



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



In the matter of:)	
)	
-----,)	ISCR Case No. 21-01435
)	
Applicant for Security Clearance)	

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

06/24/2022

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant has provided evidence sufficient to mitigate the national security concerns arising from his problematic financial history. Applicant’s eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted his latest security clearance application (SCA) on July 20, 2020. The Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) on July 1, 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 submitted an answer (Answer) to the SOR on August 13, 2021, and elected a decision on the written record by an administrative judge of the Defense Office of Hearings and Appeals (DOHA). Department Counsel submitted the Government’s file

of relevant material (FORM) (undated), including documents identified as Exhibits 1 through 8. Applicant was sent the FORM on December 13, 2021, and he received the FORM on January 11, 2022. He was afforded 30 days after receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant responded to the FORM on January 12, 2022 (Response). The SOR and the Answer (Exhibits 1 and 3) are the pleadings in the case. Items 2 and 4 through 8 are admitted without objection. The case was assigned to me on March 23, 2022. On May 6, 2022, I reopened the record until June 2, 2022, to allow Applicant to submit documents to supplement his Response. He submitted additional documents on May 18, 2022, which were admitted without objection as Exhibit 9. The record closed on June 2, 2022.

Findings of Fact

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

Applicant is 61 years old, divorced, with no children. He is a high school graduate and served in the U.S. Marine Corps from 1979 through 1983. Applicant was honorably discharged. Since 1997, Applicant has been employed by a defense contractor. (Ex. 3.)

The SOR alleged eight delinquent debts totaling approximately \$58,500. (Ex. 1.) Applicant admitted all allegations except one, SOR ¶ 1.h. (Ex. 3.) He explained that his delinquencies arose from surgeries in 2018 that were not covered by his medical insurance. During his interview, Applicant did not know until September 2020 that certain accounts were delinquent, had been charged off, or were in collections. (Ex. 5.) Applicant explained that his medical conditions forced him to take short-term disability, which caused him to lose 40% of his pay. (Exs. 3 and 5.) The credit reports in the record imply that Applicant's medically caused financial defaults arose between July 2019 and December 2021. (Exs. 6, 7, and 8.)

In Applicant's Response, he submitted documents showing that he successfully disputed SOR ¶ 1.h. The creditor found that this is not Applicant's account. In his Response, Applicant also submitted documents showing that on December 3, 2021, he had enrolled six of his SOR debts with a debt consolidation agency. Those debts are: SOR ¶¶ 1.a. – 1.e., and 1.g. Also in his Response, Applicant's documents showed that he made his first scheduled payment (\$796.63) on January 10, 2022. His supplemental documents showed that he made nine other payments on his SOR debts between January 11, 2022, and April 11, 2022. Those payments totaled \$4,278. (Ex. 9.)

The only debt not enrolled with the debt consolidation agency is SOR ¶ 1.f. (\$4,235). Applicant's Answer and Response stated that he contacted the original creditor and learned that the account had been sold to a collection agency. Applicant was given that agency's phone number. He called the agency several times in August 2021 leaving messages about his account. He was never called back.

Law and 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 Guideline F 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).

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

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

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

Guideline F 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. The next inquiry is whether AG ¶ 20(b) applies.

Applicant developed medical conditions requiring surgeries in 2018, during the period of his employment. Not all of his medical costs were covered by his medical insurance. Applicant went on short-term disability, which caused a 40% loss of pay. His financial defaults between 2019 and 2021 which arose from his medical conditions and the resultant pay cut are conditions recognized by AG ¶ 20(b) as being "largely beyond [a] person's control." The inquiry, however, does not end there. Faced with medical and financial adversity, Applicant needs to show that he acted responsibly under those circumstances. When Applicant was interviewed, he was unaware that some of his accounts were in default. This caused his post-SOR (7/1/2021) delay in addressing them. On December 3, 2021, Applicant enrolled six of his SOR debts in a debt consolidation agency to help him resolve his debts. He has made 10 payments to that agency from January 2022 to April 2022. Applicant's 10 payments totaled \$4,278. Applicant acted responsibly under the circumstances. I find that AG ¶ 20(b) applies, and Applicant has mitigated SOR ¶¶ 1.a. through 1.e. and 1.g. He also mitigated SOR ¶ 1.h., which was not his account.

I have also considered AG ¶ 20(d). The facts and analysis discussed under AG ¶ 20(b) apply equally here. Applicant initiated a good-faith effort to repay his SOR debts. And his 10 payments made from January 2022 to April 2022 show a track record towards resolving those debts. AG ¶ 20(d) applies.

As to SOR ¶ 1.f., Applicant made good-faith efforts to contact the successor collection agency to discuss his account. He was unsuccessful. "The law does not require the doing of a futile act." *Ohio v. Roberts*, 448 U.S. 56 (1980). The amount of that debt (\$4,235) does not raise national security concerns. I find that Applicant has mitigated this debt.

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. AG ¶¶ 2(a) and (d)(1)-(9) (explaining the "whole-person" concept and factors). In my analysis above, I considered the potentially disqualifying and mitigating conditions and the whole-person concept in light of all the facts and circumstances surrounding this case.

Applicant does not leave me with questions about his eligibility and suitability for a security clearance. For these reasons, I conclude that Applicant has mitigated 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: FOR APPLICANT

Subparagraphs 1.a.- 1.h.: For Applicant

Conclusion

In light of all of the circumstances presented, it is clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is granted.

Philip J. Katauskas
Administrative Judge