



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



In the matter of:)
)
) ISCR Case No. 19-02516
)
Applicant for Security Clearance)

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: *Pro se*

03/31/2020

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. A Statement of Reasons (SOR) was issued under Guideline F, financial considerations, due to delinquent student loans and other delinquent debt. He provided sufficient evidence addressing his financial difficulties. Financial considerations security concerns are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

On September 13, 2019, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued an SOR to Applicant, detailing the security concerns under Guideline F, financial considerations, under which it was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him.

The DoD CAF acted under Executive Order 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 for Determining Eligibility for Access to Classified Information* (AG) effective within the DoD on June 8, 2017.

On October 14, 2019, Applicant answered the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). (SOR Response) On December 11, 2019, DOHA issued a Notice of Hearing scheduling a hearing that was conducted on January 15, 2020.

Four Government exhibits (Ex. 1 – 4) and seven Applicant exhibits (Ex. A – G) were admitted into evidence without objection. The record was held open following the hearing to allow Applicant to submit additional documentation. On February 7, 2020, six additional documents were received and admitted into evidence without objection as Ex. H – M. On March 11, 2020, an additional document was received and admitted into evidence without objection as Ex. N. Applicant testified, as reflected in a transcript (Tr.) received on January 29, 2020.

Findings of Fact

Applicant is a 34-year-old operational engineer who has worked for a defense contractor since October 2018 and seeks to obtain a security clearance. (Tr. 19, 38) His annual salary is \$71,000. (Tr. 38) He is not married. (Ex. 1) After obtaining his current job, he used his salary to address debts not listed in the SOR including credit card accounts, medical accounts, truck payment, and loans, and he started addressing his student loan obligations. (Tr. 44) He asserted he was not neglecting his other debts. (Tr. 44)

Applicant has not served in the military. He was unemployed from October 2017 through July 2018. He had been laid off due to a slowdown in work. (Tr. 33) During his unemployment, he used funds from a severance package of a few thousand dollars, unemployment compensation, saved funds, and money borrowed from his mother to continue making payments on his obligations. (Tr. 36) During the period of unemployment, he moved back in with his parents to save expenses. (Tr. 34) In July 2018, he obtained a position as an estimator with an annual salary of \$65,000. (Tr. 35) He used part of his salary to repay the money borrowed from his mother. (Tr. 36)

In 2009, Applicant obtained his bachelor's degree. Prior to his graduation, he obtained a number of student loans to pay for his education. (Tr. 30) He is currently enrolled in a three-year study program leading to a master's degree paid for by his employer. (Tr. 31)

In Applicant's response to the SOR, he denied all of the delinquent obligations except for two student loan obligations. (SOR Response) He indicated a number of the accounts had been paid, a number had been re consolidated, and he was working with the Department of Education to bring his student loan account back into good standing. At the time of his response, he was waiting for documentation to support his assertions.

The SOR alleges seven past-due accounts that totaled \$1,119, ten collection accounts that totaled approximately \$15,000, and a student loan account (SOR 1.q) of \$47,772 that was placed for collection. Six of the past-due accounts, for which he was approximately \$700 past due, was owed the same creditor. Additionally, another single creditor was owed six collection accounts (SOR 1.a – 1.f) totaling \$14,205 are owed the same creditor. Fourteen of the eighteen delinquent accounts in the SOR were student loans. In November 2019, his Direct Loan Consolidation including the six student loan accounts listed in SOR 1.a – 1.f, was completed. (Ex. A, Tr. 21) He has a \$405 monthly payment on the consolidation loan with the payment being made by automatic draft. (Tr. 21, 45) In 2005, 2006, and 2007, he satisfied the smaller student loan obligations listed in SOR 1.j – 1.p. (Ex. J, Tr. 47)

Only four of the SOR delinquent obligations were for other than student loans. In August 2019, the telephone account (SOR 1.g, \$191) that had been in collection, for service at an apartment where he once lived with his brother, was paid in August 2019. (Ex. B, Tr. 22) The account was the last month's telephone bill and came due after Applicant had moved from the location. (Tr. 23) Applicant never received a copy of the bill and believed his brother had paid it. (Tr. 23)

In August 2018, Applicant made a repayment agreement to repay the credit card account (SOR 1.i, \$413) that had been in collection. (Ex. C) He made \$100 monthly payments between August 2018 and January 2019 for a total of \$613 in payments. (Ex. C, Tr. 24) As of March 2019, the account had a zero balance. (Ex. C) In May 2018, he paid the medical debt listed in SOR 1.r (\$351). (Ex. E, Tr. 26) The SOR lists a \$60 medical debt (SOR 1.h). Applicant is unaware of the origin of this debt and has been attempting to gain information about the source of the obligation so it can be addressed. (Tr. 28)

In March 2019, Applicant starting making \$532 monthly payments on his \$47,772 student loan (SOR 1.q). (Ex. D) As of January 2020, the amount owed on this debt had been reduced to \$43,696 through the repayment agreement. (Ex. M) In February 2020, an additional monthly payment of \$532 was made. (Ex. O)

Applicant was working on addressing his \$2,739 student loan (SOR 1. k). The SOR indicated this debt had been \$428 past due. Since March 2019, Applicant has been making \$405 monthly payments on another student loan. (Ex. G, Ex. K, Tr. 27, 50) Since then until November 2019, the balance on the loan has been reduced from \$2,167 to \$1,134. (Ex. G) In December 2019 and January 2020, two additional payments of \$405 were made, reducing the outstanding balance to \$324. (Ex. K, Ex. L)

Applicant makes regular contributions to his company's 401(k) retirement plan. (Tr. 39) He has approximately \$3,500 in his checking and savings accounts. (Tr. 41) He has no vehicle payments. He has reviewed his credit reports and has received on-line financial counseling. (Tr. 51) He has created a monthly budget and is willing and able to pay his debts. (Ex. H, Ex. I, Tr. 53, 60)

Applicant's direct manager stated Applicant works thoroughly to meet customer requirements. Applicant checks with co-workers to confirm all procedures and processes are correctly followed. (Ex. F, Tr. 27)

Policies

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 must 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 overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the adjudication process is an examination of a sufficient period and a careful weight of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is known as the whole-person concept.

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.

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.

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 Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination of 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

AG ¶ 18 articulates the security concern for financial problems:

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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

AG ¶ 19 includes three disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts," "(b) unwillingness to satisfy debts regardless of the ability to do so," and "(c) a history of not meeting financial obligations." In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

The record having established disqualifying conditions, additional inquiry about the possible applicability of mitigating conditions is required. Applicant has the burden of establishing that matters in mitigation apply. Five financial considerations mitigating conditions under AG ¶ 20 are potentially applicable in this case:

(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;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Prior to 2009, Applicant obtained student loans in order to pay for his bachelor's degree. He was current on his debt payments until becoming unemployed in October 2017. His unemployment lasted until July 2018. While unemployed, he used funds from a severance package, unemployment compensation, saved funds, and money borrowed from his mother to continue making payments on his obligations. Additionally, during this period, he moved back in with his parents to save money. In July 2018, he obtained a position as an estimator with an annual salary of \$65,000. At that time, he started repaying the money borrowed from his mother, and making payments on his credit card accounts, medical accounts, his truck payment, and other loans, and he started addressing his student loan obligations.

AG ¶ 20(a) applies because the debts were incurred some time ago and Applicant has acted reasonably by making payments on his delinquent obligations. He is still attempting to locate the holder of a small \$60 medical collection account. AG ¶ 20(b) applies because Applicant experienced a period of unemployment from October 2017 through July 2018. Once he had a job, he began repaying his creditors. This shows that he has acted responsibly under the circumstances.

An applicant is not required to establish that he has paid each of the delinquent debts in the SOR. However, an applicant needs to show that he has a plan to resolve his debts and that he has taken significant steps to implement his plan. This he has done. He has paid off several of his debts and is making monthly payments on his remaining student loans.

While Applicant is credited with obtaining financial counseling online, not enough is known about the counseling to conclude that it satisfies AG ¶ 20(c). However, AG ¶ 20(c) applies in part because there are clear indications that his financial problems are being resolved and are under control. AG ¶ 20(d) applies because he paid the telephone service debt (SOR 1.g), the credit card debt (SOR 1.i), the medical debt (SOR 1.r), some of his student loan debts (SOR 1.j through 1.p), and he is making monthly payments on his remaining student loan debts (SOR 1.a through 1.f and 1.q).

Applicant's other existing debt obligations are being paid on time. The \$60 medical collection debt and remains unaddressed, but it is not sufficiently large enough to result in a security concern. Applicant has made substantial progress toward resolving the issues of concern to the DoD. Under all of these circumstances, Applicant has mitigated the financial consideration security concerns.

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 common sense 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. The comments under Guideline F are incorporated in the whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

A security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. Applicant provided extensive evidence of payments, payment plans, and additional action to resolve the delinquent debts alleged in the SOR. Many of the obligations were paid prior to the issuance of the SOR. His actions show he has acted with financial responsibility. Questions about his reliability, trustworthiness, and ability to protect classified information have been mitigated. The record shows good judgment and a willingness to comply with rules and regulations. He currently maintains a monthly budget and reviews his credit reports. He

is willing and able to pay his debts. Applicant has amply demonstrated that he can be counted on to fulfill his obligations, and his financial situation is stable.

The law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, have been carefully applied to the facts and circumstances in the context of the whole person. The issue is not simply whether all the delinquent obligations have been paid—the majority of his delinquent obligations are being addressed—it is whether Applicant’s financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(c)) Overall, the record evidence leaves me without questions or doubts about his eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has 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, Financial Considerations: FOR APPLICANT

Subparagraph 1.a – 1.r: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

CLAUDE R. HEINY II
Administrative Judge