



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 20-02749
)
Applicant for Security Clearance)

Appearances

For Government: Andrea M. Corrales, Esq., Department Counsel
For Applicant: *Pro se*

June 16, 2021

Decision

TUIDER, Robert, Administrative Judge:

Applicant failed to mitigate security concerns regarding Guideline F (financial considerations). Clearance is denied.

Statement of the Case

On December 5, 2019, Applicant submitted a Questionnaire for National Security Positions (SF-86). On November 20, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudication Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F (financial considerations). The SOR detailed reasons why the CAF was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Applicant responded to the SOR by an undated Answer and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the file of relevant material (FORM), dated February 10, 2021, was provided to him by letter on February 17, 2021. Applicant received the FORM on February 26, 2021. He was afforded a period of 30 days to file objections and submit material in refutation,

extenuation, or mitigation. Applicant timely submitted additional information marked as Item 8. Items 1 through 7 were included in Department Counsel's FORM. I received Items 1 through 8 into evidence. On May 3, 2021, the case was assigned to me.

Findings of Fact

Background Information¹

Applicant is a 58-year-old data analyst employed by a defense contractor since April 2019. He seeks to retain his top secret clearance, which he has held since at least March 2015. Applicant has not served in the U.S. armed forces.

Applicant was awarded a bachelor's degree in February 2008, and two master's degrees in May 2010 and May 2011. Applicant married in February 2006, and has two minor children.

Financial Considerations

Applicant's three delinquent SOR debts totaling \$320,252 are established by his November 18, 2019; January 24, 2020; October 5, 2020; and February 2, 2021 credit reports as well as by admissions in his Questionnaire for National Security Positions (SF-86) and his November 20, 2020 SOR Answer. The three debts consist of a \$12,516 charged-off credit-card debt and two collection-account student loans totaling \$307,736. (SOR ¶¶ 1.a -1.c; Items 2 -7)

In his SF-86, Applicant attributed his financial problems to a "[h]ard year with change of employment, shutdown, medical expenses." He added that he "[w]ill get back on schedule and re-establish cycles of payment within 3-6 months." (Item 3 at 37) In the same SF-86, Applicant stated he would do the following to address his financial issues, "In the mean-time of reorganization, I am still making payments to fit budget in the mean-time (sic). I am in the process of removing additional loans with payoff and establish free cash to catch up on payments. Hopefully not affected shutdown Dec 2019." (Item 3 at 37) Applicant further suggested that he was in the process of "reorganizing" his student loans, and was continuing to make monthly payments of undisclosed amounts. (*Id* at 37-38)

In Applicant's SOR Answer, he submitted evidence that he made \$350 payments on December 23, 2019; January 23, 2020; June 29, 2020; August 3, 2020; August 17, 2020; September 1, 2020; October 1, 2020; and November 2, 2020 towards SOR ¶ 1.a (\$12,517 charged-off credit card account), and submitted evidence that he made payments on October 25, 2019; November 23, 2019; December 5, 2019; January 30, 2020; February 28, 2020; March 26, 2020; April 29, 2020; May 29, 2020; June 30, 2020; July 30, 2020; August 26, 2020; August 31, 2020; September 18, 2020; and November

¹ The limited background information regarding Applicant was derived from the FORM and was the most current information available.

6, 2020 towards his two student loans totaling \$307,736. However, he blacked out all information pertaining to payment amount, amount applied to principal, amount applied to interest, and amount applied to fees and charges. (Item 2) Applicant's February 2, 2021 credit report reflects that he paid \$3 towards his smaller student loan and \$96 towards his larger student loan. (Item 4)

Department Counsel's FORM provided specific shortcomings of Applicant's answer. As noted, Applicant submitted a response to the FORM. He submitted a copy of Forms 1098-E Student Loan Interest Statements for 2019 and 2020 with the amounts of student loan interest received blacked out. He also submitted a letter stating that his prescription for eight months of Otezla cost \$3,591, and his prescription for two years of Cosentyx cost \$6,057. It is unclear how much, if any, of these prescriptions are or will be covered by insurance. (Item 8)

In his response to FORM, Applicant discussed his fear of COVID-19 stating that he lives "in complete fear that as I go to work every day I could have a reaction to the disease, but my family is a priority." (Item 8)

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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 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 the national security."

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 clearance favorable 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.

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

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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.

AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability to satisfy debts” and “(c) a history of not meeting financial obligations.” Based on the information in the SOR, the record established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

AG ¶ 20 lists seven potential mitigating conditions:

(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;

(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;

(f) the affluence resulted from a legal source of income; 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.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

In summary, no mitigating conditions fully apply. In addition to evaluating the facts and applying the appropriate adjudicative factors under Guideline F, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(d). Applicant has been gainfully employed for the majority of his adult life, and he is presumed to be a mature, responsible citizen. Nonetheless, without other information suggesting his long-standing financial problems are being addressed, doubts remain about his suitability for access to classified information. Protection of the national interest is the principal focus of these adjudications. Accordingly, those doubts must be resolved against the Applicant.

Applicant chose to rely on the written record. In so doing, however, he failed to submit sufficient evidence to supplement the record with relevant and material facts regarding his circumstances, articulate his position, and mitigate the financial security concerns. He failed to offer evidence of financial counseling or provide sufficient documentation regarding his past efforts to address his delinquent debt. By failing to provide such information, and in relying on an explanation lacking sufficient detail to fully establish mitigation, financial considerations security concerns remain.

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.c:	Against Applicant

Conclusion

In light of all of the record as a whole, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Clearance is denied.

ROBERT TUIDER
Administrative Judge