



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



In the matter of:)
)
) ISCR Case No. 15-05505
)
Applicant for Security Clearance)

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

06/16/2017

Decision

KILMARTIN, Robert J., Administrative Judge:

Applicant did not mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for access to classified information is denied.

Statement of the Case

On March 10, 2016, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. Applicant timely answered the SOR and elected to have his case decided on the written record.

Department Counsel submitted the Government's file of relevant material (FORM) on July 7, 2016. Applicant received the FORM on July 14, 2016, and had 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the Government's evidence, and he provided no response to the FORM. The Government's evidence, identified as Items 1 through 4, is admitted into evidence without objection. The case was assigned to me on June 13, 2017.

Findings of Fact¹

Applicant is 42 years old. He graduated from high school in 1993. Applicant has been employed as a security guard by a federal contractor since April 2011. He reported no military service and he had no previous security clearance. He has been married since March 2014. His wife is unable to work due to medical issues. They have one child, age 9, and two step-children, 20 and 23. Applicant reported periods of unemployment including May 2010 to April 2011.

Applicant reported delinquent debts in section 26 of his Security Clearance Application (SCA),² including unpaid rent from being evicted from his apartment, an automobile repossession and a cell phone debt. He attributed these delinquent debts to his loss of employment. Applicant estimated that the total amount of his delinquent debts was \$8,500 and his financial issues began around 2009. He had taken no actions to resolve these financial issues at the time when he filled out his SCA.

In his Answer to the SOR, Applicant admitted all six of these delinquent debts alleged in the SOR totaling \$12,610. He is the sole source of income for a family of five including his disabled wife, and two unemployed, adult-step children. In May 2010 Applicant lost his job as a corrections officer at a county jail. He had problems with job-related anxiety and decided to resign. Consequently, his wages dropped from \$17.60 an hour down to \$9.90 an hour when he took a job at Walmart. That is when Applicant fell behind on his rent and he had a vehicle repossessed. The landlord obtained judgments against Applicant for unpaid rent. These are reflected at SOR ¶¶ 1.a (a judgment for \$2,393) and 1.b (a judgment for \$1,165).

SOR ¶¶ 1.d and 1.e are collection accounts for back rent owed, and SOR ¶ 1.f is a collections account for a telecommunications company. Although, Applicant disclosed this latter-delinquent debt in his SCA almost three years ago, and it is only for \$146, he has yet to produce any evidence that it has been resolved. In his clearance interview in March 2015, Applicant stated that he was “currently researching credit counseling services to help him pay off his debts.”³ Yet, he has provided no documents or evidence to support this effort or show progress in resolving any of the debts alleged in the SOR.

Policies

This action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2,

¹ Unless stated otherwise, the source of the information in this section is Applicant’s December 9, 2014 Security Clearance Application (SCA). (Item 2)

² Item 2.

³ Item 3, p. 5.

1992), as amended (Directive); and the adjudicative guidelines promulgated in Security Executive Agent Directive 4 (SEAD 4), effective within the DOD on June 8, 2017.⁴

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, 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(a), the adjudicative process is an examination of a sufficient period and a careful weighing of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is 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. 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.

⁴ Although I have decided this case under the adjudicative guidelines (AG) effective June 8, 2017, I also considered the case under the former AG effective on September 1, 2006, and my decision would be the same under either AG.

Section 7 of EO 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 financial considerations is set out in AG ¶18:

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 abuse, 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

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.

AG ¶ 19 provides conditions that could raise security concerns. The following apply here:

- (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’s delinquent debts alleged in the SOR are confirmed by his credit reports, answer to the SOR, and his clearance interview of March 2015. The Government produced substantial evidence to support the disqualifying conditions in AG ¶¶ 19(a), 19(b) and 19(c), thereby shifting the burden to Applicant to produce

evidence to rebut, explain, extenuate, or mitigate the facts.⁵ Applicant has not met that burden. None of the delinquent debts have been addressed.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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 . . . , and the individual acted responsibly under the circumstances;
- (c) the individual has received, or is receiving financial counseling for the problem from a legitimate and credible source, such as non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to 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 endured periods of unemployment or underemployment. Arguably, these conditions were beyond his control. He has produced no documentation, either with his Answer to the SOR, or in response to the FORM. He has not demonstrated that he acted responsibly under the circumstances. Applicant has the burden to provide sufficient evidence to show that his financial problems are under control, and that his debts were incurred under circumstances making them unlikely to recur. The mitigating conditions enumerated above 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(d):

⁵ Directive ¶ E3.1.15. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep 22, 2005) (An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government).

(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(d) were addressed under those guidelines. Most importantly, Applicant has not met his burden of production.

Applicant's finances remain a security concern. There is insufficient evidence to conclude that Applicant's financial problems are under control. He has not met his burden of persuasion. The record evidence leaves me with serious questions and doubts as to Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated 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 section E3.1.25 of Enclosure 3 of the Directive, are:

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

Subparagraphs 1.a to 1.f: Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Robert J. Kilmartin
Administrative Judge