (Tr. 23) Applicant possessed gap insurance, which did not cover the claim. Applicant has not made any payments towards the satisfaction of this delinquency. (Tr. 40) He has been in contact with agents of the loan company, but has been informed that the negotiation process will take longer because of COVID-related delays. (Tr. 40)

SOR subparagraph 1.c is a credit card account totaling \$5,377. Applicant settled this account for \$1,344, and satisfied it on June 23, 2020. (AE B) Subparagraph 1.d, totaling \$1,165 is a credit account that Applicant used to purchase furniture in 2014. In June 2020, he settled and paid the account for \$630. (AE C)

Subparagraphs 1.e and 1.f allege delinquencies collectively totaling \$468. Applicant satisfied both debts. (Answer at 2; AE G)

SOR subparagraph 1.g, totaling \$428, is a delinquent cell phone account. (GE 5 at 4) Applicant cosigned this account for a cousin. Applicant satisfied this debt. (Tr. 26-27)

SOR subparagraph 1.h, totaling \$1,091, is a delinquency stemming from a cable television box that Applicant forgot to return after he moved. He satisfied this debt in its entirety in July 2020. (AE D)

The debt alleged in SOR subparagraph 1.i is a delinquent car loan totaling \$10,918. (AE E) Applicant cosigned this loan for his roommate who defaulted, leading the creditor to obtain a judgment against both Applicant and his roommate in July 2018. Applicant's roommate has been paying this debt through a garnishment since August 2020. (AE I; Tr. 62)

When Applicant first began working as a systems administrator eight years ago, he earned \$34,000. (Tr. 29) As the only member of his extended family with a steady job, he would sometimes overextend himself financially to help relatives pay bills. (Tr. 29-30) In addition, some of his debt includes money he used to finance the funerals of two family members who passed away between 2013 and 2014. (Tr. 24, 29)

Since 2015, Applicant's annual salary has increased by \$40,000. (Tr. 62 – 63) He uses a budgeting app to track his finances. (Tr. 66) He has \$2,000 of monthly discretionary income that he applies to his delinquencies, and he has \$500 in savings. (Tr. 64)

Applicant completed a security clearance application in November 2018. He did not list the July 2018 judgment, as required in response to Section 26. Applicant contends that the omission was unintentional, as he did not know about this judgment until after he completed the security clearance application. (Tr. 60) Applicant and the primary borrower on the loan were roommates when the judgment was filed. (Tr. 61) The initial pleading lists both gentlemen as codefendants. (GE 4) The court records indicate that the court issued two summons in April 2018 and that service was executed on two individuals on June 20, 2018. (GE 4 at 3)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall 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 ¶ 1(d) 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. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). The factors under AG ¶ 2(d) are as follows:

- (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.

Analysis

Guideline F: Financial Considerations

The security concerns about financial considerations are set forth in AG ¶ 18:

Failure or inability 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 An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant’s outstanding debts generate concerns under AG ¶ 19(a), “inability to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.”

The following mitigating conditions are potentially applicable:

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) . . . 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 career began approximately eight years ago. Although he was then in his early twenties and only earned \$34,000 annually, many of his family members solicited his financial help. Applicant obliged, overextending himself financially in the process. As for two of the delinquent car loans, Applicant did not default on them until they were totaled and the insurance companies rejected his gap insurance claims. Applicant has acted responsibly under the circumstances, satisfying all of the SOR debts except the delinquent car notes as alleged in subparagraphs 1.a, 1.b, and 1.i. He is paying subparagraph 1.a through a negotiated agreement, the primary borrower is making payments on the debt alleged in subparagraph 1.i, and Applicant is attempting to settle subparagraph 1.b. Applicant's salary has increased by \$40,000 over the past five years. He has \$2,000 in monthly discretionary income, \$500 in savings, and maintains a budget. His finances are now organized through a budget app that he maintains. He earns a significant amount more money than he did when he incurred the majority of the debt, and has ample discretionary income and savings to prevent a recurrence of future financial problems. I conclude AG ¶¶ 20(a) through 20(c), and 20(d) are applicable.

Guideline E, Personal Conduct

Under this guideline, "[c]onduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information." (AG ¶ 15) Moreover, "of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes." (*Id.*)

Applicant's omission of a July 2018 judgment, stemming from a delinquent car loan, from his November 2018 e-QIP raises the issue of whether AG ¶ 16(a), "deliberate

omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities,” applies. Applicant contends that as the loan cosigner, he was unaware that the primary borrower was behind on the debt, and he was unaware that debt collection process legal proceedings had been initiated. This explanation is not credible in light of the court records of service of process, and the fact that Applicant and the primary borrower were roommates. Under these circumstances AG ¶ 16(a) applies without mitigation.

Whole-Person Concept

The positive inference generated by Applicant’s resolution of his financial problems are insufficient to outweigh the negative security inference generated by his failure to disclose a judgment, as required on his security clearance application. Under these circumstances, I conclude that he has failed to mitigate the 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.I:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, 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.

Marc E. Curry
Administrative Judge