



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



In the matter of:)
)
) ISCR Case No. 19-03630
)
 Applicant for Security Clearance)

Appearances

For Government: Brittany White, Esq., Department Counsel
For Applicant: *pro se*

03/25/2022

Decision

LYNCH, Noreen A., Administrative Judge:

This case alleges security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

Statement of the Case

On February 24, 2020, in accordance with Department of Defense (DOD) Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline F. (Item 1) The action was taken under Executive Order (Exec. Or.) 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) implemented by DOD on June 8, 2017. Applicant responded to the SOR and elected to have his case decided on the written record, in lieu of a hearing.

Department Counsel submitted the Government's file of relevant material (FORM) on September 17, 2021. Applicant received the FORM December 11, 2021. Applicant did not object to the Government's evidence, and he provided a response to the FORM (Item 10). The Government's evidence included in the FORM and identified as 1 through 9, is admitted without objection. The case was assigned to me on March 17, 2022. Based on

my review of the documentary evidence, I find that Applicant has mitigated financial consideration security concerns.

Findings of Fact

In response to the SOR, Applicant admitted SOR allegations ¶¶ 1.b, 1.c, 1.c, 1.e, 1.g, and denied ¶¶ 1.a, 1.d, 1.f and 1.h with explanations. (Item 2) Applicant, age 34, filed for divorce in 2015, but the divorce was finalized in 2016 or 2018. He had no children from the marriage. (Item 3) Applicant remarried in 2018, and his wife had three teenagers. He served in the U.S. Air Force from July 2006 to October 2016. He serves in the Air National Guard (active reserve) from October 2016 to the present. He attended college classes from 2008 under the GI bill at various universities to earn an undergraduate degree in computer science. He worked full time and studied at night. (Item 9) He is currently a police officer and is sponsored by a company for a security clearance. Applicant completed his security clearance application on April 16, 2018. (Item 3) The record did not reflect that he had a security clearance. (Item 1) He is being sponsored for a security clearance with his current employer. It is not clear from the record how long Applicant has been employed with them. (Item 3)

FINANCIAL

The SOR alleges that Applicant has eight delinquent debts totaling \$121,381, including a mortgage, commercial accounts, cell account, credit union loans, insurance, and a medical account. (Item 1)

Applicant attributes his financial situation to his divorce. (Item 10) He also stated that the divorce was in 2018. While it was amicable, there were unresolved financial issues. Applicant and his wife lived in a house with a current mortgage. Applicant moved out of the house and his wife stated that she would stay. However, she neglected to pay the mortgage. Eventually, she decided to take their son and move out of the country. Applicant moved back into the house and used his entire savings to pay the mortgage, which was six months overdue in the amount of \$12,000. His wife also left a shared vehicle unpaid that was repossessed. The credit accounts and the phone account were unpaid. (Item 10)

As to SOR allegation ¶ 1.a, a mortgage account that was past due in the amount of approximately \$35,618, with a total loan balance of \$377,447, Applicant closed the mortgage by a short sale and avoided foreclosure. (Item 10 and Item 8). The 2021 credit report shows that the mortgage account is reflected as paid and closed. (Item 8)

As to SOR allegation ¶ 1.b, a charged-off account in the amount of \$58,320 to a credit account, Applicant's 2021 credit bureau shows that he has been paying monthly since 2018 and the most recent payment was August 2021. The other same credit account shows that Applicant has a zero balance. (Item 8)

As to SOR allegation 1.c a charged-off account in the amount of \$10,021, Applicant admitted the debt and provided no information. This appears to be the car loan and the last payment was in 2019. (Item 8) The charge-off amount is still \$10,021. (Item 8) However, Applicant submitted a document that stated it was a "profit and loss write-off" as it was totaled during a hailstorm. The credit report also shows a zero amount for past-due. (Item 8)

As to SOR allegation 1.d, a cell phone account in the amount of \$3,182, Applicant denied the debt because it was his wife's phone. However, in response to the FORM, he submitted a document that shows that he paid the amount and it is in good standing. (Item 10)

As to SOR allegation 1.e, a credit card account charged-off for \$1,893, Applicant settled the account for \$780 and the document shows the debt is covered. also states that the account is closed and in good standing. (Item 10)

As to the SOR ¶ 1.f the SOR alleged that Applicant is indebted for a medical account in the amount of \$649. He denies this allegation, but provided no information.

As to the SOR ¶ 1.g, the SOR alleged that Applicant was indebted for a collection account in the approximate account of \$240 to an insurance company. He admitted the debt and provided no information.

As to the SOR ¶ 1.h, the SOR alleges that Applicant has a charged-off account in the approximate amount of \$11,245. He denied this allegation in his answer to the SOR. He provided documentation that he is settling the credit card account, which was his wife's account, but he has not begun the payments. (Item 10)

Applicant admitted in his interview in 2019 that his finances were strained, but he was progressing with a new job. He is budgeting his money, his larger debts are satisfied or in the process of being resolved. He has been taking action to ameliorate the delinquent debts due to the divorce. He received financial counseling and his earlier credit reports from 2018 and 2019 show the great majority of accounts as "pays as agreed." (Item 4)

Applicant was making a transition from the military to civilian life during the time of the divorce. He had travelled to many stations while his wife was home and responsible for bills. He had a pay cut when he transferred from active duty to reserves. The divorce and the transition into a new and stressful career in law enforcement took a toll. He worked midnights as a police officer for almost three years while also attending drill and training for national guard. He stated that he also called several creditors that were joint accounts to have his name removed but that was not possible.

Applicant has paid, settled or is in the process of resolving 90% of his delinquent debts. He has resolved AG ¶ 1.a through 1.e. He has presented sufficient evidence to mitigate the financial consideration concerns. He is working on a plan.

Policies

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 (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of EO 10865, "Any determination under this order adverse to an applicant shall be a determination 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 concern under this guideline 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 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

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions, corroborated by his credit reports, establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"), and AG ¶ 19(c) ("a history of not meeting financial obligations").

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

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;

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;

AG ¶ 20(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; and

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

Applicant's financial issues began with his divorce. The record is not clear whether the divorce was in 2016 or 2018. Applicant had a good record of paying his bills prior to the divorce as shown by his earlier credit reports. The divorce and lack of cooperation from his wife caused both the mortgage and her credit cards to not be paid. Applicant transitioned from the active military to reserves in 2016 and had a decrease in pay. Despite that he paid his larger debts and called creditors. He is in the process of making plans to pay the others. He received financial counseling, has a budget, and a stable job. He worked at nights to improve his salary and managed to attend college classes. AG ¶ 20(a) through 20(d) are established.

Applicant served his country for many years. He left active duty and served in the reserves.. While he was away on duty, his former wife neglected to pay the mortgage. He married for a second time and takes care of his current wife and her three teens. He has made substantial efforts to resolve his delinquent debts. For these reasons, I find SOR ¶¶ 1.a through h. for Applicant.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall commonsense judgment based upon careful consideration of the applicable guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F, and Applicant's military service and devotion to his country, I conclude that Applicant has presented sufficient mitigation. He was presented with a divorce situation and transition to civilian life with many debts and he did not ignore them. Accordingly, Applicant has carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a – 1.h:

For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest to continue Applicant's eligibility for access to classified information. Clearance is granted.

Noreen A. Lynch
Administrative Judge