



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



In the matter of:)
)
) ISCR Case No. 19-03896
)
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis, Esquire, Department Counsel
For Applicant: *Pro se*

July 16, 2020

Decision

ROSS, Wilford H., Administrative Judge:

On September 25, 2018, Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP). (Item 4.) On February 28, 2020, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). (Item 1.) The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on June 8, 2017.

Applicant signed his Answer to the SOR (Answer) on March 13, 2020, and requested his case be decided on the written record in lieu of a hearing. (Item 3.) On April 30, 2020, Department Counsel submitted the Department's written case. A

complete copy of the file of relevant material (FORM), consisting of Items 1 to 8, was provided to Applicant, who received the file on May 6, 2020.¹

Applicant was given 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He elected not to submit any additional material. The case was assigned to me on July 7, 2020. Based upon a review of the pleadings and exhibits, national security eligibility for access to classified information is denied.

Findings of Fact

Applicant is 38, married but separated, and has one child. Applicant served in the Army from 2001 until 2004, when he received an Honorable Discharge. He has been continuously employed since leaving the Army in 2004. He is currently employed by a defense contractor and seeks to obtain a security clearance in connection with his employment. (Item 3 at Sections 13A, 15, 17, and 18.)

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleged in this paragraph that Applicant is ineligible for clearance because he is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds.

Applicant admitted all 33 allegations in the SOR under this paragraph. The total amount of money Applicant allegedly owed on all SOR-listed debts is approximately \$34,802. Delinquent medical debts comprise \$14,516 worth of this debt. The existence and amount of the debts is supported by credit reports dated October 20, 2018; November 25, 2019; and April 22, 2020. (Items 6, 7, and 8.)

Applicant stated in his Answer at 5, "I have made some financial mistakes in the past, as has everyone at some point in their life. It is a slow process, but I am confident that I can achieve the goal." Applicant further stated in his Answer that he is working with the VA to have some of his medical debts paid for by the Government, and he now has a health insurance plan through his employer.

¹ Department Counsel submitted eight Items in support of the SOR allegations. Item 5 is inadmissible. It is the summary of an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management on July 16, 2019. Applicant did not adopt the summary as his own statement, or otherwise certify it to be accurate. Under Directive ¶ E3.1.20, this Report of Investigation (ROI) summary is inadmissible in the Government's case in chief in the absence of an authenticating witness. (See Executive Order 10865 § 5.) In light of Applicant's admissions, Item 5 is also cumulative. Applicant is not legally trained and might not have understood Department Counsel's FORM commentary, which described the potential admissibility of Item 5. I therefor reviewed it for any potentially mitigating information that Applicant might have thought would be considered. Any such mitigating information will be discussed later in this decision.

The debts in the SOR range from \$29 (SOR 1.p) to \$10,921 (SOR 1.a). Applicant submitted no evidence showing that he has made payment arrangements with any of the creditors named in the SOR, even the smallest. While he admitted allegation 1.g, he added that this is a debt he might have a reason to dispute. He further stated in his Answer that he is working with the creditor in allegation 1.gg, to reach a resolution. Applicant submitted no documented financial information, such as a budget, from which to determine whether he is now financially stable. Applicant did not submit any evidence concerning the quality of his job performance. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

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 list potentially disqualifying conditions and mitigating conditions, which are useful 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, the administrative judge applies the guidelines 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. 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, "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.

According to 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, 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 access to classified information. 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 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

Paragraph 1 (Guideline F, Financial Considerations)

The security concern relating to the guideline 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 personal 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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

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

Applicant, based on documentary evidence, has 33 delinquent accounts totaling approximately \$34,802 that he could not or chose not to resolve. The evidence is

sufficient to raise these potentially disqualifying conditions, shifting the burden to Applicant to demonstrate mitigation.

The guideline includes five conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's financial difficulties:

(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, or 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;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; 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 debt problems have been in existence for many years. In addition, he provided no information to show that his current financial situation is stable. AG ¶ 20(a) does not apply.

Applicant has been continuously employed since he entered the Army in 2001. AG ¶ 20(b) is not applicable.

AG ¶¶ 20(c), (d), and (e) do not have applicability to the facts of this case.

It is Applicant's burden to show with sufficient evidence that he has mitigated the security concerns of his financial situation. He has not done so, for the reasons set forth in this decision. Paragraph 1 is found against Applicant.

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 national security 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 facts and circumstances surrounding this case. Applicant's financial difficulties are recent, voluntary, and occurred when he was a mature adult. Rehabilitation was not demonstrated, nor was unlikelihood of recurrence. Overall, the record evidence as described above leaves me with questions and substantial doubts as to Applicant's suitability for national security eligibility and a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under the guideline for Financial Considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:

AGAINST APPLICANT

Subparagraphs 1.a through 1.gg:

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 national security eligibility for a security clearance. Eligibility for access to classified information is denied.

WILFORD H. ROSS
Administrative Judge