



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



In the matter of:)	
)	
)	ISCR Case No. 20-01308
)	
Applicant for Security Clearance)	

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: *Pro se*

07/21/2021

Decision

Curry, Marc E., Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns. Clearance is denied.

Statement of the Case

On September 24, 2020, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, explaining why it was unable to find it clearly consistent with the national interest to grant security clearance eligibility. The DOD CAF took the action 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 National Adjudicative Guidelines (AG) effective for any adjudication made on or after June 8, 2017. On November 4, 2020, Applicant answered the SOR, admitting all of the allegations except subparagraph 1.k, and subparagraphs 1.n through 1.p. He requested a decision on the written record. On November 30, 2020, Department Counsel prepared a file of relevant materials (FORM). Applicant received a copy of the FORM on December 7, 2020 and was instructed to file any objections to this

information, or any supplemental information within 30 days of receipt. Within the time allotted, he submitted one exhibit, which was another copy of his SOR answer. The case was assigned to me on April 27, 2021.

Findings of Fact

Applicant is a 33-year-old inventory technician who has been working for a defense contractor since 2018. He is a high school graduate and has some college education. He is not married and does not have any children.

Applicant has delinquent debt totaling approximately \$55,000. Approximately \$30,000 constitutes commercial debt and approximately \$25,000 constitutes student loan debt. Applicant denies subparagraph 1.k, a cell phone account, in his answer, but agreed that he was responsible for this debt during his subject interview. (Item 8 at 8) He provided no explanation for his denial of subparagraphs 1.n through 1.p.

Applicant contends that he has \$1,000 of discretionary income to apply to debt reduction, and that he has changed his spending habits. (Item 8 at 8) He provided no evidence that he has started paying these delinquent debts. As of the date of the interview with the investigative agent in 2019, he had not participated in any financial counseling.

In 2013, Applicant was charged with felony embezzlement after being caught on camera stealing a cell phone from a store where he worked. (Item 6 at 2) Subsequently, he pleaded guilty to the lesser charge of misdemeanor embezzlement of property and received a deferred sentence of two years, and was ordered to complete 20 hours of community service. (Item 6 at 3)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (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 required to be considered 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 overall 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 ¶ 1(d) 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. 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

(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.

Analysis

Guideline F: Financial Considerations

The security concerns about financial considerations are set forth in AG ¶ 18:

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

Applicant’s delinquent debts trigger the application of AG ¶ 19(a), “inability to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.” Applicant’s theft from his employer triggers the application of AG ¶ 19(d), “deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust.”

The following mitigating conditions are potentially applicable under AG ¶ 20:

(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; and

(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.

Applicant submitted no evidence that he has begun satisfying these debts, or that he has begun developing any payment plans. He provided no evidence substantiating his denial of subparagraphs 1.k and subparagraphs 1.n through 1.p. As of 2019, he had not begun any financial counseling. I conclude that none of the financial considerations apply to the financial delinquencies alleged in subparagraphs 1.a through 1.r.

Arguably, mitigating condition 20(a) applies to Applicant's arrest, alleged in subparagraph 1.s, given that it was isolated, and occurred eight years ago. However, Applicant's significant, longstanding, and continuing problems with delinquent debt render subparagraph 20(a) inapplicable. Ultimately, I conclude that Applicant has failed to mitigate the financial considerations security concern.

Whole-Person Concept

I considered the whole-person concept factors in my analysis of the disqualifying and mitigating conditions, particularly with respect to whether the embezzlement charge poses an ongoing security risk. These factors do not warrant a favorable conclusion.

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

Subparagraph 1.a – 1.s:

Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Marc E. Curry
Administrative Judge