



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



In the matter of:)
)
) ISCR Case No. 19-03739
)
Applicant for Security Clearance)

Appearances

For Government: A. H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

08/11/2020

Decision

LYNCH, Noreen A., Administrative Judge:

This case invokes security concerns raised under Guideline F (Financial Considerations). Applicant presented sufficient evidence to mitigate the financial security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On March 6, 2020, in accordance with DoD Directive 5220.6, as amended (Directive), and the Adjudicative Guidelines (AG), effective June 8, 2017, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline F. The SOR further informed Applicant that, based on information available to the Government, DoD adjudicators could not make the preliminary affirmative finding that it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant timely answered the SOR, and requested a review based on the written record in lieu of a hearing. (Answer.) The case was assigned to me on July 21, 2020. Department Counsel submitted a File of Relevant Material (FORM), dated April 30, 2020. The Government submitted nine Items for the record. Applicant responded to the FORM in a timely fashion with a packet of documents labeled A through F. All documents were admitted into the record.

Findings of Fact

Applicant, age 49, is married and has two adult children. He completed requirements for an undergraduate degree in May 2018 and obtained his degree. (Answer to FORM, D) He accomplished this while working full time. He served in the United States Navy from 1989 until 2009, when he retired honorably. Applicant completed a security clearance application on February 9, 2018. (Item 3) He is currently working for a federal contractor, which he began in 2018. He initially held a security clearance in the military and maintained his clearance after retirement in the contracting field. (Items 2 and 3)

The SOR alleges that Applicant has five delinquent debts and two judgments for a total amount of debt of \$87,000. Applicant admits all the SOR allegations ¶¶ 1.a through 1.g, and provides explanations. (Item 1)

Applicant attributes his financial difficulties, his inability to maintain financial stability, and pay all his debts to a “rough patch” in 2014, 2015, and 2016. His wife was not working; he housed his mother-in-law who had stage-four cancer; and his father-in-law who was unemployed. In addition, he admits that he overextended himself financially. (Answer to FORM) He paid for medical treatments for his mother-in-law that exacerbated his financial difficulties. Applicant admits to making some poor judgments.

Applicant stated that he did not try to escape from his financial obligations. He attempted to reduce expenses by modifying his home mortgage. He failed to do so, moved out, and rented another place. He had rented a small apartment for his wife on the mainland because he was to be transferred there by his command. However, the transfer did not take place. He could not maintain the home mortgage loan and the rent. (Item 3) Before the home went to foreclosure, Applicant was able to sell it. Applicant admits that he should have acted sooner. His in-laws do not live with him now. It is not clear when they left Applicant’s home, but it was sometime after 2016. His wife is now working. (Answer to FORM)

He admits being scared and stressed and not able to navigate his way. (Answer to FORM) Applicant realizes that this is not an excuse. He also discusses having major repairs with his vehicles and the need to purchase a car in 2016, which also exacerbated his financial difficulties. He regrets not seeking legal help sooner for the vehicle issue. In 2018, Applicant was unemployed for a short period for health reasons. (Answer to FORM)

Applicant has a budget and provided a bill-paying checklist. The documents shows his creditors and the amounts he is currently paying on the accounts. It also shows a monthly net total income of about \$11,000, including military retirement pay and military disability pay. He has a net remainder. (Answer to FORM, E)

Applicant’s combined credit report reflects that he has multiple accounts that were paid as agreed. Some of these accounts go back as far as 2003. (Item 4) The delinquent debts originated on his credit report after the 2014, 2015, and 2016, events that are described in the finding of facts above.

For SOR ¶ 1.a, Applicant had a November 2, 2018 judgment entered against him in the approximate amount of \$36,353. This judgment is the result of an automobile loan that Applicant obtained in 2016. The account was past due, and the car was repossessed. Applicant has been making payments to the debt collector since August 2018. He provided an account summary reflecting that he has paid a total of \$1,600 with consistent monthly payments of \$200 since 2018. (Answer to FORM, A)

As to SOR ¶ 1.b, Applicant admits the 2014 judgment entered against him for \$7,849 for non-payment of a home owner association debt. He paid the account in full in June 2017 from the proceeds of the sale of the home property. (Item 1)

As to SOR ¶ 1.c, Applicant admits that he is indebted for a charged-off account in the amount of \$29,268 for a consolidation loan. The consolidation loan was obtained from the same institution as listed in SOR ¶ 1.a. Applicant has been making \$200 monthly payments consistently since August 2018 to the debt collector. He provided an account summary reflecting a total of \$1,400 paid on the account. (Answer to FORM, A)

As to SOR ¶ 1.d, Applicant admits he is indebted for an account that is past due in the amount of approximately \$406, with a total balance of \$4,626. He states that he has been current on this account for several months and provided a March 2020 account summary to show nothing past due and a record of payments made on the account. (Item 1)

The charged-off account in SOR ¶ 1.e, for \$4,626, is the result of a credit card account. Applicant provided a confirmation of electronic transfers from his bank deposit account. The payment plan shows the payments starting in July 2020 and continuing until April 2023. He provided documentation of one payment of \$128.51 made in June, 2020. (Answer to FORM)

The charged-off account in SOR ¶ 1.f in the amount of \$482.27 is in a repayment status. Applicant made his first payment of \$96.40 on April 2, 2020. (Item 1) He stated that he has eight payments remaining.

As to the SOR allegation in ¶ 1.g, for a charged-off account in the amount of \$9,005, Applicant admits that he initially incurred this debt. However, he contests the amount owed. He takes responsibility because it is in his name. He explained the cause of the debt in his subject interview in great detail. (Item 3) In 2016, he traded in his vehicle for another car. He presented documentation that part of the agreement was a down payment of \$6,000 cash, and the trade in. (Answer to FORM, C) The car dealer was to take the vehicle that was traded, sell it, and pay off the balance of the loan. (Answer to SOR) The agreement was not honored, and Applicant has attempted to resolve this issue since at least 2017. The car dealer wanted another \$6,000, which Applicant did not possess.

Applicant has been working with a law firm to resolve the financial issue raised in SOR 1.g. (Answer to FORM, C) Since 2017, Applicant has made many efforts to resolve this matter. The law firm contacted the car dealer, who promising to resolve the issue,

has not. The sales contract confirms Applicant's description of the event. He provided a letter from his attorney and the 2016 sales contract. His legal team advises that the original car dealer is liable for the balance of the car loan and not the Applicant. The letter from his attorney refers to an unfair and deceptive trade practice. (Answer to FORM, C) Applicant intends to resolve the matter with the assistance of the law firm.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of EO 10865, "Any determination under this order adverse to an applicant shall be a determination 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 concern under this guideline 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

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's acknowledgements, corroborated by his credit reports, establish two disqualifying conditions under this guideline: AG ¶ 19(a) (“inability to satisfy debts”), AG ¶ 19(c) (“a history of not meeting financial obligations”).

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

AG ¶ 20(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;

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 counseling service, and there are clear indications that the problem is being resolved or is under control;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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 provide evidence of actions to resolve the issue.

Applicant's delinquent debts are the result of a multitude of circumstances beyond his control that began in 2014. He took care of his wife's parents by housing them and providing medical care for his mother-in-law who had cancer and his father-in-law, who was unemployed. He also was the sole provider for the family. This was an exceptional circumstance. He had to deal financially with a terminally ill family member. He also managed to sell his house before foreclosure and downsize to a smaller apartment. He did not receive a transfer to the mainland as was expected. This caused more financial difficulties. Applicant had good credit as reflected on his credit reports before 2014. Life happened and he admits that he was not as proactive as he could have been. He also had difficulties with his vehicle and appears to be the victim of a deceptive or unfair car sales agreement by a car dealer. He did not ignore creditors and has been paying or resolving his debts for years. He took reasonable actions under the circumstances. He paid bills that he could. He paid several collection accounts. He did not ignore his creditors. He is using sound judgment and paying his debts. Granted, he has not paid all of them, he is not required to do so all at once. He has established a track record with a good payment history.

Applicant presented recent information about his payment history to the various accounts that have been paid. He is gainfully employed and is dedicated to paying his debts. AG ¶ 20(a), is applicable in this case.

AG ¶ 20(b) is established. He had several circumstances beyond his control of varying degrees occurring almost simultaneously. He painstakingly listed all information on his security clearance application and provided documentation to show exactly what he has paid and what his plans are.

AG ¶ 20(c) is partially established. He sought legal advice for one debt. He has a budget. AG ¶ 20(d) is established. Applicant is adhering to good-faith efforts now to address his financial accounts. He produced sufficient documentation to support this mitigating condition. Applicant has met his burden to mitigate the financial concerns set out in the SOR.

AG ¶ 20(e) applies to the debt in SOR ¶ 1.g. He has a reasonable basis to dispute the debt and has taken appropriate actions to resolve the debt.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall commonsense judgment based upon careful consideration of the applicable guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, including his many challenging conditions beyond his control in recent years, I conclude that Applicant has mitigated the security concerns raised by his financial indebtedness. Accordingly, Applicant has carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a - g: For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest to grant Applicant's eligibility for access to classified information. Clearance is granted.

Noreen A. Lynch
Administrative Judge