



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 20-01502
)
)
Applicant for Security Clearance)

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: *Pro se*

March 16, 2022

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of the Case

On October 14, 2020, in accordance with 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 Guidelines F and E. The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant’s security clearance.

Applicant answered the SOR soon thereafter, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on September 16, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 23, 2021, scheduling the hearing for December 2, 2021. The hearing was convened as scheduled. The Government offered Exhibits (GXs) 1 through 4, which were admitted into evidence. Applicant testified on his own behalf. The record was left open until February 7, 2022, for receipt of additional documentation. Applicant offered two sets of documents, which I marked Applicant’s Exhibits (AppXs) A and B, and

admitted into evidence. DOHA received the transcript of the hearing (TR) on December 9, 2021.

Findings of Fact

Applicant denied all the SOR allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 30-year-old employee of a defense contractor. He has been employed with the defense contractor for “about six-and-a-half years.” (TR at page 12 lines 2~5, and GX 1 at page 7.) He is single and has no children. (TR at page 13 lines 14~22.) Applicant attributes the alleged past-due indebtedness to a period of unemployment or underemployment “between 2013 to 2015.” (TR at page 22 lines 16~19.)

Guideline F - Financial Considerations

1.a. and 1.b. Applicant has past-due debts totaling about \$10,027 to Creditor A, as the result of motor vehicle repossession. He has done little if anything to address this past-due debt, which appears on his July 2021 credit report. (TR at page 24 line 2 to page 29 line 10, at page 36 line 15 to page 37 line 24, at page 38 line 11 to page 39 line 9, and GX 4 at page 6.) These allegations are found against Applicant.

1.c.~1.h. Applicant had past-due student loan debts totaling about \$32,607 to Creditor C. Applicant has resolved these debts by way of garnishment; and as such, they are no longer reflected as past-due on the Government’s July 2021 credit report. (TR at page 29 line 11 to page 34 line 24, GX 4 and AppX B.) These allegations are found for Applicant.

Guideline E - Personal Conduct

2.a. Applicant knew or should have known of his past-due indebtedness, noted above under Financial Considerations, when he executed his September 2019 Electronic Questionnaires for Investigations Processing (e-QIP). He answered, “No,” to Section 26 as to his having financial delinquencies “in the past sever (7) years.” (TR at page 14 line 11 to page 24 line 1, and GX 1 at pages 32~33.) I find this to be a willful falsification. This allegation is found against Applicant.

Policies

When evaluating an applicant’s national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). 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 national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching 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 ¶ 2(b) 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. Directive ¶ E3.1.15 states 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 applies for access to classified information seeks to enter 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 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 information.

Section 7 of Executive Order (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 relating to the guideline 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

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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

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

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has a past-due debt due to a vehicle repossession, and had significant past-due student loans. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 20 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 20 including:

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

Applicant's financial problems are ongoing. He has a long history of delinquencies. Although he has paid his delinquent student loans, he still has a past-due debt as the result of a motor vehicle repossession. He has not demonstrated that future financial problems are unlikely. Mitigation under AG ¶ 20 has not been established. Financial Considerations is found against Applicant.

Guideline E - Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

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. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. Two are potentially applicable in this case:

(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; and

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative

Applicant was less than candid in answering Section 26 on his 2019 e-QIP. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 17 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 17 including:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully

Neither of these apply. Applicant intentionally falsified his 2019 e-QIP. Personal Conduct is found against Applicant.

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 considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guideline F and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment. Applicant is well respected in the workplace. (AppX A.) However, overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Financial Considerations and Personal Conduct security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a. and 1.b:	Against Applicant
Subparagraphs 1.c~1.h:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

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

Richard A. Cefola
Administrative Judge