



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



In the matter of:)
)
) ISCR Case No. 14-01187
)
Applicant for Security Clearance)

Appearances

For Government: Pamela Benson, Esq., Department Counsel
For Applicant: *Pro se*

12/23/2014

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On May 19, 2014, the Department of Defense (DOD) issued to 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 effective within the DOD for SORs issued after September 1, 2006.

On June 16, 2014, Applicant answered the SOR and elected to have his case decided on the written record. On October 14, 2014, Department Counsel submitted the Government’s file of relevant material (FORM). The FORM was provided to Applicant on October 23, 2014, and it was received on October 30, 2014. Applicant was afforded

an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant provided additional information. The case was assigned to me on December 5, 2014.

Findings of Fact

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

Applicant is 27 years old. He is not married and has no children. He attended college from August 2006 to December 2010, but did not earn a degree. He has worked for a federal contractor since October 2013.

Applicant listed on his security clearance application (SCA) that he was unemployed from November 2005 to May 2006, September 2006 to June 2007, and July 2010 to May 2012.

SOR ¶¶ 1.a through 1.c and 1.f through 1.h alleged delinquent student loans in the approximate total amount of \$25,123. He explained in his response to the FORM, that he attempted to pay for college through student loans. He was unable to finish college. He could not pay his student loans until he found full time employment. He was underemployed and unemployed for periods of time. He now has a full-time job and a reliable vehicle. He contacted the three creditors servicing his student loans and is participating in rehabilitation loan programs. Each requires consistent monthly payments for a period of months before the loans will be taken out of default status. The agreements require monthly payments of \$266, \$50 and \$5. Applicant provided proof he made payments on the first plan. The other two agreements were recently signed and payments will be due in the succeeding months.¹

The debts in SOR ¶¶ 1.d (\$1,660) and 1.e (\$278) are medical debts. One is a dental bill Applicant incurred when he was trying to enlist in the Air Force, but due to reductions, he was not able to join the Air Force. The other is a bill for when he broke his foot. He incurred these debts while attending college. Applicant stated in his response to the FORM that both debts are paid. He provided documentation to show the first debt was paid in full. He did not provide documentation that the second debt was paid.² Regarding the debt in SOR ¶1.i (\$904), a cell phone debt, Applicant believed he had canceled the cell phone plan after receiving two consecutive months of incorrect bills for \$1,000. The creditor corrected the mistake. Applicant did not realize the plan was not canceled. He intends to settle the debt and budget his income so he can offer a lump sum payment to resolve the debt.³

¹ Response to FORM with attachments.

² Response to FORM with attachments.

³ Item 4.

Applicant worked with his local credit union to create a written budget that allows him to follow his transactions and monitor his expenditures. He follows his budget closely. He also was counseled by his pastor on his personal finances and the importance of maintaining his credit, not purchasing items using credit, and the negative aspects of using credit. Applicant does not have any credit card or consumer debts. He noted he has not incurred any new debts since he found full time employment.

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 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.

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 avoided drawing 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 as to obtaining 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 that an applicant may deliberately or inadvertently fail to 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.

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 relating to the guideline 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 the following under AG ¶ 19:

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

Applicant was unable to pay his student loans and they became delinquent. He also had three other delinquent debts that he was unwilling or unable to pay. I find the above disqualifying conditions apply to these facts.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under AG ¶ 20:

- (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's student loans are in a rehabilitation status. He is budgeting so he can make a lump sum settlement offer to resolve the cell phone debt. The debts are recent and not yet resolved. AG ¶ 20(a) does not apply.

Applicant was unable to pay his student loan debts during periods of unemployment and underemployment. These were conditions beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Since obtaining full time employment he has arranged payment plans to rehabilitate his student loan debts. He paid two medical debts and is saving to make a settlement offer on a cell phone debt. Applicant has acted responsibly under the circumstances. AG ¶ 20(b) applies. Applicant worked with a credit union to develop a budget and monitor his transactions. He has been counseled on the importance of maintaining good credit and not exceeding its limits. Applicant has no other delinquent debts and appears to be living within his means. I find there are clear indications that Applicant's financial problems are under control, and he is resolving his delinquent debts. AG ¶¶ 20(c) 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 the 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 that guideline, but some warrant additional comment.

Applicant is 27 years old. He accumulated substantial student loan debt that became delinquent when he had difficulty finding full time employment. Since becoming employed he has made arrangements with the student loan creditors to rehabilitate his loans. He paid two medical debts and is budgeting to resolve a cell phone debt. Applicant is monitoring his budget and does not have other delinquent debts. The record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guideline F, financial considerations.

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.i: 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.

Carol G. Ricciardello
Administrative Judge