



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 23-00127 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Karen Moreno-Sayles, Esq., Department Counsel
For Applicant: *Pro se*

03/14/2024

Decision

GARCIA, Candace Le'i, Administrative Judge:

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

Statement of the Case

On February 3, 2023, 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 February 28, 2023, and requested a hearing before an administrative judge. The case was assigned to me on September 26, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice on October 13, 2023, scheduling the matter for a video conference hearing on November 8, 2023.

I convened the hearing as scheduled. I admitted Government Exhibits (GE) 1 and 3 through 5, without objection. Upon sustaining Applicant's objection, I did not admit GE 2. Applicant testified and proffered one document that I admitted as Applicant Exhibit (AE)

A, without objection. At Applicant's request, I kept the record open until November 22, 2023, to enable him to submit post-hearing documentation. He timely submitted additional documents, which I admitted collectively as AE B, without objection. DOHA received the hearing transcript (Tr.) on November 22, 2023.

Findings of Fact

Applicant admitted all the SOR allegations. He is 34 years old. He has never married and he does not have children. He attended college in State A from August 2007 until May 2015, when he earned a bachelor's degree in music performance. He briefly attended graduate school in 2016, without earning a degree. He has resided with his sister in state B since August 2021. (Tr. 6-11, 27, 30-31, 33, 39; GE 1)

Applicant worked two part-time jobs, as a cook for a multinational pizza chain and an overnight gas station clerk while in college and continuing until August 2018. He worked full time for a defense contractor from September 2015 until March 2018, and then for a non-defense contractor until August 2021, when he relocated to State B for better job opportunities. He remained unemployed until October 2021, when he began working as a loading dock operator; initially for another non-defense contractor until January 2022; and then for a second and third defense contractor, until approximately July 2023. Since then, he has worked as a security officer for a fourth defense contractor. He was first granted a security clearance in 2022. (Tr. 6-11, 28-33, 53-56, 63-64; GE 1; AE B)

The SOR alleged that Applicant had 17 delinquent federal student loans, totaling \$111,769 (SOR ¶¶ 1.a-1.q); a credit card in collection for \$456 (SOR ¶ 1.r); and a city debt in collection for \$210 (SOR ¶ 1.s). Each of the SOR allegations are established by Applicant's admissions and his credit bureau reports from June 2022 and January 2023. (GE 1, 3-4)

Applicant attributed his indebtedness to a variety of factors, including his underemployment and unemployment, the extraordinary expenses associated with relocating to State B, and his financial illiteracy, particularly with respect to his student loans. Since August 2021, he has resided in State B with his sister, an elementary school teacher, who financially supported him while he was unemployed. (Tr. 27-28, 30-31, 33, 36-38, 56, 58-63, 73-74)

Applicant used the student loans to pay for his college and graduate school expenses. Until he received correspondence from the U.S. Department of Education (DOE) concerning his student loans in about 2019 or 2020, he had neither made a payment nor initiated any contact with the DOE. At that time, he made one payment of an unrecalled amount toward his student loans, which he maintained was all that he could then afford. He attributed his prior inaction to his financial illiteracy. On an unrecalled date, he unsuccessfully applied for the student loan forgiveness program. He was not required to make any payments during the COVID-19 payment pause. (Tr. 36-50, 61, 64-67, 72-78; AE A-B)

When Applicant completed his June 2022 security clearance application (SCA), he learned that his unresolved student loans raised security concerns. On an unspecified date, he contacted the DOE and made an unspecified payment, in an amount under \$100. On another unspecified date, sometime after he received the SOR in February 2023, he contacted the DOE again. At that time, his student loans, which were not then in delinquent status due to the COVID-19 payment pause, had been transferred to two service providers: Companies A and B. He set up two separate monthly payment arrangements in the amounts of \$64 and \$151, respectively, scheduled to begin in October 2023. He made a \$50 good-faith payment to Company A in June 2023 and three monthly payments of \$64 between October 2023 and November 2023. After some confusion on his part as to whether Company B was the same as Company A, he paid Company B \$157 in November 2023. He maintained that he has the financial means to meet both monthly payment obligations until his student loans are resolved. (Tr. 36-50, 61, 64-67, 72-78; AE A-B)

Applicant made a payment of an unspecified amount in October 2023 to resolve the credit card debt. He made a \$25 payment in March 2023 and three payments totaling \$188 in August 2023 to resolve the city debt. The most recent credit bureau report from November 2023 does not reflect any debts in delinquent status, including his student loans. (Tr. 51-53, 60-61; GE 5; AE B)

Applicant earned approximately \$30,000 annually from 2016 to 2019; approximately \$35,000 annually from 2019 until September 2022; and between \$40,000 and \$45,000 annually since then. He intends to seek part-time employment to supplement his income. He and his sister split their monthly household expenses. He estimated that his monthly net remainder, after expenses, was about \$150 to \$200. He has not received financial counseling. (Tr. 30-31, 33-36, 53-58, 60, 64)

Applicant provided letters of support from individuals who attested to his judgment, reliability, and trustworthiness. Among these individuals were his employer's regional site manager, as well as the physical security operations manager, both of whom describe Applicant as one of their best officers. (Tr. 64-65; AE B)

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(a) 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; 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. Under AG ¶ 20(b), he must provide evidence that he acted responsibly under his circumstances. His pre-SOR efforts to resolve his student loans were thwarted by his lack of available income. Since receiving the SOR, he resolved his two smaller SOR debts and has made meaningful progress in resolving his student loans, which are no longer in delinquent status. His finances are under control and no longer cast doubt on his reliability, trustworthiness, and judgment. AG ¶¶ 20(a), 20(b) and 20(d) 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 without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude that Applicant 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: FOR APPLICANT

Subparagraphs 1.a - 1.s: For Applicant

Conclusion

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

Candace Le'i Garcia
Administrative Judge