



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



In the matter of:

ISCR Case No. 15-05013

Applicant for Security Clearance

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel

For Applicant: Atoy H. Wilson, Esq.

March 1, 2017

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of the Case

On December 3, 2014, Applicant submitted a security clearance application (e-QIP). On March 5, 2016, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken 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 September 1, 2006.

Applicant answered the SOR on April 6, 2016 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on May 31, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 15, 2016 scheduling the hearing for July 18, 2016. The hearing was convened as scheduled. The Government offered Exhibits (GXs) 1 through 4, which were admitted without objection. Applicant offered Exhibits (AppXs) A through E, which were admitted

without objection. Applicant testified on his own behalf. The record was closed on September 19, 2016, after the receipt of AppX E. DOHA received the transcript of the hearing (TR) on July 26, 2016.

Findings of Fact

Applicant is 33 years old. (TR at page 19 lines 19~24, and GX 1 at page 5.) He has been employed with a Government contractor since July of 2014 in "Security." (GX 1 at page 10.) He currently does not hold a security clearance.

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 identified 11 debts, all but one of them are student loans, totaling approximately \$52,000. Applicant admits all but one of the allegations, 1.k., the non-student loan, explaining that he is unaware of this alleged past-due debt. (TR at page 65 line 24 to page 67 line 13.) The alleged debts were listed on credit reports dated December of 2014, January of 2016, and May of 2016. (GXs 2~4.)

Guideline F - Financial Considerations

1.a.~1.j. Applicant admits that he is indebted to three different creditors for past-due student loans totaling about \$52,000. He attributes this past-due indebtedness to periods of unemployment from 2009~2014. (TR at page 37 lines 1~14, and at page 44 line 23 to page 48 line 9.) Applicant mistakenly thought that he had begun to address his outstanding student loans through a debt consolidation program; but when interviewed regarding his application for a security clearance, he discovered that his consolidated payments only addressed the student loan alleged in subparagraph 1.j. (TR at page 32 line 19 to page 33 line 1, at page 65 lines 20~23, and AppX C.)

Prior to his hearing, Applicant initiated a debt consolidation program to address his remaining student loans. (TR at page 63 line 13 to page 65 line 23, at page 67 line 24 to page 69 line, at page 81 lines 3~18, and AppXs A and B.) He has now submitted a post-hearing exhibit showing that his debt consolidation has been successful, and that he now owes \$43,026.02 at an interest rate of 5.375%. (AppX E at pages 4~6.) I find that Applicant has initiated a good-faith effort to address his outstanding student loans.

1k. After his hearing, Applicant has determined that the alleged past-due debt to Creditor K, in the amount of about \$365, is his debt. (TR at page 65 line 24 to page 67 line 13, and AppX E at page 3.) This debt has been "Settled in Full," as evidenced by correspondence from the successor creditor to Creditor K. (AppX E at page 3.)

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 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 AG ¶ 2(a) describing 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 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, 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 clearance 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 as to 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 EO 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:

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 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 accumulated a significant amount of delinquent student loans. His actions demonstrated both a history of not addressing his debt and an inability to do so. The evidence is sufficient to raise the above disqualifying conditions.

Three 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 . . .), and the individual acted reasonably under the circumstances; and
- d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

The evidence shows that Applicant thought he was addressing his admitted student loans, but was mistaken. He has now established a consolidated loan payment plan for his student loans, and has settled the remaining small debt of allegation 1.k. His behavior happened so long ago, and occurred under such circumstances, that it is unlikely to recur and does not cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶¶ 20(a), 20(b), and 20(d) provide 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. Applicant has the support of those who know him in the work place. (AppX E at pages 1 and 2.) Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated Financial Considerations security concerns under the whole-person concept.

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: FOR APPLICANT

Subparagraphs 1.a.~1.k.: 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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Richard A. Cefola
Administrative Judge