



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 19-02535
)
Applicant for Security Clearance)

Appearances

For Government: Brian Farrell, Esq., Department Counsel &
Brittany White, Esq., Department Counsel
For Applicant: *Pro Se*

04/29/2020

Decision

GARCIA, Candace Le'i, Administrative Judge:

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

Statement of the Case

On October 17, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). The action was taken under Executive Order (Exec. Or.) 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) implemented by DOD on June 8, 2017.

Applicant responded to the SOR (Answer) on November 26, 2019, and requested a hearing before an administrative judge. The case was assigned to me on February 6, 2020. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing

(NOH) on March 3, 2020, scheduling the hearing for March 11, 2020. Applicant waived the 15-day hearing notice required by the Directive. I convened the hearing as scheduled. (Tr. at 72)

Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified; he did not call any witnesses or present any documentation. At Applicant's request, I kept the record open until April 8, 2020, and he presented documentation which I collectively marked as Applicant Exhibit (AE) A and admitted in evidence without objection. DOHA received the hearing transcript (Tr.) on March 17, 2020. (Tr. at 15-19)

Findings of Fact

In his Answer, Applicant admitted all the SOR allegations except ¶ 1.f, which he denied. He is 31 years old, single, and does not have children. (Answer; Tr. at 7, 9; GE 1)

Applicant graduated from high school in 2007. He then served in the U.S. military from 2007 until he was honorably discharged in September 2015. He was discharged from the National Guard (NG) in late 2017. As of the date of the hearing, he worked as an aircraft mechanic for his employer, a DOD contractor, since September 2018. He was first granted a security clearance in 2008. (Tr. at 5-7, 21-25, 36-38; GE 1)

The SOR alleges five delinquent consumer accounts totaling \$32,761 (SOR ¶¶ 1.a - 1.e) and a delinquent \$358 U.S. Government overpayment (SOR ¶ 1.f). The debts are established by Applicant's admissions and 2018 and 2019 credit reports. Applicant also disclosed and discussed his debts in his 2018 security clearance application (SCA) and during his 2019 background interview. (GE 1-4)

Applicant attributed his delinquent debt to a period of self-employment from February to July 2016 and a period of underemployment from July 2016 to September 2018. Having worked as a truck driver from September 2015 to February 2016, he formed an owner-operator business in which he was contracted by a company to haul recreational vehicles (RVs) from the manufacturer to dealerships around the country. To do so, he purchased a business vehicle for which he was responsible for carrying insurance, as further discussed below. He earned approximately \$8,000 monthly during this period of self-employment. (Tr. at 21-77; GE 1, 4)

In May 2016, Applicant's anticipated two-week NG training unexpectedly lasted for five weeks. He did not earn income from his business during this period and he did not get paid for his NG training until September 2016. When he returned from NG training, the company to which he was contracted did not provide him with as many RV units to haul. He was consequently unable to make the monthly payments on his business vehicle, it was repossessed in around September 2016, and his business faltered. He then worked on an as-needed basis for \$15 hourly in home entertainment installation, and he supplemented his income as a ride share service driver. From approximately July 2017 to September 2018, he worked for a fast food restaurant in which he earned \$28,000

annually as a shift leader and then \$40,000 annually as a general manager. He also incurred \$5,000 in out-of-pocket expenses for his cross-country move in 2018 for his current employment. (Tr. at 21-77; GE 1, 4)

SOR ¶ 1.a is for a \$28,081 charged-off automobile account related to Applicant's purchase of a business vehicle, as previously discussed. Applicant financed approximately \$72,000 in February 2016 to purchase an \$80,000 truck. When he purchased this vehicle, he turned in two other vehicles and made a minimal down payment. Within the cross-country RV hauling community, it was common business practice to purchase a vehicle that was reliable and served as a place to sleep. His monthly payment was \$1,300. He received delinquent notifications by e-mail when he did not make his monthly payments, beginning in around May 2016. The vehicle was repossessed in September 2016. He did not learn that his outstanding balance after repossession was \$28,081 until he checked his credit report and communicated with the creditor in early to mid-2017. As of the date of the hearing, he had not yet taken action to resolve this account because he lacked the financial means to do so. Additionally, he focused on addressing his daily living expenses to ensure he did not incur additional delinquent debt and was paying his smaller delinquent SOR debts, as discussed below. He intends to resolve this debt. (Tr. at 24-36, 38, 71-72, 74; GE 1, 2, 3, 4)

SOR ¶ 1.b is for a social group membership account, placed for collection for \$2,635. Applicant signed paperwork for a one-year membership with the group in July 2017. He attended the group's events and paid its monthly membership dues for three months, after which time he stopped attending the group's events but was still charged for the remaining dues. He did not understand the one-year financial commitment he made when he joined the group. He provided documentation reflecting that he paid this account in March 2020. (Tr. at 38-41, 73-74; GE 2, 3, 4; AE A)

SOR ¶ 1.c is for a cellular wireless account placed for collection for \$1,077. Applicant believed he paid this account before he switched carriers in 2015. He first became aware that it was delinquent when he observed it on his credit report in late 2018, at which point he telephoned the underlying creditor and was told that they did not have a record of the account. After he received the SOR, he telephoned the collection agency and unsuccessfully disputed the outstanding amount. He began receiving delinquency notices from the collection agency in February 2020. He intended to resolve this account with his anticipated tax refund for tax year 2019. He provided documentation reflecting that this collections account was removed from his credit bureau report between March 27 and April 2, 2020. (Tr. at 41-44, 71, 73-74; GE 2, 3, 4; AE A)

SOR ¶ 1.d is for a supermarket credit card placed for collection for \$493. Applicant used this credit card for both business and personal expenses. It became delinquent in around July or August 2016. He provided documentation reflecting that he settled and paid this card in March 2020. (Tr. at 44-46, 71, 74; GE 2, 3, 4; AE A)

SOR ¶ 1.e is for a credit card placed for collection for \$475. Applicant could not recall when this card first became delinquent. He provided documentation reflecting that he settled and paid this card in March 2020. (Tr. at 46-48, 71, 74; GE 2, 3, 4; AE A)

SOR ¶ 1.f is for a U.S. Government life insurance overpayment that was placed for collection for \$358. Applicant recalled receiving a notice from the U.S. Government between approximately February and April 2019, indicating that the overpayment was resolved through a garnishment of his income tax refund for tax year 2018. This debt is only reflected in Applicant's October 2018 credit report; it is not reflected in his most recent credit report from June 2019. (Tr. at 48-49; GE 2, 3, 4)

Applicant has earned \$70,000 annually, or a net income of \$4,000 monthly, since September 2018. His monthly rent is \$600. He owns two cars, a \$15,000 truck that he financed with a five-year loan in July 2017, and a \$29,000 compact crossover that he financed with a \$25,000 five-year loan in April 2019. His truck and insurance payments were \$525 and \$125 monthly, respectively, and he withdrew \$4,000 from his retirement savings account to pay his truck loan in 2019 so that he could have more disposable income. He is current on his payments of \$500 monthly for his compact crossover and insurance of \$100 monthly. He has a credit card with a \$400 limit, which he uses to rebuild his credit. He tries to set aside his estimated monthly net remainder of \$600 for savings, and had \$600 in savings as of the date of the hearing. He has used a tax preparation company to file his taxes and was current on his annual income tax filings; he also paid the taxes associated with his \$4,000 withdrawal from his retirement savings account. He received financial counseling when he was discharged from the U.S. military, and he monitors his credit by checking his credit report. He does not have any other delinquent debt. (Tr. at 21-22, 51-70, 74; GE 4)

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 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(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 ¶ 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 Exec. Or. 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 Exec. Or. 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 was unable to pay his debts. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c).

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's financing of \$72,000 towards the purchase of an \$80,000 business vehicle was not a condition beyond his control. His decision to purchase such a vehicle, however, was motivated by the common business practice within the cross-country RV hauling community of purchasing a reliable vehicle that also served as a place to sleep. He made his monthly payments of \$1,300 from February to May 2016, when his ability to continue to do so was impeded by conditions beyond his control. Thus, the first prong of AG ¶ 20(b) applies. For the full application of AG ¶ 20(b), he must provide evidence that he acted responsibly under his circumstances. With his limited income, he prioritized his expenses and took steps to pay his smaller delinquent debts. While he could have taken such efforts sooner had he used his discretionary income to pay his delinquent debts after he purchased a car in 2017, instead of buying a second car in 2019, he nonetheless resolved the debts in SOR ¶¶ 1.b through 1.f.

A security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, pay the debts alleged in the SOR first, or establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Applicant received financial counseling in 2015. He is current on his annual income tax filings. He does not have any other delinquent debts. With his monthly net remainder of approximately \$600, he has the capacity and intends to resolve the sole remaining debt in SOR ¶ 1.a. I find that AG ¶¶ 20(a), 20(b), 20(c), and 20(d) are established.

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 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. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. Applicant credibly testified at the hearing that he intended to resolve his remaining delinquent debt and take the necessary steps to avoid future financial delinquencies. 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.f:	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's eligibility for a security clearance. Eligibility for access to classified information is granted.

Candace Le'i Garcia
Administrative Judge