



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



In the matter of:

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ISCR Case No. 14-01810

Applicant for Security Clearance

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: *Pro se*

03/31/2015

Decision

WHITE, David M., Administrative Judge:

Applicant incurred substantial delinquent indebtedness but, despite regular full-time employment and apparent surplus income, demonstrated neither means nor efforts to resolve the large majority of it. The evidence is insufficient to mitigate resulting security concerns. Based upon a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SF 86) on May 28, 2013. On June 26, 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). 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 for Determining Eligibility for Access to Classified Information*, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing (AR) on July 22, 2014, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on October 23, 2014. The case was assigned to me on October 27, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Video Teleconference Hearing on December 10, 2014, and I convened the hearing, as scheduled, on January 12, 2015. Applicant and the court reporter attended the hearing in person. Department Counsel participated from DOHA Headquarters by video teleconference. The Government offered Exhibits (GE) 1 and 2, which were admitted without objection. Applicant testified on his own behalf, I granted Applicant's request to leave the record open until January 26, 2015, for submission of documentary evidence. DOHA received the transcript of the hearing (Tr.) on January 21, 2015. Applicant submitted no documentary evidence after the hearing. Department Counsel obtained an updated credit report on Applicant's behalf which was offered admitted as GE 3 without objection from Applicant on January 26, 2015, and the record closed. (Tr. 51; GE 3.)

Findings of Fact

Applicant is a 27-year-old employee of a defense contractor, where he has worked since October 2012. He also held full-time employment in several other jobs throughout the five preceding years. He is single, with no children. He is a high school graduate, and took college classes from a for-profit university from November 2005 to August 2009 without earning a degree. He has no military service and has never held a security clearance. (GE 1.)

In his response to the SOR, Applicant admitted the allegations concerning delinquent debts set forth in SOR ¶¶ 1.b through 1.l, and 1.r through 1.t. He denied the other 6 SOR allegations of delinquent debts; claiming that the two medical collection accounts in SOR ¶¶ 1.a (\$108) and 1.q (\$178) had been paid, and that the four student loan accounts (totaling \$89,022) alleged to be 90 days or more past due in SOR ¶¶ 1.m through 1.p. were current. (AR.) Applicant's admissions are incorporated in the following findings.

Applicant testified that he would obtain and submit proof of payment of the two medical debts he claimed to have paid. He did not do so. (AR; Tr. 23-24, 37, 44.) He also failed to supply any evidence to corroborate his claim that the four SALLIE MAE student loan accounts alleged to be past due in SOR ¶¶ 1.m through 1.p were current. He testified that he paid, "670-plus dollars a month," toward these debts. Department Counsel provided a credit report, dated January 15, 2015, that shows four NAVIENT student loan accounts with a total outstanding balance of \$87,368; toward which Applicant is current with monthly payments that total \$690. I conclude that these are the same student loans that were formerly held by SALLIE MAE. The new credit report also shows that the two medical collection accounts were paid as of August 2014. (AR; GE 2; GE 3; Tr. 45.)

In his testimony, Applicant confirmed his admissions that he owes the delinquent student loan debts alleged in SOR ¶ 1.b through 1.l and 1.r through 1.t, totaling

\$74,155. He said that he thought he had made some payments toward some of them, but would need to investigate and provide the details. He furnished no further information concerning these debts. He also testified that he stopped making mortgage payments in 2011 toward the home he purchased for \$217,000 in 2009, but continued living there for about another year before the lender took possession in a foreclosure proceeding. The most recent information in the record credit reports shows that, as of March 2013, Applicant was 120 days or greater past due on the loan in the amount of \$27,605; with a total balance due of \$217,058. Applicant provided no documentation concerning any foreclosure action or any potential remaining deficiency debt. (AR; GE 2; GE 3; Tr. 28-31, 35-44.)

Applicant testified that he estimated his monthly income at about \$2,600 leaving him with discretionary funds of about \$300 per month after meeting his living expenses. He did not provide detailed budget or financial statement, despite being offered the opportunity to do so. (Tr. 46-48.) Applicant 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.

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.

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.

The record evidence potentially raises 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 repaid two SOR-listed delinquent medical debts totaling \$286; and brought four of his student loans (totaling \$87,368) into a current status. However, he accrued more than \$290,000 in other delinquent debts over the past five years, and demonstrated neither the means nor any effort to resolve them. These substantial debts raise 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's delinquent debts are recent and ongoing, without indication that the circumstances under which they arose have changed. He therefore failed to establish substantial mitigation under MC 20(a).

Applicant also offered insufficient evidence to support significant mitigation under MC 20(b). He voluntarily incurred all of the debt in question, and has been fully employed during the period the payments became delinquent. This is not responsible action under the circumstances.

Applicant did provide any evidence of financial counseling. He repaid two small medical debts, and brought four student loans into a current status. However, he neither documented any effort to repay or otherwise resolve the substantial remaining SOR-listed delinquent debts, nor asserted a legitimate basis to dispute their validity. These facts preclude significant mitigation under MC 20(c), (d), or (e).

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 has incurred substantial delinquent indebtedness that he has made no effort to repay. These debts remain outstanding, creating the ongoing potential for pressure and duress. The evidence does not support a finding that continuation or recurrence are unlikely, or that behavioral changes demonstrate rehabilitation. He is a mature and experienced individual who is accountable for his choices and financial irresponsibility. Overall, the record evidence creates ongoing doubt as to Applicant's present eligibility and suitability for a security clearance.

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 |
|--------------------------------|-------------------|
| Subparagraph 1.a: | For Applicant |
| Subparagraphs 1.b through 1.l: | Against Applicant |
| Subparagraphs 1.m through 1.q: | For Applicant |
| Subparagraphs 1.r through 1.t: | 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