



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 20-00374
)
Applicant for Security Clearance)

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: *Pro se*

03/30/2021

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On May 29, 2020, the Defense Counterintelligence and Security Agency (DCSA) issued to Applicant a Statement of Reasons (SOR) 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

Applicant's answer to the SOR was undated, and in it he elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM), and Applicant received it on January 7, 2021. He was afforded an opportunity to file objections and submit material in refutation,

extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 7. Applicant did not submit a timely response. There were no objections by Applicant, and all Items are admitted into evidence. I reopened the record on March 22, 2021, to permit Applicant an opportunity to submit updated information. On April 1, 2021, he submitted an email and three documents. They are marked as Appellant Exhibits (AE) 1 through 4 and admitted into evidence without objection. The case was assigned to me on March 18, 2021.

Findings of Fact

Applicant admitted all of the SOR allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 37 years old. He is a high school graduate. He took some college courses, but did not earn a degree. He served in the Marine Corps from July 2001 to September 2005 and was honorably discharged. He is not married and has no children. (Item 3)

On his January 2019 security clearance application (SCA), Applicant disclosed that he was a student from September 2005 to January 2008 and again from March 2010 to June 2010. He disclosed that he was employed from January 2008 to March 2008; unemployed March 2008 to June 2008; employed June 2008 to September 2008; unemployed September 2008 to March 2010; employed March 2010 to September 2016; unemployed September 2016 to April 2017; and employed April 2017 to June 2017. He began his current job working for a federal contractor in July 2017. (Items 3, 7)

The SOR alleges six delinquent student loans totaling approximately \$26,099, and a delinquent medical debt in the approximate amount of \$1,001. During Applicant's February 2019 background interview with a government investigator, he explained that the student loans were for a school that he attended that later closed. According to his credit reports, he received the loans in 2006 through 2008. He said he did not pay the loans because he was not earning enough. He applied for a student loan forgiveness program. He told the investigator he had not received any information on his application. He did not provide evidence to show what actions he may have taken regarding the loans while he was working or if he made any contact with the creditor to request a forbearance. He stated that in January 2019, his wages were garnished to pay his student loan debt. In his submissions, he stated that he was advised that he did not qualify for the loan forgiveness program. He provided pay stubs to show in January 2019 his wages were garnished to repay the student loans. In 2020, the garnishment was paused due to the COVID-19 pandemic. The garnishment resumed in 2021. (Items 2, 3, 4, 5, 6, 7: AE 1, 2, 3, 4)

During his background interview, Applicant denied the medical debt alleged in the SOR, believing his medical expenses were covered by his veteran's benefits. In his answer to the SOR, he admitted the debt. He did not provide any information about the status of this debt, nor did he mention its status in his submissions. All of the debts alleged

are corroborated by Applicant's admissions and credit reports. (Items 2, 3, 4, 5, 6, 7; AE 1)

Applicant told the investigator that he is capable of meeting his financial obligations and intends to resolve his debts immediately. He attributed his financial problems to unemployment and underemployment. (Item 7)

Policies

When evaluating an applicant's suitability for national security eligibility, 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 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(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 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 avoided drawing 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. Directive ¶ E3.1.15 states 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 as to obtaining 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 that an applicant may deliberately or inadvertently fail to 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 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 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 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

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

Applicant has six delinquent student loans and a delinquent medical debt that began accumulating in approximately 2010. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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, 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 attributes his financial problems to periods of unemployment and underemployment. He secured student loans to attend college from 2005 to 2008, and 2010. He failed to pay the loans. He indicated the school where he attended went out of business. Applicant's wages were garnished in January 2019 to pay the student loans. Subsequently, Applicant applied to have the loans forgiven. He was advised his loans did not qualify for the forgiveness program. Applicant did not provide evidence of any voluntary actions he may have taken prior to his wages being garnished to pay the delinquent loans or actions he may have taken when he was employed from 2010 to 2016 or when he began his most recent employment in July 2017. His unemployment and underemployment was beyond his control. Applicant did not provide evidence of any action on his part to contact the holder of the loans before garnishment commenced to begin payments. I find Applicant did not act responsibly under the circumstances. AG ¶ 20(b) partially applies.

Garnishment is not considered a good-faith effort to repay a debt. There is no evidence Applicant has received financial counseling nor did he submit information about his current finances. Applicant failed to provide any evidence of his actions to dispute or resolve the delinquent medical debt. I find none of the remaining mitigating conditions apply.

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 the 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 has numerous delinquent student loans that he failed to address until his wages were garnished. He failed to provide evidence of any attempt to resolve his medical debt. Applicant failed to meet his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns raised under Guideline F, financial considerations.

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:	AGAINST APPLICANT
Subparagraphs 1.a-1.g:	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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge