



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



In the matter of: ----- Applicant for Security Clearance)))))	ISCR Case No. 18-00901
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Appearances

For Government: Kelly Folks, Esq., Department Counsel
 For Applicant: *Pro se*
 01/24/2020

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility for access to classified information. He did not present sufficient evidence to explain, extenuate, and mitigate the security concern stemming from his problematic financial history. Accordingly, this case is decided against Applicant.

Statement of the Case

On April 25, 2018, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging that his circumstances raised security concerns under Guideline F, financial considerations. This action was taken under Executive Order (E.O.) 10865, Safeguarding Classified Information within Industry (February 20, 1960), as amended, as well as DOD Directive 5220.6, Defense Industrial Personnel Security Clearance Review Program (January 2, 1992), as amended (Directive). The Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (AG), effective within the Defense Department on June 8, 2017, apply here. Applicant answered the SOR on May 22, 2018, and requested a hearing to establish his eligibility for access to classified information.

I was assigned the case on September 13, 2018. On January 17, 2019, a date mutually agreed to by the parties, a hearing was held. Applicant testified at the hearing. The Government offered four exhibits, which were marked for identification as GE 1 through 4, and which were admitted without objection. Applicant offered no exhibits. The record was left open until February 7, 2019. Applicant did not submit any documents post-hearing. The transcript of the hearing (Tr.) was received on January 28, 2019.

Findings of Fact

Applicant is 41 years old, a high school graduate with some college credits. He is married with three children, two daughters ages eight and three, and a son age five. Since February 2006, Applicant has been employed by defense contractors. (Tr. 21, 31-33; GE 1.)

The SOR alleged that Applicant has 10 delinquent accounts totaling \$20,901. (SOR ¶ 1.) Applicant admitted all of those accounts. (Answer ¶ 1.) Applicant testified about the status of the SOR delinquent debts. SOR ¶ 1.a is Applicant's home mortgage. Applicant testified that he brought the mortgage current 6 to 12 months ago. That debt, however, was reported delinquent as of March 15, 2018. (Tr. 57-59; GE 4.) The other nine delinquent debts are charge-offs (4), collections (4), and one judgment. (SOR ¶¶ 1.c-f & h; SOR ¶¶ 1.b, g-h & j; SOR ¶ 1.i.) The virtually uniform descriptions of the current status of the delinquent SOR debts are: (1) they went delinquent between 2012 and 2014; (2) Applicant plans to pay those debts by payment plan or otherwise; (3) there are no payment plans in effect; and (4) Applicant has made no payments on those debts. (Tr. 57-80.)

Applicant testified about the circumstances that caused his financial problems. Not long after Applicant's oldest daughter was born, she showed signs of developmental delay. Applicant took her to a number of specialists and neurologists. At age 4, she was diagnosed to be fully on the far end of the autism spectrum. She is non-verbal with erratic behavior. She is currently enrolled in a special needs program. (Tr. 21-22.)

When Applicant's daughter was evaluated for a school-based special needs program, Applicant was told that she would not qualify for a high school diploma and would need to go through a certificate program instead. Because Applicant believed his daughter was smart and capable, Applicant objected to that finding and hired a lawyer to challenge it. That was not an expense Applicant had anticipated before her birth (about \$2,500 to \$3,000). The challenge was successful, and Applicant's daughter was recommended for a very expensive form of in-home therapy, involving four to five days per week of therapist visits. The insurance that Applicant has through his employer does not cover that therapy. As a result, Applicant had to go to the outside insurance market for insurance that would cover that therapy. He was successful, but the insurance he obtained has very high deductibles. He estimated that her specialized coverage costs more than \$500 per month. Applicant's daughter needs constant attention and now has a full-time therapist. (Tr. 23-24, 27-28, 50-52, 87.)

As a result of the costs of his daughter's in-home therapy, Applicant had to prioritize his mortgage, taxes, and utilities to keep a roof over his family's head and to make sure his other two children were being taken care of. His credit card bills, however, were not being paid on time. To keep himself gainfully employed, Applicant took out-of-state and out-of-country work assignments. (Tr. 23-25.)

Applicant also suffered loss of household income when his spouse took time off after the birth of her three children. The oldest daughter was born in April 2011, and her mother took about 12 to 18 months off after her birth. At the time, Applicant's spouse was making about \$80,000 per year. Although she applied for unemployment compensation, the household income suffered a significant loss until Applicant's spouse went back to work at the \$80,000 per year range. Applicant's son was born in May 2014. Applicant's spouse took about three to six months off, and at the time, she had been making about \$100,000 per year. Applicant's younger daughter was born in September 2016. Applicant's wife took three to six months off, and at the time she was making just over \$100,000 per year. When Applicant's wife rejoined the workforce, she made about \$70,000 per year, which is her current salary. She took a pay cut in order to work from home to get the children to school, be home when they return, and be home when her oldest daughter's therapist is there. In sum, Applicant's household income decreased by about \$80,000 when his oldest daughter was born, about \$50,000 when his son was born, and about \$50,000 when his youngest daughter was born. (Tr. 41-49.)

Applicant testified about his household finances. Currently, he and his spouse earn \$80,000 and \$70,000 per year, respectively. They have no other sources of income. They have no car loans and no savings account. Applicant's 401(k) has about a \$15,000 balance. The only real estate they own is the family home. In 2009, when it was purchased, the sale price was \$390,000. Applicant is current on his state and federal income taxes. He has never owed any taxes and always gets a refund. He has never filed for bankruptcy. Applicant has not taken any financial counseling courses. (Tr. 37-40, 53, 55, 81-82, 91-92.)

Applicant's mortgage payment is \$2,500 per month. Groceries are about \$800 per month. Utilities are \$250 per month. Cable and cellphones are \$300 per month. Car insurance and gas are \$650 per month. Specialized insurance coverage is more than \$500 per month. Employer-sponsored health insurance is \$400 per month. That yields a net remainder of \$7,125 per month. Applicant sets aside some of that remainder to pay some of the smaller debts. His plan is to get current on the mortgage and day-to-day expenses to improve his credit score, so he can take out a home equity loan to pay off all outstanding bills. (Tr. 27, 82-99.)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held in "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." *Department of the Navy v. Egan*, 484 U.S. 518, 531 (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 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, 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(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 ¶ 2(b) 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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

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. 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.

Analysis

Guideline F, Financial Considerations

The financial considerations security concern 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 sets forth several conditions that could raise security concerns under AG ¶ 19. The following conditions are potentially applicable:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

AG ¶¶ 19(a) and (c) apply to Applicant's delinquent debts. The next question is whether any mitigating conditions apply.

Conditions that could mitigate 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 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 conditions that resulted in the financial problem were largely beyond individual acted responsibly under the circumstances; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Although the SOR debts might have been incurred several years ago, they remain delinquent today. Nor are the delinquent debts infrequent; there are ten such debts. Thus, AG ¶ 20(a) does not apply.

There were a number of factors that contributed to Applicant's financial difficulties. First, his oldest daughter was born with profound developmental infirmities. To give his daughter the best chance for some developmental success, Applicant retained an attorney to challenge the special educational plan initially proposed. His attorney was successful, but legal fees were unexpected before his daughter's birth. Second, Applicant's employer-sponsored health insurance did not cover his daughter's recommended therapy. As a result, Applicant purchased specialized insurance coverage for his daughter. This was a significant unanticipated cost. Third, the birth of Applicant's

