



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



In the matter of:)
)
) ISCR Case No. 14-00652
)
Applicant for Security Clearance)

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

07/23/2014

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated the financial considerations and criminal conduct security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On March 19, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F (financial considerations) and J (criminal conduct). 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) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on April 10, 2014, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on May 28, 2014. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant

received the FORM on June 5, 2014. As of July 17, 2014, he had not responded. The case was assigned to me on July 18, 2014. The Government exhibits included in the FORM (Items 4-8) are admitted.

Findings of Fact

Applicant is a 35-year-old employee of a defense contractor. He has worked for his current employer since September 2013. He is applying for a security clearance for the first time. He attended a technical school from 2007 to 2008. He has never married and he has no children.¹

Applicant and a friend were riding off-road motorcycles (dirt bikes) in June 2011. The motorcycles were not registered to ride on the street. After observing several traffic violations, a police officer attempted to make a traffic stop of the two motorcycles. Both Applicant and his friend fled, which started a high-speed chase.² The police officer wrote in his report:

The motorcycles failed to stop at all stop signs, use proper turning signals, drove at a high rate of speed, and drove on the wrong side of the road several times during the pursuit. There were several other vehicles on the road and pedestrians in the area.³

Applicant eventually pulled over and was arrested. The friend continued to drive. He was arrested after Applicant cooperated and gave the friend's name to the police. Applicant admitted traveling about 75 miles per hour during the chase.⁴

Applicant was charged with evading a police officer. He pleaded no contest in August 2011. He was sentenced to 60 days in jail, a \$460 fine, and summary probation for three years. Applicant's jail time was stayed, and he was referred to a work release program (community service).⁵

Applicant completed the terms of his work release program. His probation will end in August 2014. He admits he made a "bad judgment call," but he assures that "it will not happen again."⁶

The SOR also alleges two charged-off student loans: SOR ¶¶ 2.a (\$30,356) and 2.b (\$12,016). Applicant admitted owing the debts, and both of the debts appear on two

¹ Item 4.

² Item 5.

³ Item 6.

⁴ Item 6.

⁵ Items 3-6.

⁶ Item 3.

credit reports. However, Applicant stated that he is paying the student loans and the accounts are current.⁷

Applicant stated that his student loans became delinquent when he was unemployed. He had several periods of unemployment, including from February 2007 to June 2008, October 2010 to February 2011, and January 2012 to September 2013.⁸

Applicant's credit report from November 2013 lists charged-off student loans for \$30,356 and \$12,016 (SOR ¶¶ 2.a and 2.b). The credit report also lists student loans that were not in collection with balances of \$20,866; \$6,158; \$5,941; \$5,732; \$3,344; \$1,156; and \$1,146. All but the \$20,866 student loan were listed as in deferment. Applicant's May 2014 credit report lists the charged-off student loans with balances of \$30,409 and \$11,265. It also lists student loans that were not in collection with balances of \$20,508; \$6,329; \$6,105; \$5,746; \$3,352; \$1,188; and \$1,149.⁹

Applicant stated that he has been making payments on the defaulted student loans listed in the SOR. He stated that without the student loans, he would not have had the opportunity to obtain his current employment. He would like to obtain his security clearance so he can remain employed, start a consistent career, and complete his student loan payments.¹⁰

Applicant stated that the \$12,016 defaulted student loan had been reduced to \$11,303 by his payments. Applicant submitted a copy of a transaction from the student loan provider's website from April 1, 2014. It shows the loan with a balance of \$12,198, with an interest rate of 9.75%, and a past-due minimum payment due of \$910. Applicant paid \$910 on April 1, 2014. That payment is consistent with the May 2014 credit report.¹¹

Applicant stated that the \$30,356 student loan had been reduced to \$27,435. As proof of that assertion, Applicant presented part of a statement from the student loan provider. The statement shows four student loans with balances of \$5,956; \$5,606; \$1,159; and \$1,121; for a total of \$23,289. The interest rate for the four loans is 6.8%. The statement does not list account numbers, but it appears that it is referring to four student loans that were not in collection. Applicant did not submit any documentary evidence establishing payments toward the \$30,356 defaulted student loan.¹²

⁷ Items 3, 7, 8.

⁸ Item 3-5.

⁹ Items 7, 8. Any financial matters that were not alleged in the SOR will not be used for disqualification purposes. They may be considered when assessing Applicant's overall financial situation, in the application of mitigating conditions, and in analyzing the "whole person."

¹⁰ Item 3.

¹¹ Items 3, 7.

¹² Item 3.

Applicant listed his conviction and his defaulted student loans on his Questionnaire for National Security Positions (SF 86), which he submitted in October 2013. He was also forthcoming about both matters when he was interviewed for his background investigation in November 2013.¹³

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(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 access to classified information will be resolved in favor of 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 EO 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

¹³ Items 4, 5.

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 under AG ¶ 19. The following are potentially applicable in this case:

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

Applicant had defaulted student loans that he was unable or unwilling to pay. The evidence is sufficient to raise the above disqualifying conditions.

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, 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 had several extended periods of unemployment from 2007 until he was hired by his current employer in September 2013. His unemployment qualifies as a condition that was beyond his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances.

Applicant established that he paid \$910 toward one of his student loans on April 1, 2014. His statement that he has been paying his other defaulted student loan has not been corroborated by documentary evidence. The Appeal Board has held that “it is reasonable for a Judge to expect applicants to present documentation about the satisfaction of specific debts.” See ISCR Case No. 09-07091 at 2 (App. Bd. Aug 11, 2010) (quoting ISCR Case No. 04-10671 at 3 (App. Bd. May 1, 2006)).

Applicant’s has additional student loans that he will have to start paying at some point. There is insufficient evidence for a determination that Applicant’s financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(c), and 20(d) are not applicable. AG ¶ 20(b) is partially applicable. I find that financial considerations concerns remain despite the presence of some mitigation.

Guideline J, Criminal Conduct

The security concern for criminal conduct is set out in AG ¶ 30:

Criminal activity creates doubt about an Applicant’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable:

- (a) a single serious crime or multiple lesser offenses;
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted; and
- (d) individual is currently on parole or probation.

Applicant was convicted of evading a police officer. He remains on probation until August 2014. The above disqualifying conditions are applicable.

Conditions that could mitigate criminal conduct security concerns are provided under AG ¶ 32. The following are potentially applicable:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur

and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

Applicant has an otherwise clean criminal record. He completed the terms of his work release program, and he should be off probation next month. He has been open and honest about his criminal record. Nonetheless, the nature of Applicant's offense raises a concern. Rather than stop and accept a possible ticket for a minor traffic offense, Applicant took off on his dirt bike and led the police on a high-speed chase. The DOD requires security clearance holders to self-report security violations and other actions of security consequence. By fleeing the police, Applicant did the exact opposite of what would be expected of a security clearance holder. Applicant was 32 years old at the time, so it is difficult to attribute the conduct to youthful recklessness.

Applicant's statements of rehabilitation appear sincere, but at this time, his criminal conduct continues to cast doubt on his reliability, trustworthiness, and good judgment. Both of the mitigating conditions have some applicability. Nonetheless, criminal conduct security concerns remain.

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 Guidelines F and J in this whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant remains on probation until August 2014. In the not-so-distant future, Applicant may establish that his criminal conduct was an aberration that will not be repeated and his finances are in order. However, at the present time, he has not established either.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has not mitigated the financial considerations and criminal conduct 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 J:	Against Applicant
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline F:	Against Applicant
Subparagraphs 2.a-2.b:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge