



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 20-00452
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne M. Driskill, Esq., Department Counsel
For Applicant: *Pro se*

03/23/2022

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant did not provide sufficient evidence to mitigate the national security concerns arising from his problematic financial history. Applicant’s eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on July 9, 2018. The Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) on June 18, 2021, detailing security concerns under Guideline F, Financial Considerations. The DOD CAF acted 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

Applicant answered the SOR on July 12, 2021, and elected a decision on the written record by an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On March 9, 2021, Department Counsel submitted the Government’s file of

relevant material (FORM), including documents identified as Items 1 through 7. Applicant was sent the FORM on June 10, 2021, and he received the FORM on June 30, 2021. He was afforded 30 days after receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not respond to the FORM. The SOR and the answer (Item 1) are the pleadings in the case. Items 3 through 7 are admitted without objection. The case was assigned to me on October 6, 2021.

Findings of Fact

After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 35 years old and is a high school graduate. He married in 2007 and was divorced in 2016. Applicant had two children (a son nine and a daughter twelve) from that marriage. He remarried in 2017. The two children live with Applicant and his current wife. Applicant served on active duty in the U.S. Marine Corps from 2005 until 2016, when he was separated with an other than honorable discharge. (Item 2.)

The SOR alleged that Applicant has nine delinquent debts totaling \$36,882. Applicant admitted those delinquencies. He claimed that he was paying on two of those accounts and was settling a third account. Applicant claimed that his sudden discharge from the Marine Corps contributed to his financial difficulties. (Item 3.) Applicant's delinquencies range from 2016 to 2021. (Items 4 through 7.) He provided no documents in support of his Answer.

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

The adjudicative 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(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 access to classified information 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an applicant may deliberately or inadvertently fail to 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.

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. . . .

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

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

- (a) inability to satisfy debts; and
- (b) a history of not meeting financial obligations

- (c) The SOR debts are established by the Applicant's admissions and the Government's credit reports. AG ¶¶ 19(a) and 19(c) apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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, or 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 delinquencies occurred recently and persist to this day. I cannot find that AG ¶ 20(a) applies. Applicant no doubt suffered some financial difficulty upon his unexpected discharge from the Marine Corps, including unemployment. He did not, however, provide any documents supporting what those difficulties were or how he addressed them responsibly. I cannot find that AG ¶ 20(b) applies. Applicant claimed that he was paying on two accounts and was settling a third account. As with AG ¶ 20(b), Applicant failed to produce any documents supporting that claim. The Board has previously stated that it is reasonable for a Judge to expect applicants to present documentation showing that debts have been resolved or are being resolved. See, e.g., ISCR Case No. 07-10310 at 2 (App. Bd. Jul. 30, 2008). AG ¶ 20(d) does not apply.

Under AG ¶ 2(a), 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 the facts and circumstances surrounding this case. I have also considered the whole-person concept.

Applicant leaves me with questions as to his eligibility and suitability for a security clearance. For these reasons, I conclude that Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

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:	AGAINST APPLICANT
Subparagraphs 1.a.-i.:	Against Applicant

Conclusion

In light of all of the circumstances presented, it is clearly not consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

Philip J. Katauskas
Administrative Judge