



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



In the matter of:)
)
) ISCR Case No. 19-03331
)
Applicant for Security Clearance)

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

06/22/2020

Decision

Curry, Marc E., Administrative Judge:

Applicant failed to mitigate the security concerns generated by his delinquent finances. Clearance is denied.

Statement of the Case

On February 5, 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 explaining why it was unable to find it clearly consistent with the national security 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) effective for any adjudication made on or after June 8, 2017. On December 27, 2019, Applicant answered the SOR, admitting all of the allegations except subparagraphs 1.d and 1.f. He requested a decision without a hearing. On March 25, 2020, Department Counsel prepared a File of Relevant Material (FORM) setting forth the Government's argument in support of the SOR, together with supporting documentation. Applicant received a copy of the FORM on March

27, 2020, and was instructed to file any objections to this information, or to supplement the file within 30 days of receipt. Applicant did not do so, whereupon the case was assigned to me on May 22, 2020.

Findings of Fact

Applicant is a 44-year-old man with one child, age 18. He was married from 2000 to 2006. The marriage ended in divorce. (Item 1 at 15) He currently lives with his girlfriend in a legally-recognized domestic partnership. He has a high school diploma. He has been working for a defense contractor as a mechanical installer since 1998. (Item 1 at 10)

Per credit reports of December 2019 and May 2019, Applicant has approximately \$24,000 of delinquent debt. (Items 4 and 5) Applicant is aware of these debts, but either contends that they were fraudulent, turned over to collection agencies before he had an opportunity to satisfy them, or that his ex-wife incurred them, using credit cards that she opened in his name without his knowledge or consent. (Item 1 at 4) He provided no documented proof substantiating the basis of these contentions.

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). They 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, as follows:

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 greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

Applicant's history of delinquent debts generates security 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(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) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit

