



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



In the matter of:)
)
) ISCR Case No. 14-00859
)
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

10/15/2014

Decision

WHITE, David M., Administrative Judge:

Applicant accumulated more than \$21,500 in delinquent consumer and student loan debts over the past seven years despite being continuously employed. He demonstrated neither means nor efforts to resolve these debts. Resulting security concerns were not mitigated. Based on a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SF 86) on June 11, 2013.¹ On April 29, 2014, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations).² The action was taken under Executive

¹Item 4.

²Item 1.

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 that came into effect in the Department of Defense on September 1, 2006.

Applicant submitted an undated written response to the SOR, and requested that his case be decided by an administrative judge on the written record without a hearing.³ Department Counsel submitted the Government's written case on June 24, 2014. A complete copy of the File of Relevant Material (FORM)⁴ was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant signed the document acknowledging receipt of his copy of the FORM on June 27, 2014. He submitted no material in refutation, extenuation, or mitigation within the 30-day period thereafter, made no objection to consideration of any contents of the FORM, and did not request additional time to respond. I received the case assignment on September 12, 2014.

Findings of Fact

Applicant is 28 years old, and has worked for a defense contractor since April 2013. He is single, but has lived with the mother of his two-year-old child since January 2011. He is a high school graduate, and attended a community college for about two years. He has no military service, and this is his first application for a security clearance. His SF 86 reflects continuous full-time employment in six different jobs since April 2005.⁵

In his response to the SOR, Applicant admitted all of the allegations in SOR ¶¶ 1.a through 1.i, with the uncorroborated explanation that he was making unspecified payments toward the debts alleged in SOR ¶¶ 1.a, 1.e, 1.f, and 1.g.⁶ Applicant's admissions are incorporated into the following findings of fact.

³Item 3.

⁴The Government submitted seven Items in support of the SOR allegations. Item 7 is a copy of the Subject Interview from the Office of Personnel Management Report of Investigation for which Department Counsel offered no authenticating evidence, and which Applicant did not adopt. Department Counsel requested the admission of this Item into evidence if Applicant did not object. However, Directive ¶ E3.1.20 requires that this document be authenticated in order to be received and considered. Since it was neither authenticated nor adopted by Applicant, Item 7 is excluded from evidence in this case and will not be considered.

⁵Item 4.

⁶Item 3.

Applicant's record credit bureau reports document and confirm the existence of the nine delinquent debts alleged in the SOR, totaling \$21,532. Three of these debts, totaling \$9,983, are delinquent student loans that were placed for collection in July 2010. Applicant claimed to be making payments toward these loans in his response to the SOR, but provided neither details nor evidence documenting such payments. Five of the remaining delinquent debts, to which Applicant also admitted, were for various consumer credit accounts. The final admitted delinquency was a \$150 medical debt placed for collection in 2012. Applicant provided no information concerning whether this medical debt was routine or unexpected.⁷

Applicant submitted no evidence of financial counseling, or other efforts to establish financial responsibility within his current budget. He provided no evidence concerning the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. He submitted no character references describing his judgment, trustworthiness, integrity, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

Policies

When evaluating an applicant's suitability for a security clearance, 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 (DCs) and mitigating conditions (MCs), 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 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.

⁷Item 3; Item 5; Item 6.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, “[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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 protect or 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.

Analysis

Guideline F, Financial Considerations

The security concerns under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

Department Counsel asserted, and the record evidence established, security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

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

Applicant admittedly owes the nine consumer and student loan debts alleged in the SOR, totaling \$21,532, which became delinquent over the past seven years and remain unpaid. This evidence raises security concerns under DCs 19(a) and (c), thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant offered no evidence to support mitigation under any of these provisions. Nothing showing either the intention or the means to pursue debt resolution was provided.

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 pertinent facts and circumstances surrounding this case. Applicant is an accountable adult, who is responsible for his voluntary choices and conduct that underlie the security concerns expressed in the SOR. His financial irresponsibility is ongoing toward more than \$21,500 in delinquent debt, which did not arise under circumstances that were shown to be beyond his control, and have remained unresolved during nine years of his continuous full employment. He offered no evidence of financial counseling, rehabilitation, better judgment, or responsible conduct in other areas of his life. The potential for pressure, coercion, and duress remains undiminished.

In the absence of any demonstrated means or effort to resolve his delinquent debts, or to otherwise mitigate the resulting security concerns, the record evidence leaves me with substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from his financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: AGAINST APPLICANT

Subparagraphs 1.a through 1.i: 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.

DAVID M. WHITE
Administrative Judge