



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



In the matter of:

Applicant for Security Clearance

)
)
)
)
)

ISCR Case: 15-02785

Appearances

For Government: Pamela C. Benson, Esquire, Department Counsel

For Applicant: *Pro se*

10/06/2017

Decision

WHITE, David M., Administrative Judge:

Applicant incurred some delinquent debts after leaving military service, while pursuing professional education for several years. Most of those debts have been resolved since he began his current employment, and his financial situation is stable. Resulting security concerns were mitigated. Based upon a review of the pleadings and exhibits, national security eligibility is granted.

Statement of Case

On September 10, 2014, Applicant submitted a security clearance application (SF-86). On March 24, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. (Item 1.) The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD 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 DoD after September 1, 2006.

Applicant answered the SOR on June 14, 2016. He admitted all of the SOR allegations concerning delinquent debts, with explanations, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 1.) On July 29, 2016, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing six Items, was mailed to Applicant on August 1, 2016, and received by him on August 8, 2016. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant responded to the FORM in an undated, but timely written submission, to which Department Counsel had no objection. He did not object to Items 1 through 6, which are admitted into evidence. Applicant's FORM response is marked Exhibit (AE) A, and admitted into evidence. DOHA assigned the case to me on May 22, 2017.

The SOR and FORM in this case were issued under the adjudicative guidelines that came into effect within the DoD on September 1, 2006. Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines*, implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions issued on or after June 8, 2017, are to be decided using the new *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), as implemented by SEAD 4. I considered the previous eligibility guidelines, as well as the new SEAD 4 AG, in adjudicating Applicant's national security eligibility. My decision would be the same under either set of guidelines, although this decision is issued pursuant to the currently effective SEAD 4 AG.

Findings of Fact

Applicant is 36 years old. He has never married, and has no children. He earned a bachelor's degree in December 2005, and two master's degrees in May 2009 and May 2011. He has worked for a defense contractor since May 2012, and seeks national security eligibility in connection with that employment. He honorably served on active duty in the U.S. Navy from October 2000 to March 2004, and held a security clearance without incident during most of that time. (Item 2.)

As recently as September 2015, Applicant had ten delinquent medical bills totaling \$6,655. (SOR ¶¶ 1.a through 1.i and 1.w.) As of the close of the record, he had repaid all of those debts, except for the two accounts alleged in SOR ¶¶ 1.e and 1.f. In his SOR response, he stated that he intended to continue making payments to resolve the \$2,324 debt alleged in SOR ¶ 1.f, but would not repay the \$1,750 account alleged in SOR ¶ 1.e because it was an invalid charge resulting from gross negligence on the part of the hospital that reported the debt to the credit bureau. (Item 1; Item 4; Item 5.)

During the seven-year course of Applicant's undergraduate and graduate studies, he incurred 11 student loan debts. SOR ¶¶ 1.j through 1.t alleged that those loans were then delinquent in the total amount of \$2,804. Applicant has since brought all of his student loans into current status, and they are being paid as agreed according to the most recent record credit reports. (Item 1; Item 3; Item 5.)

Applicant received a reenlistment bonus from the Navy, but for reasons that are not explained in the record evidence he did not reenlist before his honorable discharge in 2004. This resulted in approximately \$20,000 in debt that he was required to repay. SOR ¶ 1.u alleged that he still owed \$3,784 toward this debt. Documentation he provided with his SOR response showed that he resolved this debt with a final payment in May 2016. (Item 1.)

SOR ¶ 1.v alleged a \$423 delinquent credit card account. Applicant repaid this debt in March 2016. (Item 1; Item 5.)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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. 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 national security eligibility 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person applying for national security eligibility 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 national security eligibility. 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 or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, “[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.” 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 concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

AG ¶ 19 describes three conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant was temporarily unable or unwilling to repay his formerly delinquent medical, reenlistment bonus, student loan, and credit card debts, creating a brief history of not meeting financial obligations. These facts establish *prima facie* support for the

foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes two conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged 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; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial issues arose when he left active Naval service with an Honorable discharge, and subsequently pursued a bachelor's and two master's degrees as a student. Since beginning his current employment, he successfully brought all of his student loans into current status, and repaid most of his other formerly delinquent debts. He has incurred no new delinquencies; living within his means while repaying those debts.

Applicant acted responsibly under the circumstances, established professional credentials to permit his ongoing solvency, and demonstrated clear indications that his financial issues are resolved. The record establishes full mitigation of financial security concerns under the provisions of AG ¶¶ 20(a) and 20(d).

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(d):

(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.

According to 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 applicable 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 a mature adult, who took reasonable and effective action to resolve the financial issues he encountered while pursuing post-service education toward qualifying for his current professional employment. The likelihood that financial problems will recur is minimal. The potential for pressure, coercion, or duress is minimized by the resolution of all but one of Applicant's formerly outstanding debts. Overall, the record evidence leaves me without doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. He fully met his burden to mitigate the security concerns arising under the guideline for 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.w: 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 national security eligibility and a security clearance. National security eligibility is granted.

DAVID M. WHITE
Administrative Judge