



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 19-02428
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: Pro se

February 3, 2021

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of the Case

On December 13, 2019, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. 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 for cases after June 8, 2017.

Applicant answered the SOR on January 24, 2020, and requested a hearing before an administrative judge. The case was assigned to me on April 28, 2020. DOHA issued a notice of hearing on September 29, 2020, and the hearing was convened as scheduled on November 10, 2020. The Government offered six exhibits, referred to as Government Exhibits 1 through 6. Applicant objected to Government Exhibit 5 because the credit report was not his, but was his fathers. Government Exhibit 5 was not admitted into evidence. Government Exhibits 1 through 4, and 6 were admitted without

objection. The Applicant offered ten exhibits, referred to as Applicant's Exhibits A through J, which were admitted without objection. Applicant also testified on his own behalf. The record remained open until close of business on November 20, 2020, to allow Applicant the opportunity to submit additional supporting documentation. Applicant submitted one Post-Hearing Exhibit, referred to as Applicant's Post-Hearing Exhibit A, which was admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on November 18, 2020.

Findings of Fact

Applicant is 28 years old. He has a high school diploma and a few semesters of college. He holds the position of Senior Composite Fabricator and Assembler for a defense contractor. He seeks to obtain a security clearance in connection with his employment in the defense industry.

The SOR alleges that Applicant has ten delinquent accounts totaling approximately \$28,000. In addition, Applicant failed to file his Federal and State income tax returns for tax years 2015 and 2017. In his Answer, Applicant admits each of the allegations and provides explanations. Credit reports of the Applicant dated September 26, 2018; March 16, 2020; and November 8, 2020, reflect that each of these debts was at one time delinquent and owing. (Government Exhibits 4, 5, and 6.)

Applicant explained that a friend told him that if he did not owe taxes, he did not have to file his income tax returns every year, and that there was no problem with filing two years at one time in order to get two refund checks at one time. Consequently, Applicant listened to his friend and deliberately did not file his Federal and State income tax returns in a timely fashion for tax years 2011 through 2017. (Tr. pp. 46 - 49.) Upon realizing that this information was bad and erroneous, Applicant states that he properly filed all of his Federal and State income tax returns including those for tax years 2015 and 2017, and has paid all of the back taxes he owed. (Tr. pp. 47- 48 and Applicant's Exhibit C.)

Applicant has been working for his current employer for the past two years. He stated that until he was hired by his current employer, he was never well compensated, and he could not afford to pay his bills. To worsen matters, in 2013, Applicant was involved in a motorcycle accident on his way to work. He broke his back, lost his job, and was bedridden for almost eight months. By the time he was able to get back on his feet and back to work, a number of delinquent debts had accumulated. He could not afford to pay those bills and support the immediate needs of his family.

In 2016/2017, Applicant hired a debt consolidation firm to assist him in resolving his debt. They charged him \$26 monthly and did nothing to assist him. He fired the firm and began working toward resolving his debts himself. (Tr. p. 50.)

Applicant applied for a security clearance in August 2018. He was subsequently interviewed by an investigator about his indebtedness. At that time, Applicant learned

the real importance of being financially responsible. Since then, Applicant has made an assertive effort to resolve his debts.

The following delinquent debts listed in the SOR have been resolved or are being resolved:

1.b. Applicant was indebted to a creditor for a delinquent debt that was placed for collection in the approximate amount of \$30. Applicant has satisfied this debt. (Applicant's Exhibit D.)

1.c. Applicant was indebted to a creditor for a delinquent account placed for collection in the approximate amount of \$79. Applicant has satisfied the debt. (Applicant's Exhibit G.)

1.d. Applicant was indebted to a creditor for a delinquent account placed for collection in the approximate amount of \$79. Applicant has satisfied the debt. (Applicant's Exhibit G.)

1.e. Applicant was indebted to a creditor for a delinquent account placed for collection in the approximate amount of \$26,592. Applicant is making monthly payments of \$300 toward this debt, and he plans to continue until the debt is paid in full. (Applicant's Exhibit F.)

1.f. Applicant was indebted to a creditor for a delinquent account placed for collection in the approximate amount of \$202. Applicant has satisfied the debt. (Applicant's Exhibit G.)

1.g. This is a delinquent debt for an account that was placed for collection in the approximate amount of \$202. Applicant has satisfied the debt. (Applicant's Exhibit G.)

1.h. This is a delinquent medical debt that was placed for collection in the approximate amount of \$118. Applicant has satisfied the debt. (Applicant's Exhibit H.)

1.i. This is a delinquent medical debt that was placed for collection in the approximate amount of \$116. Applicant has satisfied the debt. (Applicant's Exhibit H.)

1.j. This is a delinquent medical debt that was placed for collection in the approximate amount of \$277. Applicant has satisfied the debt. (Applicant's Exhibit H.)

1.k. This a delinquent account placed for collection in the approximate amount of \$2,679. The debt has been resolved. (Applicant's Exhibit I.)

Four letters of recommendation from Applicant's coworkers and friends collectively indicate that he is a young man of integrity, a hard worker and is well respected. They are aware of his past financial problems, and they know that he is diligently working to resolve his debts. They describe Applicant as professional,

knowledgeable, responsible and trustworthy. He is recommended for a security clearance. (Applicant's Exhibit J.)

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 to be 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, administrative judges apply the guidelines 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 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 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.

Under 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." The applicant 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 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.

Section 7 of EO 10865 provides that adverse decisions shall be "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

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18, as follows:

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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Three are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant's previous employment did not pay well, and he was unable to pay his bills. He also mistakenly listened to a friend who gave him bad advice about his taxes. He became delinquently indebted. The evidence is sufficient to raise the above disqualifying conditions.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 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 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

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

As a naïve young man, Applicant made some very poor decisions in the past, by listening to a friend regarding his income tax filings, and he fell behind on his taxes. He also incurred delinquent debt he could not afford to pay because of a motorcycle accident. At that time, he did not have employment that paid him sufficient monies to pay his bills. Since gaining adequate employment, Applicant has paid off, and/or is making payments to resolve his debts. He has paid off his back taxes, and is making payments toward his debts that are outstanding. He has shown remarkable progress toward resolving his debt, and he has acted reasonably and responsibly under the circumstances. He intends to continue to resolve his debts. Applicant has shown maturity, good judgment and reliability. There are clear indications that his financial problems of the past are under control. He has initiated and is adhering to a good-faith effort to repay his overdue creditors. AG ¶ 20(b) and 20(d) provide full mitigation. The Financial Considerations concern has been mitigated.

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 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were

addressed under that guideline, but some warrant additional comment. Applicant is a hardworking young man who made some poor financial decisions in the past. He has learned from his past experience, and is working hard to resolve his debt. He understands the importance of properly managing his finances in the future. He shows great potential and is well respected by those he works with. He also clearly understands the great responsibilities he has in holding a security clearance. He has shown the requisite maturity, good judgment, reliability, and trustworthiness required of this privilege.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Financial Considerations security concerns.

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:	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 Applicant national security eligibility for a security clearance. Eligibility for access to classified information is granted.

Darlene Lokey Anderson
Administrative Judge