



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



In the matter of:)
)
) ISCR Case No. 15-02843
)
Applicant for Security Clearance)

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

09/20/2016

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On November 10, 2015, 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; DOD 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.

Applicant answered the SOR on December 15, 2015, and elected to have his case decided on the written record. On January 26, 2016, Department Counsel submitted the Government's file of relevant material (FORM). The FORM was mailed to Applicant, and it was received on February 9, 2016. Applicant was afforded an

opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the Government evidence and did not provide any material within the required timeframe. The Government's documents identified as Items 2 through 8 are admitted into evidence. The case was assigned to me on August 26, 2016.

Findings of Fact

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

Applicant is 34 years old. He was married for a short time and the marriage was annulled. He has a child, for whom he is required to pay child support. He graduated from college in 2007 with a bachelor's degree. He attended college part-time in pursuit of a master's degree in 2010, but did not complete it. He attended a technical college from July 2011 to February 2012, and earned a diploma. He worked part-time from 2003 to 2009. He worked full time from January 2010 to July 2011 and then changed careers. He has been employed by a federal contractor since March 2012.

Applicant filed Chapter 7 bankruptcy in July 2012, and his debts were discharged in November 2012. He estimated he had about \$60,000 of debts discharged. As part of the bankruptcy, Applicant was required to make monthly payments to the Bankruptcy Trustee.¹ He failed to comply with the payments and in December 2013, the Bankruptcy Court revoked the discharge for his failure to pay the trustee.²

Applicant has eight delinquent student loans (SOR ¶¶ 1.e, 1.f, 1.g, 1.h, 1.i, 1.j, 1.k, and 1.l) totaling approximately \$60,300. He has two medical debts (SOR ¶¶ 1.b and 1.c) totaling approximately \$1,860, and one debt owed to a fire rescue unit (SOR ¶ 1.d) for \$554. All the debts are supported by credit reports from October 2015, March 2015, and December 2012.³ During his interview with a government investigator in February 2013, Applicant indicated that when his student loans were removed from deferred status in 2008, his parents paid them for him. They were again deferred when he resumed attending college and technical school. When he completed school, he stated he and his parents made \$1,000 a month payments, each paying \$500. He told the investigator the payments were applied to all of the loans, but he did not specifically know which ones were being paid. He indicated he had no idea what loans may have been included in his bankruptcy. He was aware that his federal student loans were not discharged in bankruptcy. He indicated he was unaware that any of his student loans were delinquent.⁴

¹ The payments were required due to an amount the Trustee required Applicant to pay because of the value he claimed on his vehicle.

² Item 7.

³ Items 4, 5, 6.

⁴ Item 8.

Applicant admitted in his answer to the SOR that he owed all of the alleged debts. He did not provide any information or documents to show any of the debts are resolved or current.⁵

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.

⁵ Item 2.

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.

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.⁶

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

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

Applicant has delinquent debts that are unresolved. He has eight student loans that are past due or delinquent. His debts were discharged in Chapter 7 bankruptcy in 2012; however, said discharge was revoked because he failed to pay the Bankruptcy Trustee as required. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

⁶ See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

(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 has delinquent debts that are unpaid and unresolved. He has numerous delinquent student loans. He did not provide evidence of actions he may have taken to resolve these issues. He did not provide evidence of his current financial situation. There is insufficient evidence to conclude that his financial problems are unlikely to recur. His failure to timely address his delinquent debts casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

There is insufficient evidence to conclude Applicant's financial problems were due to conditions beyond his control. AG ¶ 20(b) does not apply. Applicant received financial counseling required in accordance with bankruptcy procedure. There are not clear indications the problems are being resolved. The first part of AG ¶ 20(c) applies, the second part does not. Applicant failed to provide evidence that he initiated good-faith efforts to repay overdue creditors or otherwise resolve debts. There is no evidence Applicant disputed any of the alleged debts. AG ¶¶ 20(d) and 20(e) do not 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 34 years old. He has worked for a federal contractor since 2012. He has eight student loans that are delinquent or past due, and three delinquent debts that are unpaid. He did not provide evidence to show what action he is taking to resolve or pay his debts. He has failed to meet his burden of persuasion. The record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: **AGAINST APPLICANT**

Subparagraphs 1.a-1.l: 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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge