



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



In the matter of:)	
)	
)	ISCR Case No. 20-03073
)	
Applicant for Security Clearance)	

Appearances

For Government: John Lynch, Esq., Department Counsel
For Applicant: *Pro se*

11/12/2021

Decision

Curry, Marc E., Administrative Judge:

Applicant has either satisfied his delinquent debts in their entirety or is paying them through payment plans. His omission of financial information from his 2020 security clearance application was unintentional. I conclude Applicant has mitigated the security concern. Clearance is granted.

Statement of the Case

On November 25, 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, and Guideline E, personal conduct, 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. On December 11, 2020, Applicant answered the SOR, admitting all of the allegations except subparagraphs 1.f through 1.h. He requested a decision without a hearing. On April 14,

2021, Department Counsel prepared a File of Relevant Materials (FORM) setting forth the Government's argument in support of the SOR, together with supporting documentation. Applicant received a copy of the FORM on April 16, 2021, and was instructed to file any objections to this information, or to supplement the file within 30 days of receipt. On June 10, 2021, Applicant filed a response with attachments, whereupon the case was assigned to me on July 7, 2021.

Findings of Fact

Applicant is a 35-year-old single man. He served in the U.S. Navy from 2007 to 2011. His discharge was honorable. (Item 3 at 21) He has a high school diploma and has taken some college classes. (Item 2 at 16) He has been working for a defense contractor as an administrative assistant since September 2018. (Item 3 at 14)

Appellant incurred approximately \$30,000 of debt between 2010 and 2020. (Items 6,8, and 10) He attributes most of his financial problems to financial mismanagement. (Item 4) In September 2018, Applicant took his current job with the hope that he could begin getting his debts under control. (Response at 1) Shortly after taking the job, he realized that he had underestimated the cost of living where he had relocated and needed more income to make ends meet and satisfy his debts. (Response at 1) In approximately December 2018, Applicant was involved in an automobile accident that totaled his car. (Response at 1) Although he was not at fault, he had to pay out-of-pocket medical expenses while his insurance claim was pending. (Response at 1) Consequently, Applicant could not make any debt reduction progress.

In May 2019, Applicant negotiated a raise with his employer, which increased his salary from \$60,000 per year to \$75,000 per year. (Response at 1) After receiving his raise, Applicant began contacting his creditors and satisfying debts. Moreover, in an effort to increase his disposable income and facilitate debt elimination, Applicant recently resumed part-time work with two ride-sharing companies. (Response at 1) Currently, all of his debts have either been paid, or are being paid through payment plans, as follows:

Subparagraph 1.a (\$17,484 Consumer Loan): Paying \$100 monthly payments consistent with payment plan since December 2019. (Response at 10)

Subparagraph 1.b (\$6,8710 Student Loan Balance): Reduced the balance to \$5,143 through a negotiated plan. (Response at 12) Payoff due May 2022. (Response at 12; Answer at 3)

Subparagraph 1.c (\$3,862 Consumer Loan): Settlement agreement reached whereupon Applicant will satisfy the debt through \$154 monthly payments, beginning in May 2021 and continuing through February 2022. Payments will be debited electronically. (Response at 13) First payment posted May 24, 2021. (Response at 14)

Subparagraph 1.d (\$2,557 Medical Bill): Paying \$100 per month through a settlement agreement. First payment received May 21, 2021. (Response at 14-15)

Subparagraph 1.e (\$2,081 Student Loan): Satisfied as of May 21, 2021. (Response at 16)

Subparagraph 1.f (\$461 Medical Bill): Satisfied October 8, 2020. (Item 2 at 4)

Subparagraph 1.g (\$251 Phone Bill): Satisfied October 8, 2020. Item 2 at 8)

Subparagraph 1.h (\$306 Balance on Totaled Car): Paid through GAP insurance April 16, 2020. (Item 2 at 9; Response at 3-4)

Applicant maintains a budget. (Item 4 at 5) He has approximately \$800 of monthly, after-expense disposable income. (Item 4 at 5)

Applicant did not include his delinquent debts in response to Section 26 of a security clearance application completed in May 2020. At an investigative interview with an Office of Personnel Management investigator in August 2020, Applicant volunteered his largest debt, totaling \$17,484, as alleged in subparagraph 1.a, as well as the debt alleged in subparagraph 1.c, totaling \$3,862. He contends that he misread the question.

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 ability to begin satisfying his debts faster was hampered by circumstances related to the pandemic, and medical bills generated by a car accident. However, he readily attributed the incurrence of his financial delinquencies to irresponsibility. 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," does not apply. Nevertheless, since December 2019, Applicant has either satisfied his SOR debts entirely, or has been working towards their satisfaction through arranged payment plans. Moreover, he maintains a budget (a sign of financial stability), and has ample after-expense monthly income to pay off the remaining debts through the payment plans. Under these circumstances, the following mitigating conditions under AG ¶ 20 apply:

- (c) . . . there are clear indications that the problem is being resolved or is under control; [and]
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Under these circumstances, I conclude Applicant has mitigated the financial considerations security concern.

Guideline E: Personal Conduct

Under this guideline, "conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information." Moreover, "of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes." (AG ¶ 15) Applicant's failure to list any of his delinquent debts on his security clearance raises the issue of whether AG ¶ 16(a), "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities," applies.

The debt that Applicant voluntarily disclosed at his subject interview totaled approximately double the amount of the next highest delinquency alleged in the SOR. The total amount of the debt disclosed voluntarily totaled more than half of the delinquent balance. Under these circumstances, I conclude Applicant had no intent to mislead the government when he completed the security clearance application. AG ¶ 16(a) does not apply.

Whole-Person Concept

Applicant has either satisfied his debts or has arranged payment plans. These steps indicate that Applicant has rehabilitated his finances, eliminating any vulnerability to pressure, coercion, exploitation, or duress. Upon considering this case in the context of the whole-person concept, I conclude Applicant has mitigated the 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.h: 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