



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



In the matter of:)
)
) ISCR Case No. 19-02430
)
Applicant for Security Clearance)

Appearances

For Government: Andrea M. Corrales, Esq., Department Counsel
For Applicant: *Pro se*

02/26/2020

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On September 20, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken 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) effective within the DOD on June 8, 2017.

Applicant answered the SOR on October 18, 2019, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government’s file of relevant material (FORM), and Applicant received it on November 6, 2019. He was afforded an opportunity to file objections and submit material in refutation,

extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 6. Applicant did not submit a timely response. There were no objections by Applicant, and all Items are admitted into evidence. The case was assigned to me on February 14, 2020.

Findings of Fact

Applicant admitted all of the SOR allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 55 years old. He married in 1984 and divorced in 1995. He has three grown children, ages 32, 33, and 35 years old. He served in the military from 1985 to 2005. Although not disclosed on his August 2015 security clearance application (SCA), he presumably retired with an honorable discharge. Applicant earned a bachelor's degree in 2010 and a master's degree in 2012. He disclosed on his SCA that he has been employed by a federal contractor from March 2006 until the date of the SCA. He disclosed one period of unemployment from October 2005 to February 2006.

In Applicant's answer to the SOR, he attributed his financial problems to unemployment. Presumably, this unemployment took place sometime after August 2015 when he completed his SCA. Applicant failed to provide the specific period of unemployment, any other information about his finances, or actions he may have taken to resolve his delinquent debts. (Item 2, 3)

The SOR alleged four delinquent debts totaling approximately \$29,389, and a home foreclosure. Applicant's admissions, credit reports from May 2018 and April 2019, and court documents corroborated the delinquent accounts and foreclosure. (Items 2, 3, 4, 5, 6)

The debt in SOR ¶ 1.a (\$27,521) is for a car loan. Applicant stated in his SOR answer that he contacted the creditor after he became unemployed and advised them he was unable to make the monthly payments. He asked the creditor for the car to be repossessed, which it was. He did not provide any other information about his attempt to resolve this delinquent debt or whether he intended to pay it. (Items 2, 4, 5)

Regarding the delinquent debts alleged in SOR ¶ 1.b (\$902) and ¶ 1.d (\$467), Applicant stated in his answer to the SOR that he believed he had paid the final bills to the creditors, and he intended to contact them to make "suitable payment arrangements until full restitution is completed." (Item 2) Applicant did not provide documentary evidence that he has resolved these debts.

The debt in SOR ¶ 1.c is for expenses associated with Applicant's online education. He stated in his answer to the SOR that he disputed the account with the creditor. He had attended a class, but had to take an extended leave of absence. His financial aid was returned and the balance is what is owed. Applicant stated in his SOR answer that he would contact the creditor to make "suitable payment arrangements until

full restitution is completed.” (Item 2) Applicant did not provide documentary evidence of actions that he has resolved this debt.

Applicant stated in his SOR answer that his home was foreclosed due to his loss of employment. He said he made every attempt to honor his responsibilities, but due to his unemployment he was unable to do so. He stated he was not proud of his credit file, but it is not a true description of his character. He is working diligently to correct it. (Item 2)

Policies

When evaluating an applicant’s suitability for 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 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, these guidelines are applied 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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an applicant may deliberately or inadvertently fail to 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 EO 10865 provides that 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.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

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

Applicant has delinquent debts that began to accrue around 2016 that are not resolved. His home was foreclosed the same year. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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; and

(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.

Applicant admitted all of the alleged debts. He failed to provide evidence that he has taken action to pay or resolve any of the debts. He attributed his financial problems to unemployment, but did not provide amplifying information as to when it began; the circumstances around why he lost his job; whether he is now employed; his current finances; and what actions he has taken to resolve his delinquent debts. Applicant's debts remain unresolved. AG ¶ 20(a) does not apply. Applicant's unemployment may have been beyond his control, but there is insufficient evidence to apply AG ¶ 20(b) without evidence of the circumstances surrounding it. However, even if Applicant is given the benefit of the doubt, he failed to show he acted responsibly by contacting the creditors and making payment arrangements to resolve his delinquent debts. AG ¶ 20(b) has minimal application.

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 the 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 the 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 that guideline, but some warrant additional comment.

