



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 19-02287
)
)
Applicant for Security Clearance)

Appearances

For Government:
Jeff Nagel, Esquire, Department Counsel
Andrew Henderson, Esquire, Department Counsel

For Applicant:
Pro se

December 3, 2020

Decision

ROSS, Wilford H., Administrative Judge:

Statement of the Case

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on February 16, 2018. (Government Exhibit 1.) On September 17, 2019, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, 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; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines effective within the Department of Defense after June 8, 2017.

Applicant answered the SOR in writing (Answer) on December 23, 2019, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on February 4, 2020. The case was assigned to me on February 10, 2020. The Defense Office of Hearings and Appeals (DOHA) issued an initial Notice of Hearing on February 13, 2020. The case was heard on March 5, 2020, and on October 19, 2020. DOHA received the transcript of the final hearing on November 9, 2020.

The Government offered Government Exhibits 1 through 6, which were admitted without objection. Applicant offered Applicant Exhibits A through F at the hearing, which were all admitted without objection, and testified on his own behalf. He asked that the record to remain open for the receipt of additional documentation. He timely submitted Applicant Exhibit G, which was also admitted without objection. The record closed on November 13, 2020.

Findings of Fact

Applicant is 42 years old and married with two children. He has a Bachelor of Science degree. Applicant has been employed by a defense contractor as an engineer since September 2017. Applicant is seeking to obtain national security eligibility and a security clearance in connection with his employment. (Government Exhibit 1 at Sections 12, 13A, and 17.)

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleges 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.

The SOR alleged that Applicant had eleven past-due or charged-off student loans, totaling \$84,005. Applicant admitted all the allegations in the SOR.

Applicant used a combination of student loans and credit-card debt to pay his way through school. After school Applicant went through a long period of under-employment and unemployment before obtaining his current position three years ago. During the past three years he had been saving money to pay off his large credit-card debt, and has done so. This is supported by the two most recent credit reports in the record, submitted by the Government. He then continued saving money and negotiated payoffs with several of the student-loan creditors. He has substantially reduced his indebtedness, and has a plan in place to resolve all of his remaining student loans in the near future. (Tr. 69-75; Government Exhibits 5 and 6; Applicant Exhibit G.)

Using the Government exhibits he obtained at the hearing, particularly the credit reports, Applicant was able to provide an extended analysis of his student loan debts.

This analysis, found at Applicant Exhibit G, discusses all the debts listed in the SOR. (Tr. 34-40; Hearing Exhibit I.)

The current status of the allegations in the SOR is as follows:

1.a. Applicant admitted owing DP OF EDUC \$12,454 for a past-due student loan. This is one of four loans Applicant has with this creditor. This debt and the one in 1.f for \$9,383 are alleged in the SOR. Two additional loans are not alleged in the SOR. The total balance for all four loans was alleged to be \$47,470.20. Applicant reached a payment arrangement and provided a copy of a cashier's check for \$34,396.87 that he had sent to the creditor's agent as payment in full for these four loans. This debt is being resolved. (Tr. 53-55; Government Exhibit 2 at 6, Exhibit 3 at 3, 4; Applicant Exhibit E, Exhibit G at 4, 5, 7, 8, 9.)

1.b. Applicant admitted owing NAVIENT \$11,278 for a charged-off student loan. This is one of four loans Applicant had with this creditor, totaling \$37,278. The other three are allegations 1.d, 1.e, and 1.g. Applicant made a payment arrangement with the creditor's agent and paid the agreed amount in February 2020. This debt has been resolved. (Tr. 30-34; Government Exhibit 2 at 4, Exhibit 3 at 3, 4; Applicant Exhibit C, Exhibit G at 5, 6.)

1.c. Applicant admitted owing GLEHC \$10,794 for a past-due student loan. This is one of two loans with this creditor. The other is allegation 1.h for \$6,505. The total indebtedness is \$17,299. Applicant is currently attempting to resolve these two debts with the creditor. This debt is not resolved. (Applicant Exhibit G at 5.)

1.d. Applicant admitted owing NAVIENT \$9,699 for a charged-off student loan. Applicant made payment arrangements with the creditor's agent and paid the agreed amount in February 2020. This debt has been resolved. (Tr. 30-34; Government Exhibit 2 at 4, Exhibit 3 at 3, 4; Applicant Exhibit C, Exhibit G at 5, 6.)

