DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:)
)
) ISCR Case No. 20-01544
)
Applicant for Security Clearance)

Appearances

For Government: Benjamin R. Dorsey, Esq., Department Counsel
For Applicant: *Pro se*

08/30/2021

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Decision

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LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On October 20, 2020, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on October 29, 2020, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on January 26, 2021, and reassigned to me on June 2, 2021. The hearing was convened as scheduled on July 21, 2021. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through D, which were admitted without objection.

Findings of Fact

Applicant is a 31-year-old employee of a defense contractor, where he has worked since 2019. He served on active duty in the U.S. military from 2008 until he was

honorably discharged in August 2016. He seeks to retain a security clearance, which he has apparently held, with a short break, since he was in the military. He is attending college on the GI Bill. He married in 2015. He and his wife separated in 2019 and are pending divorce. He has no children, but he has three stepchildren who live with their mother. (Transcript (Tr.) at 16-21; GE 1; AE B, C)

The SOR alleges 12 delinquent debts, with balances totaling about $58,000. Applicant admitted to owing all the debts, but the $14,222 defaulted auto loan alleged in SOR ¶ 1.b is being paid by garnishment of his wages after a judgment was awarded against him. His pay statement for the period October 17, 2020, to October 23, 2020, shows that $300 was garnished that pay period, and $8,557 was garnished year-to-date. The balance as reported on a January 2021 credit report had been reduced to $9,621. (Tr. at 15, 34-35; Applicant's response to SOR; GE 2-5; AE A, D)

Applicant attributed his financial problems to unemployment and underemployment after his discharge from the military. However, several debts became delinquent before his discharge from the military and others became delinquent after he started his current job. He was off work from the time he went on terminal leave until about a month after his discharge. He worked from September 2016 to December 2017 in a low-paying job. He worked from December 2017 for another defense contractor until he went to work for his current employer in April 2019. (Tr. at 14, 21-24, 27, 33-34; Applicant's response to SOR; GE 1-5)

With the exception of the garnishment, Applicant has not made any payments toward the debts alleged in the SOR. He stated that he was concentrating on paying the garnishment and the loan for his current car. He receives about $1,360 per month in disability pay from the Department of Veterans Affairs (VA) and about $1,800 per month in housing allowance as part of his GI Bill. He owes the IRS about $4,500 for the past two tax years, and about $100 in state income taxes. He has not received financial counseling. (Tr. at 15, 25-28, 33-39; Applicant's response to SOR; GE 2-5; AE D)

Applicant admitted that letting his finances suffer "was just kind of a careless and irresponsible thing to do." His parents immigrated to the United States. He stated that as a first-generation American, he did not learn the value of credit when he was growing up. (Tr. at 41; GE 1)

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 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 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

Guideline F, Financial Considerations

The security concern 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

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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.

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

(a) inability to satisfy debts; and

(c) a history of not meeting financial obligations.

Applicant's financial history, which includes multiple delinquent debts, is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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 attributed his financial problems to unemployment and underemployment after his discharge from the military. However, several debts became delinquent before his discharge from the military and others became delinquent after he

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started his current job, including unpaid federal and state taxes. The only debt that is being paid is through involuntary garnishment of his pay, which earns him less credit in mitigation.

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. I find that the security concerns arising out of Applicant's delinquent debts are not 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 have incorporated my comments under Guideline F in my whole-person analysis. I also considered Applicant's honorable military service.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns.

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Formal Findings

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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.l: Against Applicant

Conclusion

It is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Edward W. Loughran
Administrative Judge