



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



In the matter of:)
)
-----) ISCR Case No. 21-02409
)
Applicant for Security Clearance)

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

07/22/2022

Decision

KATAUSKAS, Philip J., Administrative Judge:

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

Statement of the Case

Applicant submitted his security clearance application (SCA) on February 21, 2018. The Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) on December 10, 2021, detailing security concerns under Guideline F, financial considerations. The DOD CAF acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry 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 December 15, 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) on January 28, 2022, including documents identified as Items 1 through 4. Applicant received the FORM on February 15, 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 March 8, 2022 (Response). The SOR and the Answer (Item 1) are the pleadings in the case. (The SOR and the Answer are combined in Item 1. Therefore, they will be cited as "SOR" and "Answer.") Items 2 through 4 are admitted without objection. The case was assigned to me on April 27, 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 38 years old, married, and has a 12-year-old daughter. He is a high school graduate and has about a year and a half of college credits. Applicant served on active duty in the U.S. Army from August 2005 until June 2010. At the time of his February 2018 SCA, he was employed by a defense contractor. (Item 2.) Applicant is currently sponsored by another defense contractor.

The SOR alleged five delinquent credit card accounts with the same creditor totaling over \$118,000. Applicant admitted these allegations with explanations. (Answer cover letter.) His February 2018 SCA disclosed no delinquent accounts. (Item 2.) That is verified by a March 2018 credit report (all accounts were Pays As Agreed). (Item 3.) By the July 30, 2021 credit report, the five SOR debts were delinquent. (Item 4.)

Applicant began working overseas for a defense contractor in June 2011. His contract ended in December 2018. By that time, Applicant's yearly salary was \$220,000. He was unemployed from December 2018 until May 2019, when Applicant was employed by another defense contractor. That position, however, paid \$130,000 per year. From May 2019 until December 2019, Applicant stayed current on his household expenses by using his savings and credit cards. Since he paid only the minimums due each month on his credit cards, the balances increased. (Answer cover letter.)

By December 2019, Applicant realized that while he was able to stay financially afloat, he was not able to reduce his debts. As a result, at that time, Applicant retained a law firm to handle debt consolidation and settlements with his creditors. He was put on a 48-month debt consolidation plan. Under that plan, Applicant and the firm opened a joint account that the firm could use to resolve his debts. To further that goal, Applicant automatically deposits \$1,599 per month into that account. (Answer cover letter.)

As of Applicant's March 8, 2022 Response, he has settled two of the five SOR accounts. For those two settlements he paid \$300 per month and \$695 per month. Applicant has provided the following documentation:

** December 6, 2019 Agreement and Payment Schedule with Applicant and the firm.

** Two January 22, 2021 settlement agreements with two SOR accounts.

** December 15, 2021 letter from the firm stating that Applicant has been a client of the firm since December 2019 and has consistently made the monthly deposits to the joint account.

** Applicant's monthly settlement payments/month (\$300 and \$695) to the joint account from December 13, 2019, to January, 20, 2022, for the two settlements

** Applicant's monthly payments (\$1,599) to the joint account from December 13, 2019, to January 20, 2020.

** March 3, 2022 Credit Report showing the January 6, 2022 resolution of the two SOR accounts.

When Applicant filed his Response on March 8, 2022, he still had 22 months left on his agreement with the firm. Applicant continues to make the \$1,599 monthly payments to the joint account. The firm continues to negotiate with the creditor for the three remaining SOR accounts. In light of the two already concluded settlements, Applicant is confident that the remaining three accounts will also be resolved. (Answer and Response and related documents.)

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 condition is applicable in this case:

- (a) inability to satisfy debts.

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

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 . . .), 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 did not occur that long ago. They arose when he became unemployed from December 2018 until May 2019. In 2018, Applicant's financial record was spotless. That changed in May 2019, when his new job paid 40% less than his former job. To make ends meet, Applicant used savings and credit cards. That took its toll, and by July 2021, he had five delinquent debts that found their way into the SOR.

Realizing that his financial situation would only get worse, Applicant retained a law firm in December 2019 to help consolidate his debt and work with his creditor to resolve his delinquencies. (The five delinquencies were with the same creditor.) Applicant signed an agreement to open a joint account into which Applicant would pay \$1,599/month to fund the firm's efforts to resolve his debts. He has adhered to that plan, and as a result two of the SOR debts have been resolved. Applicant has consistently adhered to that plan and continues to make \$1,599 monthly payments to fund settlements. Applicant is hopeful that the remaining three SOR debts will be resolved. His consolidation program still has 22 months to run.

Applicant has no history of financial problems and has a stable employment record. So these circumstances are unlikely to recur. Applicant's prompt action to address his financial straits shows reliability, good judgment, and responsible conduct in confronting his loss of employment, a condition largely beyond his control. Applicant has adhered to his debt consolidation plan, and the record shows a track record of consistent adherence. I find that mitigating conditions AG ¶¶ 20(a), (b), and (d) 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. 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 leaves me with no questions about his eligibility and suitability for a security clearance. Therefore, I conclude that Applicant has provided sufficient evidence 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:

FOR APPLICANT

Subparagraphs 1.a. – e.:

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