



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



In the matter of:)
)
) ISCR Case No. 19-03408
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Kent, Esq., Department Counsel
For Applicant: *Pro se*

10/20/2020

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On January 27, 2020, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on March 2, 2020, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on July 21, 2020, and reassigned to me on August 10, 2020. The hearing was convened as scheduled on September 14, 2020.

Procedural and Evidentiary Rulings

Evidence

Government Exhibits (GE) 1 through 6 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A and C through J,

which were admitted without objection. Applicant did not offer the credit report that was marked AE B. It was offered by the Government as GE 7 and admitted without objection. The record was held open for Applicant to submit additional information. He submitted documents that I have marked AE K through P and admitted without objection.

Motion to Amend SOR

Department Counsel's motion to amend the SOR by adding two allegations under Guideline F was granted without objection.

Findings of Fact

Applicant is a 46-year-old employee of a defense contractor. He has worked for his current employer since 2009. He has a bachelor's degree and additional post-graduate and technical courses. He is married for the second time. He has three children and five stepchildren. (Transcript (Tr.) at 32-34, 63; GE 1, 6; AE D-H)

Applicant's criminal history includes arrests for driving under the influence and domestic violence in 2001. He filed a Chapter 7 bankruptcy case in 2009, and his debts were discharged the same year. He was denied a security clearance in 2015 for failing to report his domestic violence charges on a January 2012 security clearance application. He reported his criminal history, the denial of his security clearance, and his financial problems on a January 2019 security clearance application. He submitted documents and letters attesting to his excellent work performance and moral character. (Tr. at 23, 35, 54; GE 1, 4-6; AE D-H)

The SOR as amended alleges four delinquent debts. The debts include a charged-off vehicle loan (\$28,572), a charged-off credit card from a home improvement store (\$5,623), a collection account to a telecommunications company (\$945), and a collection account for a warehouse store credit card (\$6,286).

Applicant worked in the auto industry for a number of years. From about 2014 to 2018, he was the owner of a part-time business in which he bought and sold aftermarket parts for cars. In about July 2015, he bought a performance truck for about \$75,000. He paid about \$20,000 as a down payment, and financed the remainder. A credit report shows the high balance on the loan as \$50,054. (Tr. at 23, 34-35; GE 1-3, 6, 7)

About two weeks after he bought it, the truck was in an accident. The frame was damaged, and the car dealer told Applicant that the truck should be totaled. The insurance company wanted to repair the truck. Applicant is not a mechanic, but he has extensive mechanical experience, and he did not feel the truck would be safe to drive his family with a repaired frame. Applicant never reclaimed possession of the truck and stopped making payments. It is not completely clear, but the truck was apparently repaired and sold at auction. Credit reports show that \$24,381 was charged off. The August 2020 TransUnion credit report lists a balance of \$29,568, but the September

2020 Equifax credit report lists a balance of \$24,381. Applicant lost the \$20,000 down payment on the truck, but he never paid what was apparently the deficiency owed on the loan. There is no evidence that the finance company has actively pursued collection of the debt. (Tr. at 23-27, 35, 39-48, 54, 56-58; GE 1-3, 6, 7; AE A, I)

Applicant denied owing the three remaining debts. His wife handles most of their financial matters. She credibly testified that she lost one of her wallets with several credit cards in about 2015. She was an authorized user on some credit cards. They continued to pay the accounts for a period before she realized what had happened. She believes the two credit card debts and possibly the telecommunications debt resulted from the lost wallet. (Tr. at 27-30, 39, 48-53, 56, 58-63; Applicant's response to SOR; GE 1, 6)

The \$5,623 charged-off home improvement store credit card debt became delinquent in April 2016. The creditor issued an IRS Form 1099-C (Cancellation of Debt) in July 2019, which cancelled \$4,821 in debt. The income from the cancellation was addressed in Applicant's and his wife's income tax returns. The most recent credit reports show the account with a \$0 balance. The September 2020 Equifax credit report indicates, "Consumer disputes – reinvestigation in progress." (Tr.at 27-28; Applicant's response to SOR; GE 1-3, 6, 7; AE I, J, L)

The two remaining debts are reported on the August 2020 TransUnion report that was provided by Applicant and introduced as GE 7. The warehouse store credit card account became delinquent in about August 2015. Applicant and his wife denied ever having an account with the telecommunications company. The August 2020 TransUnion credit report indicates that it was placed for collection in January 2020. It does not show when the debt became delinquent, but it indicates that the debt is estimated to be removed in September 2021, which would appear to indicate the debt is about six years old. (Tr. at 28, 49-50, 63-64; GE 2, 3, 7)

Applicant has been disputing debts on his credit report since at least 2016. He has not been successful thus far in having any of the alleged debts deleted. His finances are otherwise stable. He is current on his mortgage loan, child support, and income taxes. He has an auto loan that is almost paid, and he does not have a significant amount of revolving debt. (Tr. at 28, 31, 61-63; GE 2, 3, 6, 7; AE C, K, M-P)

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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(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."

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 EO 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* EO 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:

- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant's financial history is sufficient to raise the above disqualifying conditions.

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
- (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.

Applicant's truck was in an accident shortly after he bought it. He got in a dispute with the insurance company over whether the truck should have been a total loss. Applicant is not a mechanic, but he has extensive mechanical experience, and he did not feel the truck would be safe to drive his family with a repaired frame. He essentially walked away and let the truck be repossessed. When he did so, he lost the \$20,000

down payment that he made when he bought the truck about a month before. That was apparently not enough to cover the deficiency when the truck was sold.

Applicant's wife credibly testified that she lost one of her wallets with several credit cards in about 2015. She believes the two credit card debts and possibly the telecommunications debt resulted from the lost wallet. All of the alleged debts became delinquent at least four years ago. Applicant has been disputing debts on his credit report since at least 2016. He has not been successful thus far in having any of the alleged debts deleted. His finances are otherwise stable. He is current on his mortgage loan, child support, and income taxes. He has an auto loan that is almost paid, and he does not have a significant amount of revolving debt.

Applicant does not present a perfect case in mitigation, but perfection is not required. Under the limited circumstances of this case, I find that his finances no longer generate questions about his judgment, reliability, trustworthiness, and ability to protect classified information. Security concerns about his finances are mitigated.

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 have incorporated my comments under Guideline F in my whole-person analysis. I also considered Applicant's favorable character evidence as well as the adverse matter that was not alleged.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. 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.d: For Applicant

Conclusion

It is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge