



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



In the matter of:)
)
) ISCR Case No. 19-03452
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esquire, Department Counsel
For Applicant: *Pro se*

09/23/2020

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On February 13, 2020, the Department of Defense (DOD) Consolidated Adjudication Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). The action was taken 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 (AG) effective within the DOD on or after June 8, 2017.

In a response notarized on March 12, 2020, Applicant answered the three allegations raised in the SOR and requested a decision by a Defense Office of Hearings and Appeals (DOHA) administrative judge based on the written record. The Government's written brief with six supporting documents (Items 1-6), known as the File of Relevant Material (FORM), was submitted by Department Counsel on April 22, 2020. A complete copy of the FORM was mailed to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on May 5, 2020, but offered no

response. I was assigned the case on August 21, 2020. Based on the record before me, I find Applicant failed to mitigate financial considerations security concerns.

Findings of Fact

Applicant is a 50-year-old shop foreman who has worked in the same position since March 2018. He earned an associate's degree in 2008. Applicant was married from 2007-2011. He is now either married to, or cohabitating with, a different woman. (*compare* SOR Response at 3 and FORM Items 3-4) He has a 26-year-old child.

From November 2017 to March 2018, Applicant was without a job when his employer had no work to assign. During this time, he collected unemployment compensation. Around December 2013, he closed his own business after about 18 months, and was unemployed until April 2014. During this time, he was financially reliant on his personal savings. Applicant's income was limited from March 2011 to April 2012, as he drew unemployment compensation after an employer let him go because there was no work for him. At that time, Applicant began the business which would ultimately be shuttered in December 2013, noted above.

At issue in the February 2020 SOR are three allegations concerning three delinquent debts. Applicant admits all allegations:

- 1.a - STUDENT LOAN – Collection account (approximately \$19,567)
- 1.b – MEDICAL DEBT – Collection account (approximately \$315)
- 1.c – STUDENT LOAN – Collection account (approximately \$15,246)

With regard to 1.b, Applicant wrote in his March 2020 SOR Response that he would address the debt "immediately." No documentation of any efforts or success in addressing this obligation was submitted. As for 1.a and 1.c, Applicant wrote that he had requested forbearance on the student loans and noted that the balances previously owed were financially unwieldy. He reported that the student loans were put into forbearance, but Applicant "forgot to contact the lender and resume payments. . . . (Today, they) continue in late status." (SOR Response at 3)

When interviewed between December 2018 and January 2019, Applicant conveyed that "he was confident that he will not experience financial difficulties in the future." (FORM, Item 4, at 3) No documentation was offered reflecting his current financial condition or showing he has received financial counseling. He attributed the delinquency of the debts to his status as a single father who "couldn't make ends meet."

Applicant wrote that he no longer knows what entity owns the student loans or how to address them. Those accounts are shown as having credit report assignment dates in 2011; the medical debt at 1.b has a date of last activity in 2016. (FORM, Item 5, at 2) They are all shown as closed accounts in collection. At the end of his SOR Response, Applicant noted:

I have no intention to deny my responsibility. I currently support my wife and a household, 2 cars, and the day to day expenses of life. I consider myself to be a hardworking, tax paying, responsible citizen and do not feel this delinquency should represent my ability to be a responsible adult.

Applicant only offered generalities regarding his current expenses and needs. His present income and holdings are not defined. None of his submissions reflect that he has contacted his creditors. No strategy for addressing the debts was detailed.

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 used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. 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(c), the entire process is a conscientious scrutiny of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that any doubt concerning personnel being considered for access to classified information will be resolved in favor of national security. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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, and transcends duty hours. The Government reposes a high degree of trust and confidence in those granted such access. Decisions necessarily include consideration of the possible risk an applicant may deliberately or inadvertently fail to safeguard such information. Decisions shall be in terms of the national interest and do not question the loyalty of an applicant.

Analysis

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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.

Here, the Government offered documentary evidence showing, and Applicant admitted, the existence of three delinquent debts, thus raising disqualifying conditions:

AG ¶ 19(a): inability to satisfy debts, and

AG ¶ 19(c): a history of not meeting financial obligations.

Under these facts, three conditions could mitigate related security concerns:

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 problems 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 under control; and

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

Applicant experienced periods of unemployment due to lack of work from November 2017 to March 2018, and from March 2011 to April 2012 for the same reason. He received unemployment compensation income during these periods, which were the result of circumstances beyond his control. An intervening period of unemployment from December 2013 to April 2014 came about when he closed his own business, although it is unclear whether this was the result of a business downturn or something beyond his control. Regardless, a condition tending to mitigate the creation of delinquent debt between March 2011 and March 2018 was existent: AG ¶ 20(b).

There is no evidence Applicant has received financial counseling. There is no documentation substantiating any of his purported efforts to get his finances under control, or reflecting that he has devised and adhered to a good-faith plan to resolve his financial obligations. Consequently, mitigation may exist regarding the creation of the delinquent debts at issue, but not regarding his efforts to address them.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of his conduct and all relevant circumstances. The administrative judge should consider the nine

adjudicative process factors listed at AG ¶ 2(d). Here, I have considered those factors. I am also mindful that, under AG ¶ 2(a), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

The 50-year-old Applicant is the head of the household he shares with his partner. It is unclear if his 26-year-old son or any other individuals live with the couple. Details regarding his present income, savings, finances, and routine obligations are not well-defined. While Applicant provided facts regarding periods of unemployment tending to help mitigate the creation of his delinquent debts, insufficient information and documentation was provided to mitigate his failure to devise a workable plan for addressing his obligations or for mitigating their continued existence. Indeed, a medical debt for slightly over \$300 remains unaddressed, and Applicant provided no documentation regarding his efforts toward working with his lenders or otherwise resolving a combined delinquent student loan debt balance of nearly \$35,000.

It is clear that Applicant genuinely wants to honor his delinquent debts. Based on the scant information offered, therefore, it can only be assumed he does not have the ability to proceed further financially. This process does not require that an applicant satisfy all his delinquent debts. It does, however, expect an applicant to set forth a workable and reasonable plan for effectively and demonstrably addressing them. Applicant has thus far failed to present sufficient documentation to meet that standard.

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:	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Arthur E. Marshall, Jr.
Administrative Judge