



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



In the matter of:)	
)	
-----)	ISCR Case No. 18-01723
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrea Corrales, Esq., Department Counsel
 For Applicant: *Pro se*
 01/30/2020

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility for access to classified information. He presented sufficient evidence to explain, extenuate, and mitigate the security concern stemming from his problematic financial history. Accordingly, this case is decided for Applicant.

Statement of the Case

On July 3, 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 DOD on June 8, 2017, apply here. Applicant answered the SOR on July 18, 2018, and requested a hearing to establish his eligibility for access to classified information.

I was assigned the case on November 1, 2018. On December 14, 2018, a date mutually agreed to by the parties, a hearing was held. Applicant testified at the hearing. The Government offered three exhibits, which were marked for identification as GE 1 through 3, and which were admitted without objection. Applicant offered two exhibits, which were marked for identification as AE A and AE B, and which were admitted without objection. The record was left open until December 28, 2018. Applicant timely submitted one document, which was marked for identification as AE C, and which was admitted without objection. The transcript of the hearing (Tr.) was received on January 2, 2019.

Findings of Fact

Applicant is 31 years old and has a four-year college degree awarded in May 2012. He has never been married and has no children. Since September 2017, he has been employed by a defense contractor. This is Applicant's first time going through the security clearance process. (GE 1; Tr. 27.)

Applicant's employment history since he graduated from college follows:

June 2012 - September 2012 (part-time pest control)
October 2012 – March 2013 (unemployed)
April 2013 – February 2014 (part-time housekeeper)
March 2014 – July 2014 (full-time metal sales estimator)
August 2015 – December 2015 (full-time direct mail clerk)
January 2016 – August 2017 (part-time pest control)
July 2017 – November 2017 (part-time retail sales)
September 2017 – present (full-time defense contractor) (GE 1.)

The SOR alleged that Applicant has 13 delinquent accounts totaling \$51,045, of which \$49,614 are student loans. (SOR ¶ 1.) Applicant admitted all of those accounts, except for two medical accounts (\$645 and \$359), of which he denied any knowledge. (Answer.) Those medical debts appear on the 2017 credit report, but the \$359 debt does not appear on the 2018 credit report. (GE 3; GE 2.) In his security clearance application, Applicant disclosed eight student loan debts, one medical debt, and one consumer debt. In making those disclosures of student loan debts, he stated:

“Until recently, I didn't have an understanding or clear knowledge of the multiple loans and dollar amounts. Since pulling my credit report and going through it for this application I can now approach how to move forward on this debt Contacting debtor [sic – he meant creditor] for payment arrangements.”(GE 1.)

By the time Applicant filed his Answer, he had payment plans in place for each of the alleged student loans. (Answer.) By the time of his hearing, he had been adhering to his payment plans or had otherwise resolved his SOR debts. (Tr. 39-40, 43, 47-50; AE A; AE B; AE C.) Applicant embarked on paying delinquent debts before he completed his security application in 2017. (GE 1.)

Applicant testified about the circumstances that caused his financial problems. He explained that when he graduated from college, he had difficulty finding a good job. Applicant's current job is steady. Applicant testified that receiving the SOR "incentivized him to work on his [student] debt." Applicant embarked on paying student loan delinquent debts before he completed his security application in 2017. (GE 1.) He began payments on his student loan plans in July 2018. (Tr. 39, 54.) Applicant's post-graduate employment history above supports that explanation.

Applicant testified about his household finances. They are also set forth in a student Loan Rehabilitation Income and Expense form completed in July 2018 attached to his Answer, It and his testimony show that he is living within his means. Applicant is current on all expenses and on his state and federal income taxes. (Answer; Tr. 50-53.)

Applicant submitted a character reference letter from his current supervisor. The author commends Applicant as being of "high moral character . . . reliable and trustworthy." The author praised Applicant as one who "accomplishes . . . tasks in a professional and proficient manner." (AE C.)

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 remained delinquent until Applicant filled out his security clearance application in November 2017. Nor are the delinquent debts infrequent; there were numerous such debts. Thus, AG ¶ 20(a) does not apply.

Applicant quite candidly explained that following his college graduation, he had difficulty finding a decent job. His post-graduate employment history supports that explanation. Even when he could find a full-time job, it only lasted for a matter of months. Thus, the first prong of AG ¶ 20(b) is satisfied.

The second prong of AG ¶ 20(b) requires that Applicant acted responsibly under the adverse circumstances he was facing. When Applicant was alerted to the need to address his delinquent debts during the security clearance application process in November 2017, he had only been on his full-time defense contractor job for a couple of months. He honestly admitted that the clearance process prompted him to begin to address his delinquent debts. Often the Board does not look kindly upon applicants who address their delinquent debts only when spurred by the security clearance process. *See, e.g.*, ISCR Case No. 15-06440 at 4 (App. Bd. Dec. 26, 2017). I do not believe that to be the case here. To begin with, this is Applicant's first foray into the security clearance process. Applicant persuaded me that he did not know the nature, extent, or the importance of his credit-worthiness until he pulled a credit report in connection with filling out his security clearance application. He began addressing his delinquencies not long after that. By the time Applicant received the SOR, and certainly by the time of the hearing, he had paid or otherwise resolved his delinquencies. The second prong of AG ¶ 20(b) is satisfied. By the same reasoning, AG ¶ 20(d) applies.

The record does not raise concerns about Applicant's reliability, trustworthiness, good judgment, and ability to protect classified information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also gave due consideration to the whole-person concept. (AG ¶ 2(d)(1)-(9).)

Accordingly, I conclude that Applicant met his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

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, is:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a-m: For Applicant

Conclusion

In light of all of the circumstances presented, it is clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is granted.

Philip J. Katauskas
Administrative Judge