



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



In the matter of:)	
)	
)	ISCR Case No. 19-02606
)	
Applicant for Security Clearance)	

Appearances

For Government: Andre Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

09/01/2021

Decision

Curry, Marc E., Administrative Judge:

Applicant’s financial problems stem from periodic unemployment or underemployment, together with the lost income of his wife who was in a disabling car accident two years after the unexpected birth of triplets. Currently, Applicant has satisfied two of the delinquent debts alleged in the Statement of Reasons (SOR) entirely, and has been paying the remaining SOR debt consistent with a payment plan. I conclude Applicant has mitigated the financial considerations security concern.

History of the Case

On December 4, 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 security 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. In an undated response, Applicant answered

the SOR, admitting all of the allegations except subparagraph 1(c). He requested a hearing, whereupon, the case was assigned to another administrative judge on May 7, 2021. On May 25, 2021, Defense Office of Hearings and Appeals issued a notice of video teleconference hearing scheduling the case for June 9, 2021. On June 4, 2021, the case was transferred to me for caseload management considerations.

The hearing was held as scheduled. I received five Government exhibits (GE 1 – GE 5) and three exhibits from Applicant (AE A – AE C), together with the testimony of Applicant. Also, I received a copy of Department Counsel's discovery letter to Applicant (Hearing Exhibit I). At the end of the hearing, I left the record open, at Applicant's request, to enable him to submit additional exhibits. Within the time allotted, he submitted four additional exhibits that I incorporated into the record, identified as AE D through AE G. The transcript (Tr.) was received on June 21, 2021.

Findings of Fact

Applicant is a 50-year-old married man with four children. Three are 23-year-old triplets and the youngest is age 16. (Tr. 17) Applicant earned an associate degree in 1993. Currently, he works as an exhaust engineering technician for a defense contractor. (Tr. 13) He has been working with this company intermittently since 2004, including consecutive years between 2004 and 2013. (GE A)

Applicant is well respected on the job. According to his supervisor, he is a diligent, organized, and dedicated employee. (AE B) According to a coworker who first began working with Applicant in 2005, he has a strong work ethic and strong moral character.

Applicant has a history of financial difficulties, beginning in 2002 when his wife was in a disabling car accident four years after giving birth to triplets. (Tr. 17) The accident required multiple surgeries and rendered her unable to work full time for several years. Although her loss of income was mitigated partially by disability benefits, they were a fraction of what she earned before the accident. (Tr. 20)

In 2013, Applicant's employer laid him off. Although he promptly found another job, it was temporary and paid 30 percent less than his previous job. After the stint at the temporary job ended, Applicant was unemployed for three months between March 2014 and June 2014. (Tr. 21) Although he obtained another job in July 2014 and worked consistently for the next four years, he, for the most part, earned less than his pre-2004 salary. (Tr. 24)

In 2018, Applicant was rehired by the company that laid him off in 2013. (GE 1 at 11) By then, he had incurred three delinquent debts, as set forth in the SOR, totaling approximately \$36,000.

Since working with the same employer since 2018, Applicant's finances have begun to stabilize. Moreover, his wife's health has improved, which has enabled her to resume full-time employment. (Tr. 20) In addition, she has a part-time job. (AE G) By November

2020, Applicant had satisfied the debt for \$2,388, alleged in subparagraph 1.c, and by March 2021, he had satisfied the debt for \$2,510, alleged in subparagraph 1.b. (AE C; Answer at 2)

The largest debt, for \$32,000, as alleged in SOR subparagraph 1.a, remains outstanding. Applicant had been attempting to negotiate a settlement arrangement, but his efforts were unsuccessful. In June 2021, the creditor and Applicant reached an agreement where he promised to satisfy the debt with \$300 monthly payments. (AE D) Applicant made the first payment as agreed, on June 7, 2021, and made an additional \$300 payment on June 15, 2021. (AEs E, F)

Applicant maintains a budget. (AE G) He has \$3,800 of monthly discretionary income. Two of his adult children are working and are largely self-supportive. (Tr. 33)

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

Applicant's history of delinquent debts generates security concerns under AG ¶ 19(a), "inability to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations." Applicant's financial problems developed over several years, and coincided with the unexpected birth of triplets in 1998, his wife's disabling back injury in 2002, and several years of unemployment or underemployment in the 2010s. Applicant's employer that laid him off in 2013 re-hired him in 2018. Applicant has been working for this employer continuously since then. This steady employment coincided with an improved financial outlook. By March 2021, Applicant had satisfied the debts alleged in subparagraphs 1.b and 1.c, and by June 2021, he had negotiated a payment plan to satisfy the debt alleged in subparagraph 1.a. He has made two payments, consistent with the plan.

Applicant maintains a budget and has ample discretionary income. In that two of his children are partially independent and his wife is working both a full-time and a part-time job, he no longer has the amount of financial demands that he had when he was laid off in 2013.

Under these circumstances, the following mitigating conditions apply:

AG ¶ 20(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

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Whole-Person Concept

Upon considering this case in the context of the whole-person concept, particularly with respect to the surrounding circumstances, the presence of rehabilitation, and the minimal likelihood of recurrence, I conclude that Applicant has mitigated the financial considerations security concern.

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 – 1.c:

For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Marc E. Curry
Administrative Judge