



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



In the matter of:)
)
) ISCR Case No. 22-00812
)
Applicant for Security Clearance)

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: *Pro se*

10/20/2022

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is granted.

Statement of the Case

On May 10, 2022, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 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) effective within the DOD on June 8, 2017.

Applicant answered the SOR on May 11, 2022, 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), and Applicant received it on July 19, 2022. He was afforded an opportunity to file objections and submit material in refutation,

extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 2 through 8. (Item 1 is the SOR) Applicant provided a response to the FORM, did not object to the Government's evidence, and submitted documents marked as Applicant Exhibits (AE) A through K. The Government had no objections. All evidence was admitted. The case was assigned to me on September 29, 2022.

Findings of Fact

Applicant admitted all the SOR allegations, but disputed certain facts alleged in each allegation. I have incorporated his admissions into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 58 years old. He has been married three times and to his current wife since 2004. He has five adult children and two adult stepchildren. He served in the Army National Guard from 1982 to 1987 and received an honorable discharge. He has been an owner-operator truck driver since 2005 and works for federal contractors.

The SOR alleges three delinquent debts. They are corroborated by Applicant's admissions in his answer to the SOR, statements to a government investigator, statements in his response to the FORM, and credit reports from November 2018, August 2019, March 2021 and April 2022. (Items 2, 4, 5, 6, 7, 8; AE E)

Applicant was interviewed by a government investigator in May 2019. He told the investigator he was unaware of the consumer account in SOR ¶ 1.a (\$19,691) and did not know when it became delinquent, but acknowledged he did not earn enough money at the time to pay the monthly payments. He acknowledged receiving a collection notice in the mail and had set up a payment plan with the creditor in March 2019 and was making monthly payments of \$1,512. He anticipated the account would be resolved in January 2020. He told the investigator he was complying with the payment plan. (Item 4)

In Applicant's answer to the SOR, he admitted the account in ¶ 1.a, but disputed the balance owed. He said the balance owed was \$13,627, and believed he had paid it, so he disputed it on his credit report. He said he contacted the original creditor and they could not find his account. In his response to the FORM, Applicant explained that he had learned that his monthly payments were being paid to the collection company and at some point that company was no longer holding the debt and a new collection company held it. Applicant was unaware that this transfer of collection companies happened, and he believed he had paid the debt. He then contacted the original creditor who confirmed that his monthly payments were applied to the original balance and his current balance was \$13,627. Applicant provided a June 2022 letter from the new collection company agreeing to settle the account for \$7,000. He also provided confirmation that he paid the settlement amount and the debt is resolved. (Items 2, 4, AE C, E, G)

The debt in SOR ¶ 1.b (\$18,960) is a consumer debt. Applicant acknowledged to the government investigator that he owed the debt, but could not recall when it became delinquent, but it was because he was not earning enough money to pay it. He said he had received a collection notice in the mail. He said he had paid the debt in May 2019. In his response to the FORM, he stated that he had disputed the debt on his credit report. He contacted the collection company that held the debt and was advised the debt was paid. He provided a June 2022 letter confirming the debt was settled for less than the full amount and there is a zero balance owed. The debt is resolved. (Items 2, 4, AE H)

The debt in SOR ¶ 1.c (\$10,652) is for medical services that were in collection. Applicant's March 2021 and April 2022 credit reports show the account as delinquent since May 2018 with no payments made. In his SOR answer, he stated that he was unaware he owed the medical debt and believed his insurance had covered his medical expenses. He said when he learned of the debt from his SOR, he paid it immediately. Applicant provided documentary proof that he paid it on May 10, 2022, the date of the SOR. The debt is resolved. (Items 2, 7, 8; AE D)

In Applicant's response to the FORM, he stated that he is living within his means and is not overextended. His wife is paying closer attention to their finances, and he will ensure they never get behind in their payments or financial obligations again. He has learned that if he disagrees with a debt, he will contact the creditor and find out its status. The three delinquent debts were an aberration, and he and his wife will be diligent in reviewing their credit reports to make sure it does not happen again. Applicant has recently paid off the mortgage on his home, four years before the loan matured, and he has a significant sum in savings. (Item 2; AE E, J, K)

Policies

When evaluating an applicant's suitability for 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 used in evaluating an applicant's eligibility for access to classified information.

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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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. 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. Directive ¶ E3.1.15 states 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.

Section 7 of EO 10865 provides that 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.

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 handing and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

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

Applicant had three delinquent debts that he was unable to pay. There is sufficient evidence to support the application of the above disqualifying conditions.

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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (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
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant attributed his financial problems to a period of underemployment. The concern is that Applicant was not monitoring his finances and was unaware of his debts, which he should have been. He was unaware that the debts alleged were in collection. When confronted with them by the government investigator he made payment arrangements on one debt. He was making the payments, but was unaware the collection company had transferred the debt. When he contacted the original creditor and learned there was still an outstanding balance, he settled the debt. When he learned of the other

two debts he resolved them. Applicant's underemployment was beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly, which he did when he became aware of the debts and paid them. AG ¶¶ 20(b) and 20(d) apply.

There is no evidence Applicant has participated in financial counseling. There is evidence that Applicant and his wife are paying closer attention to their finances and are being diligent in making sure they do not incur new delinquent debts. He is financially solvent and able to meet all of his expenses. I find that his financial problems happened under unique circumstances and are unlikely to recur and do not cast doubt on his reliability, trustworthiness and good judgment. The evidence supports that his financial issues are under control. I find AG ¶ 20(a) applies and AG ¶ 20(c) partially applies.

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 the 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline, F in my whole-person analysis.

Applicant met his burden of persuasion. The record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns raised 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

Subparagraph 1.a-1.c: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge