



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



In the matter of:)
)
) ISCR Case No. 15-02847
)
)
Applicant for Security Clearance)

Appearances

For Government: Mary M. Foreman, Esq., Department Counsel
For Applicant: *Pro se*

May 26, 2016

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant was alleged to be indebted to three creditors in the total approximate amount of \$14,232. Applicant has fully repaid one debt and is making monthly payments of \$50 on each of the other two accounts. Resulting security concerns were mitigated. Based on a review of the pleadings and exhibits, eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application on August 25, 2014.¹ On October 16, 2015, 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 3.

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 a written response to the SOR, dated November 9, 2015, 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 December 14, 2015, containing seven Items. A complete copy of the File of Relevant Material (FORM) 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. However, the FORM contained an incomplete copy of Items 5 through 7, (credit reports dated September 28, 2015; March 13, 2015; and August 30, 2014.)

Applicant signed the document acknowledging receipt of his copy of the FORM on December 24, 2015. In an undated submission, he provided eight pages of additional material in response to the FORM (Response). Department Counsel had no objections to the material submitted by Applicant, and it was included in the file. I received the case assignment on February 19, 2016. On approximately May 9, 2016, I contacted Department Counsel to request that full copies of Items 5 through 7 be provided to me and Applicant. I received Items 5 through 7 on May 19, 2016. Applicant acknowledged receipt of complete copies of Items 5 through 7 on May 20, 2016. He was afforded the opportunity to present additional evidence in support of his case, but indicated he had, "nothing further to add." The record then closed.

Findings of Fact

Applicant is 32 years old, and has worked for a defense contractor since August 2014. He attended college from August 2001 to May 2003, transferred to another university in August 2003, and continued taking classes until May 2007 although he reported no degree from either institution. From January 2008 through October 2008, he attended a vocational or trade school and earned a certificate. (Item 3.)

The Government alleged that Applicant is ineligible for a clearance because he made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness and ability to protect classified information. The SOR alleged that Applicant is delinquent on three debts in the total amount of \$14,232. In Item 2, Applicant admitted the delinquent debts as set forth in SOR ¶¶ 1.a, 1.b, and 1.c. Applicant's delinquent accounts appeared on the credit reports dated September 28, 2015; March 13, 2015; and August 30, 2014. (Items 5 through 7.)

³Item 2.

Applicant's three SOR-alleged debts are private student loans, owed to the same creditor, that Applicant relied upon to support himself while attending college. Once he left college, he applied for and received a short forbearance on these loans. However, he defaulted on them after the forbearance ended and he was not able to afford payments on the loans. (Item 2; Response.)

Applicant is indebted to the student loan provider in the amounts of \$9,062, as alleged in SOR ¶ 1.a, and of \$4,103, as alleged in SOR ¶ 1.b. These accounts became delinquent in 2009. He presented transaction history reports that bear the same account numbers as the credit report entries for these debts. These reports show that, from June 2014 through May 2015, regular payments were made on each of these debts. Each account was credited with \$50 payments per month (totaling \$100 per month). He then claimed that the creditor stopped the automatic deductions from his account because "the statute for collecting this debt had expired." He requested statements by mail, but the creditor verbally told him they would no longer accept payments because they were "no longer allowed to legally collect this debt." Applicant continued to contact the creditor, in good faith, and to request to make further payments to satisfy this debt. In Item 2, he indicated he would begin making payments of \$50 on both of these accounts again. While he did not document further payments, he indicated he continues to pay these accounts in his Response. Based upon his past documented payments to this creditor, he credibly avers that he is resolving this debt. (Item 2; Response; Item 5.)

Applicant is indebted to the same student loan provider in the amount of \$1,067, as alleged in SOR ¶ 1.c. This debt was paid in full on February 19, 2015, as evidenced by a letter from this creditor. It is resolved. (Response.)

Applicant's most recent credit report reflects no other delinquent accounts. (Item 5.) He indicated that he is "willing to meet all financial obligations and [has] the ability to do so." (Response; Item 5.)

Applicant presented five letters of recommendation from supervisors and co-workers. He is considered to be "extremely trustworthy and a very reliable employee," by his senior director. He has a reputation for being honest, sincere, and demonstrating good judgment in decision making. He has an outstanding work ethic. (Response.)

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.

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 has a history of delinquent debt. In 2009, he defaulted on three student loans totaling \$14,232. His ongoing pattern of delinquent debt, and history of inability or unwillingness to pay these lawful debts, raised security concerns under DCs 19(a) and (c), and shifted 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. Three are 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;
- (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 financial problems arose in 2009 after a deferment on his student loans ended. At that time, he had not yet secured a job that would allow him to afford to repay those debts. In 2014, when he finally had sufficient money to address his delinquent student loans, he began making payments on them. He fully resolved one delinquency and has established a track record of payments on the other two accounts. He has no new delinquencies identified on his most recent credit report. There are clear indications that Applicant's financial problems are being resolved and are under control. Given Applicant's reputation for honesty, his documented past payments on his remaining two loans, and his extensive explanation of the efforts he has made to pay his remaining student loans after the lender no longer wanted to collect on them, it is unlikely that Applicant will incur delinquencies in the future. He has demonstrated a good-faith effort to resolve his debts. The security concerns have been mitigated.

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. However, he has addressed his delinquencies in an appropriate manner since 2014. He has a reputation for honesty, which lends credibility to his claims that he continues to pay his two remaining delinquent student loans. The creditor's resistance to accepting such payments significantly diminishes any potential for pressure, coercion, exploitation, or duress. Overall, the record evidence leaves me without doubt as to Applicant's present eligibility and suitability for a security clearance. He met 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:

FOR APPLICANT

Subparagraphs 1.a through 1.c:

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 eligibility for a security clearance. Eligibility for access to classified information is granted.

Jennifer I. Goldstein
Administrative Judge