



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



In the matter of:)
)
) ISCR Case No. 12-11841
)
Applicant for Security Clearance)

Appearances

For Government: Braden Murphy, Esq., Department Counsel
For Applicant: Tracey Marion, Esq. and Dale Gipson, Esp.

04/02/2015

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government’s security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is granted.

Statement of the Case

On December 5, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense 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 September 1, 2006.

On December 29, 2014, Applicant answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on February 5, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 18, 2015. I convened the hearing as scheduled on March 10, 2015. The

Government offered exhibits (GE) A through D, which were admitted into evidence without objection. Applicant and two witnesses testified. He offered Applicant Exhibits (AE) 1 through 17, which were admitted into evidence without objection. The record was held open until March 20, 2015, to allow Applicant to submit additional documents, which he did. They were marked as AE 18 through 23, and they were admitted into evidence without objection.¹ DOHA received the hearing transcript (Tr.) on March 13, 2015.

Findings of Fact

Applicant admitted all the allegations in SOR. I have incorporated his admissions into the findings of fact. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 50 years old. He married in 2004 and has two grown stepchildren. He has worked for his present employer since May 2014. He has held a security clearance since 2002.²

Applicant attended community college from June 2002 to August 2005. He attended another college from September 2005 to May 2008 and earned a bachelor's degree. He was employed consistently from August 2002 to January 2012. He was unemployed from January 2012 through March 2012. During the month of March he worked in a temporary position. He was hired for a full-time job later in March 2012 and worked there until January 2014 when he was laid off because the company lost the contract. He was then unemployed for five months until he was hired by his present employer in May 2014.³

The SOR alleges ten delinquent debts totaling approximately \$81,635, of which more than \$80,000 is for student loans. Applicant attempted to contact the creditor for the medical debt listed in SOR ¶ 1.e (\$540) but was unable to find it. The debts in SOR ¶ 1.f (\$288) and ¶ 1.g (\$217) appear to be the same account and are paid.⁴ The debt in SOR ¶ 1.j (\$282) is paid.⁵

Student loans are reflected in SOR ¶¶ 1.a through 1.d, 1.h and 1.i. Applicant testified that his two periods of unemployment affected his ability to pay his student loans. Applicant previously paid \$60,000 of student loans for college attendance from 1990 to 1994, thereby resolving those loans. In April 2011, Applicant's house was

¹ Hearing exhibit I through IV are Department Counsel and Applicant's counsel's email memoranda regarding the additional exhibits.

² Tr. 79.

³ Tr. 28-33, 41, 79-82, 86-88.

⁴AE 1 at page 35 and 36, AE 9.

⁵ Tr. 56-59; AE 2 at page 10.

severely damaged when a tornado hit the town where he lived. Insurance paid for many of the repairs, but there were considerable out-of-pocket expenses that were not reimbursable. While attempting to make some of the repairs himself, he injured his back and incurred medical debts.⁶

Applicant indicated he was making monthly payments of \$280 on his student loan debts from 2008 until he lost his job in 2012. He contacted the student loan creditors at the time to see if he could get assistance, but was denied. He defaulted on the loans in 2012. He did not resume repaying them after he obtained employment because his income was reduced, and he had gotten behind on his mortgage payment and had other pressing financial obligations. He is current on all of his financial obligations.⁷

Applicant attempted to consolidate the student loans so he could begin repaying them, but the loans had been sold, and he had difficulty determining the new creditor. Applicant's wife also has approximately \$54,000 of her own student loans incurred from 2006 to 2011 that are in default status. She stopped attending school when their house was damaged in the tornado. She stayed at home to manage the repairs.⁸

In June 2012, Applicant and his wife requested that their student loans be consolidated and arranged for an income based payment schedule. Between August and October 2012, his wife inquired numerous times about the status of the consolidation. She was finally advised that Applicant's student loans were consolidated, but hers were not completed. She requested the loan company continue to complete the consolidation of her loans. In December 2014, they were provided a document that erroneously showed Applicant's student loans and the balance owed was almost double of what the correct balance should have been.⁹ After contacting the creditor, it agreed there was an error, and it is in the process of correcting it. A repayment plan based on Applicant's income was approved, and he will be required to make monthly payments of \$489. This was based on the erroneous balance and is likely to change once the correction is made. The creditor is in the process of researching the errors made to Applicant's account. Applicant's loans are no longer in default status. Applicant's present salary is \$90,000 and his adjusted gross income is approximately \$56,800. Based on Applicant's personal financial statement, it appears he has sufficient monthly income to make the monthly student loan payments. Applicant's wife again requested

⁶ Tr. 29, 33, 35.

