



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



In the matter of:)
)
) ISCR Case No. 22-01676
)
Applicant for Security Clearance)

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: *Pro se*

02/06/2024

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On September 16, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). The action was taken 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 the adjudicative guidelines (AG) implemented by DOD on June 8, 2017.

Applicant responded to the SOR (Answer) on September 26, 2022, and requested a hearing before an administrative judge. The case was assigned to me on June 2, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice on June 22, 2023, scheduling the matter for a video teleconference hearing on July 13, 2023.

I convened the hearing as scheduled. I admitted Government Exhibits (GE) 1 through 5 without objection. Applicant testified, and he did not call any witnesses or submit documentation. At Applicant's request, I kept the record open until July 27, 2023, to

enable him to submit post-hearing documentation. He did not do so, and the record closed. DOHA received the hearing transcript (Tr.) of the hearing on July 25, 2023.

Findings of Fact

Applicant admitted all of the SOR allegations. He is 32 years old. He is not married and does not have children. He graduated from high school in 2009 and attended college from 2009 to 2013 but did not earn a degree. He worked for various private companies until December 2016, when he began working for his current employer, a DOD contractor. He started as a pipefitter; he became a rigger in 2017; he worked in quality insurance in February 2020; he became an inspector in May 2021; and he was promoted to supervisor in December 2022. He started his own part-time business as a custom fishing lure painter in November 2021. He was granted a security clearance in 2019. As of the date of the hearing, he and his girlfriend lived together. (Answer; Tr. at 5, 7-8, 24-33, 43-44, 52, 54; GE 1-3)

The SOR alleged that Applicant had eight delinquent federal student loans, totaling \$40,272. (SOR ¶¶ 1.a-1.h) The SOR allegations are established by Applicant's admissions in his Answer; background interviews conducted by an authorized DOD investigator in March 2019 and May 2022; and a credit bureau report from April 2022. (GE 1, 3-5)

Applicant took out student loans in 2009 to attend college. His minimal income affected his ability to make consistent payments toward his loans when they became due in 2013 but acknowledged that he also did not prioritize paying due to his youth. He obtained deferments and forbearances on two or three occasions. He has not made any payments since he began working for his employer in 2016. His attempts to negotiate a repayment plan with the creditor in around 2019, to include one that was income based, were unsuccessful because he could not afford the creditor's proposed payments of between \$500 and \$800 monthly. He last contacted the creditor to verify that he did not have to pay his student loans during the COVID-19 payment pause. He also suffered a work-related injury between 2020 and 2021 that caused him to be out of work for one month. He indicated during his May 2022 background interview that he intended to contact the creditor once the pause was lifted to negotiate a repayment plan. He stated at the hearing that he had not yet found the time to do so, primarily because of his work schedule, but he intended to. He also stated that he found it to be an overwhelming task. (Tr. at 13-14, 22-24, 30-38, 45-47, 49-53, 59-61; GE 2-4)

Applicant earned approximately \$30,000 when he began working for his employer. His income steadily increased over the years, and his annual salary as a supervisor is \$84,400, with the opportunity to earn more with overtime and shift differential. He had approximately \$2,980 in his checking and savings accounts and \$44,000 in his retirement savings account. He and his girlfriend split the rent and utilities. He anticipated earning a profit from his part-time business in 2024. He planned to apply his increased earnings and his profit from his part-time business to resolve his outstanding student loans. He has not received credit counseling. His 2022 credit report does not reflect any other delinquent debts. (Answer; Tr. at 13-14, 24, 24-32, 38-50, 52-53, 60-61; GE 3, 5)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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 eligibility for access to classified information.

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 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."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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." The applicant has the ultimate burden of persuasion to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information. Section 7 of Exec. Or. 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* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F: Financial Considerations

The security concern 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...

The guideline notes several 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.

Applicant has a history of not paying his debts. AG ¶¶ 19(c) and 19(c) are established.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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.

Circumstances beyond Applicant's control contributed to his financial problems. Nonetheless, under AG ¶ 20(b), he must provide evidence that he acted responsibly under his circumstances. While Applicant intends to resolve his student loans and has the financial means to begin doing so, he had not yet taken any steps toward doing so as of the date of the hearing. He has not received financial counseling. He needs more time to establish that he has his finances under control. I find that these financial issues continue to cast doubt on his reliability, trustworthiness, and judgment. AG ¶¶ 20(a), 20(b), 20(c), and 20(d) do not apply.

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude that Applicant has not mitigated the financial considerations security concerns.

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-1.h: | 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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Candace Le'i Garcia
Administrative Judge