1.e. Applicant admitted owing NAVIENT \$9,531 for a charged-off student loan. Applicant made payment arrangements with the creditor's agent and paid the agreed amount in February 2020. This debt has been resolved. (Tr. 30-34; Government Exhibit 2 at 4, Exhibit 3 at 3, 4; Applicant Exhibit C, Exhibit G at 5, 6.)

1.f. Applicant admitted owing DP OF EDUC \$9,383 for a past-due student loan. This is one of four loans Applicant has with this creditor. Applicant reached a payment arrangement and has sent a cashier's check to the creditor's agent for the agreed amount. This debt is being resolved. (Tr. 30-34; Government Exhibit 2 at 4, Exhibit 3 at 3, 4; Applicant Exhibit C, Exhibit G at 5, 6.)

1.g. Applicant admitted owing NAVIENT \$6,770 for a charged-off student loan. Applicant made payment arrangements with the creditor's agent and paid the agreed

amount in February 2020. This debt has been resolved. (Tr. 30-34; Government Exhibit 2 at 4, Exhibit 3 at 3, 4; Applicant Exhibit C, Exhibit G at 5, 6.)

1.h. Applicant admitted owing GLEHC \$6,505 for a past-due student loan. Applicant is currently attempting to resolve this debt and one other (1.c) with the creditor. This debt is not resolved. (Applicant Exhibit G at 5.)

1.i. Applicant admitted owing ECMC \$3,906 for a past-due student loan. This is one of three loans with this creditor, totaling \$7,591. The other two are allegations 1.j and 1.k. Applicant states on page 5 of Applicant Exhibit G, "I am in contact with ECMC and I am waiting for an approval response on a verbal offer to settle the debt in full. If the offer is accepted, I would be in the position to settle this debt in full within the next 90 days." This debt is not yet resolved, but is in negotiation.

1.j. Applicant admitted owing ECMC \$2,967 for a past-due student loan. Applicant is currently in active negotiation with the creditor to pay this debt in full. (Applicant Exhibit G at 5.)

1.k. Applicant admitted owing ECMC \$718 for a past-due student loan. Applicant is currently in active negotiation with the creditor to pay this debt in full. (Applicant Exhibit G at 5.)

Four credit reports were submitted by the Government (Government Exhibits 3 through 6). The credit reports show that Applicant has substantially reduced his delinquent debt over the past year. Applicant stated that his current financial situation is stable. Applicant is able to maintain payments on all of his current debts, and resolve his remaining delinquent student loans in a timely fashion. (Tr. 60, 69-75.)

Applicant submitted a letter of recommendation from the president of his employer. Applicant works for a small company of about 65 individuals, so he has frequent contact with the president. The letter stated that Applicant, "is trustworthy and industrious." (Tr. 27-28; Applicant Exhibit A.)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. 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 Executive Order 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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Paragraph 1 (Guideline F, Financial Considerations)

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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; and
- (c) a history of not meeting financial obligations.

Applicant owed approximately \$84,000 for past-due and charged-off student loans as of the date the SOR was issued. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes three conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged 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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's current financial situation is stable, in that he has paid off one major credit card debt in full, and is making timely payments on another credit card. In addition, he has been making great strides towards resolving his student-loan debt. He submitted documentary evidence showing that he had made payment arrangements concerning six of the loans alleged in the SOR, plus two additional loans not alleged, and had paid approximately \$40,000 this year to resolve them. He is in active negotiations with the

other creditors to resolve the remaining loan debts. Applicant has behaved responsibly in resolving these debts.

In support of these findings, I cite the Appeal Board's decision in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) for the proposition that the adjudicative guidelines do not require that an applicant be debt-free. The Board's guidance for adjudications in cases such as this is the following:

. . . an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payments of such debts one at a time. ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted).

When considering the entirety of Applicant's financial situation, I view Applicant's corrective action in addressing the indebtedness he incurred to further his education to be responsible and reasonable. Given his resources, he has initiated a pragmatic approach to the repayment of his SOR debts and has taken significant steps to resolve those debts. Applicant has the knowledge and ability that will allow him to stay on a proper financial footing. He has fully mitigated all the allegations in the SOR. Paragraph 1 is found for Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for national security eligibility 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 pertinent facts and circumstances surrounding this case. Applicant has mitigated the concerns regarding his financial situation. The situation regarding his student loans is being resolved in a responsible manner, and does not evince poor judgment or unreliability. He has minimized the potential for pressure, coercion, or duress, as well as the likelihood of recurrence. Overall, the record evidence does not create substantial doubt as to Applicant's present suitability for national security eligibility and a security clearance.

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: FOR APPLICANT

Subparagraphs 1.a through 1.k: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS
Administrative Judge