⁷ Tr. 37-43, 51; GE B, D; AE 16.

⁸ Tr. 53-55, 69, 106-122; AE 13, 14. I will not consider Applicant's wife's student loan debts for disqualifying purposes, but will consider them when analyzing the whole-person.

⁹ Applicant's student loan balance in August 2012 was approximately \$65,000. The balance provided by the creditor in December 2014 was \$183,000 and the number of loans reflected was 20 when it should have been 10. The creditor admitted there is an error and it is attempting to resolve it. AE 19, 21, 22, and 23.

the creditor continue to process her request for consolidation of her student loans on an income based payment schedule.¹⁰

Applicant has a state tax lien towards which he is making payments through an installment agreement. It was imposed because he did not have a sufficient amount withheld from his income. He indicated it will be satisfied in May 2015. He also is making installment payments to the Internal Revenue Service for taxes owed when he made a withdrawal from a retirement account in 2012 when he was unemployed.¹¹

Applicant's wife testified that she has been working to reduce some of their expenses and has successfully reduced their car payment and cell phone bills, allowing for more expendable income. She does not work. She worked for three months when Applicant was unemployed.¹²

Applicant's former supervisor testified on his behalf. He confirmed that Applicant was laid off at this previous employment because the company lost the contract and they could not find another job for him. Applicant was considered a good employee and trustworthy.¹³ Applicant's supervisor provided a character statement. He considers Applicant a valued employee. He believes he is trustworthy.¹⁴

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 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.

¹⁰ Tr. 42-52, 69-75, 106-122, AE 5, 11 18, 19, 21, 22 and 23.

¹¹ Tr. 60-67; AE 4, 18. This debt will not be considered for disqualifying purposes, but will be considered when analyzing the whole-person.

¹² Tr. 96-106.

¹³ Tr. 89-93.

¹⁴ AE 20.

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 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 not drawn 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 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 Executive Order 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 for financial considerations is set out in AG ¶ 18:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and the following two are potentially applicable:

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

Applicant has more than \$80,000 of delinquent student loan debts alleged in the SOR. He also had medical debts that were delinquent. I find there is sufficient evidence to raise 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:

- (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), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant attributed his financial problems to unexpected expenses and out-of-pocket expenses associated when his home was damaged by a tornado and two periods of unemployment. He credibly testified that he was making payments toward his student loans until these events happened. He contacted the student loan creditor, when he could not make the monthly payment, to determine if he could receive assistance and was denied. He could not afford to make the monthly payments and meet his living expenses. He subsequently defaulted on the student loans. These were conditions that were beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant has consolidated the student loans and has a monthly payment plan. The creditor made mistakes in calculating the current balance owed for the student loans and is in the process of making corrections. It is presumed once the corrections are made a new monthly payment plan will be implemented. He included the previously provided monthly payment amount on his personal financial statement, which indicates he can afford to make the payments. Applicant has a history of paying his student loans. In addition, he paid the small medical debts that were delinquent. It does not appear he has any other delinquent debts. His wife has taken action to reduce their monthly expenses so they have more expendable income. She is also consolidating her student loans and has requested an income based payment plan. I find Applicant has acted responsibly regarding his delinquent debts. AG ¶ 20(b) applies. He was unable to find the creditor in SOR ¶ 1.e, but paid the other medical debts in SOR ¶¶ 1.f, 1.g, and 1.j. His payment

plan for his student loans reflect a clear indication that Applicant's financial problems are being resolved and under control. AG ¶ 20(c) and AG ¶ 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(a):

- (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. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is 50 years old. He earned a bachelor's degree in 2008. He was repaying his student loans when he experienced unexpected financial problems when a tornado damaged his home and he was unemployed for two periods. He has paid the medical debts that he could that were alleged in the SOR. He has consolidated his student loans and was provided a viable repayment plan. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the financial considerations guideline.

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.j: | 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 a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge