



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



In the matter of:)
)
) ISCR Case No. 12-01071
)
)
Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

07/24/2014

Decision

COACHER, Robert E., Administrative Judge:

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

Statement of the Case

On December 30, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. DOD acted under Executive Order (EO) 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 (AG) effective within the DOD on September 1, 2006.

Applicant answered the SOR on January 24, 2014, and requested a hearing before an administrative judge. The case was assigned to me on May 5, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 13, 2013, and the hearing was convened as scheduled on June 4, 2014. The Government

offered exhibits (GE) 1 through 5, which were admitted into evidence without objection. Department Counsel's exhibit index was marked as Hearing Exhibit (HE) I. Applicant testified, presented the testimony of one witness, and offered exhibits (AE) A through F, which were admitted into the record without objection. The record was held open for Applicant to submit additional information, and he submitted AE G through K, which were admitted into evidence without objection. Department Counsel's transmittal memorandum was marked HE II. DOHA received the hearing transcript (Tr.) on June 14, 2014.

Findings of Fact

Applicant admitted all the SOR allegations. The admissions are incorporated as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 37-year-old employee of a government contractor. He works as a computer technician. He is a high school graduate who has completed about two years of college courses and is working towards a bachelor's degree. He is twice divorced and has two children, one from each marriage. He served 10 years in the Air Force, was honorably discharged, and receives disability payments from the Department of Veteran's Affairs (VA). He currently holds a security clearance.¹

The SOR alleges 23 delinquent debts for a total of about \$45,326.² The debts were listed in credit reports from September 2011, April 2013, and March 2014.³

Applicant's financial delinquencies accrued because of numerous student loans that he received starting in 2009. His VA benefits (GI Bill) did not cover the full cost of the courses he was taking at the time. He also went through his second divorce that was finalized in November 2010. He was required to pay approximately \$500 per month in child support and maintain health insurance at a cost of approximately \$420 per month for his child from this marriage. He was already paying \$700 per month in child support for his child from his first marriage. His child support obligation to his first child ended in June 2014, so that money is now available to pay his existing debts. He is current on his remaining child support obligation. He is currently taking more classes, but between his GI Bill benefits and his employer's contributions, there are no out-of-pocket costs to him. He stated that every time he was in a position to begin addressing his debts, some unforeseen event would happen that made it impossible for him to start the payments. These events included several significant car repairs and having to pay

¹ Tr. at 7, 30-31; GE 1.

² The evidence showed that many of the listed SOR debts were duplicative because they were transferred to subsequent creditors. SOR debts ¶¶ 1.a and 1.c are duplicative and SOR debts ¶¶ 1.n through 1.u are duplicative with SOR debts ¶¶ 1.e through 1.m.

³ GE 2-3, 5.

several thousands of dollars to his landlord because of damage his dog did to his apartment.⁴

Applicant presented documentary evidence showing that the student loan debts reflected in SOR ¶¶ 1.n through 1.u and 1.e through 1.m were consolidated by the Department of Education (DOE) and that his total loan amount is now \$20,507 (principal is \$16,789 and interest is \$3,718). He has made one \$250 payment to the consolidated plan in June 2014 and is required to pay that amount every month (the documentation does not indicate how long these payments will be made). Applicant testified that he was attempting to seek deferments on these debts since he is now actively taking more courses, but he did not produce any evidence showing any deferments.⁵

The debts alleged in SOR ¶¶ 1.d and 1.v are also student loan-related debts, but there is no evidence that they were consolidated into the DOE plan noted above. Applicant stated that he was paying the debt listed in SOR ¶ 1.d “through my own means starting in February 2014 in \$400 allotments.” He did not supply documentary evidence supporting these asserted payments. He stated that he reached a settlement concerning the debt listed in SOR ¶ 1.v whereby he would pay \$858 to settle the \$5,177 debt, but he did not supply any documentation concerning this settlement or proof of payment. These debts are unresolved.⁶

The debts alleged at SOR ¶¶ 1.a through 1.c are delinquent telecommunication accounts (\$606; \$300; \$606). Applicant claimed that all three accounts related to the same debt. The evidence supports his claim that SOR ¶¶ 1.a and 1.c are the same debt. He further stated that he reached a settlement with the creditor to pay \$300 on this debt and that is the amount reflected in SOR ¶ 1.b. He did not produce evidence of the settlement terms or that he paid either \$606 or \$300. Those debts are unresolved. He produced documentary evidence showing that he paid the child support debt listed in SOR ¶ 1.w and that he had no further obligation for his oldest child. That debt was resolved.⁷

Applicant received credit counseling years ago when he was in the Air Force, but he has not received any since he accumulated these debts. He has no current credit card debt. A coworker of five years testified that Applicant is trustworthy, loyal, and exercises good judgment. His job appraisals reflect that he is a “clearly outstanding” employee.⁸

⁴ Tr. at 32-34, 36-37; AE A.

⁵ Tr. at 49-50; AE H.

⁶ Tr. at 39-41; AE H; Answer.

⁷ Tr. at 34, 51-52; AE .

⁸ Tr. at 59, 67-74; AE J.

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 that 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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 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 about 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 applicant concerned." See *also* Executive Order 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 as follows: 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.⁹

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant has numerous delinquent debts that remain unpaid. The evidence is sufficient to raise the above disqualifying conditions.

Several financial considerations mitigating conditions under AG ¶ 20 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;

⁹ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

(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 debts are recent, multiple, and cast doubt on his reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

Although Applicant's divorce was an event that was beyond his control, as were the unexpected repair expenses he incurred, he failed to show he acted responsibly under the circumstances to resolve his debts. His student loan debt has been delinquent for several years, yet it took Applicant until June 2014 to arrange a payment plan with DOE to begin resolving this debt. Even under this plan, he has only shown proof of one payment, which does not equate to a significant track record of payment. Additionally, he failed to address several student loan debts that were not part of the DOE package of debts. This does not reflect responsible action, which is required by the second prong of this mitigating condition. AG ¶ 20(b) is partially applicable.

There is evidence of financial counseling several years ago. Although, he established a payment plan for the DOE debts, it is too soon to say whether he will continue to pay under that plan. At this point in time, the evidence does not support a good faith effort by Applicant to resolve his debts. AG ¶ 20(c) partially applies, but AG ¶ 20(d) does not apply.

Applicant provided sufficient documentation to show that many of the SOR student loan debts were duplicative. Those duplicative debts are resolved in favor of Applicant. Likewise, he presented documentation to show that SOR ¶¶ 1.a and 1.c were duplicative. SOR ¶ 1.c is resolved in favor of Applicant. However, there is insufficient documentation to support any other disputed debts. AG ¶ 20(e) partially applies. Applicant's finances remain a concern despite the presence of some mitigation.

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 relevant 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.

I considered the circumstances by which Applicant's financial situation was affected by his divorce and several unexpected expenses. I also considered his military service, his positive character evidence, and his outstanding job appraisals. However, I also considered that despite these factors, he has made only one payment toward his large student loan obligation and two separate student loan accounts remain unaddressed. His past track record reflects a troublesome financial history that causes me to question his determination to resolve his debts.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the financial considerations 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 F:	AGAINST APPLICANT
Subparagraphs: 1.a – 1.b:	Against Applicant
Subparagraph: 1.c:	For Applicant
Subparagraphs: 1.d – 1.m:	Against Applicant
Subparagraphs: 1.n – 1.u:	For Applicant
Subparagraph: 1.v:	Against Applicant
Subparagraph: 1.w:	For 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.

Robert E. Coacher
Administrative Judge