



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



In the matter of:)
)
) ISCR Case No. 15-06016
)
)
Applicant for Security Clearance)

Appearances

For Government: Mary M. Foreman, Esq., Department Counsel
For Applicant: *Pro se*

01/13/2017

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On April 7, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) 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 (AG) effective within the DOD on September 1, 2006.

Applicant answered the SOR on May 3, 2016, and requested a hearing before an administrative judge. The case was assigned to me on October 25, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 26, 2016. I convened the hearing as scheduled on December 7, 2016. The Government

offered exhibits (GE) 1 through 4, which were admitted into evidence without objection. Department Counsel provided Hearing Exhibit (HE) I, which is a demonstrative exhibit. Applicant testified and did not offer any documents. I held the record open until December 27, 2016, to permit Applicant an opportunity to provide additional documents, which he did. He provided one document that is marked AE A, and I admitted it without objection.¹ DOHA received the hearing transcript (Tr.) on December 15, 2016.

Procedural Issues

Department Counsel moved to amend SOR ¶ 1.p to reflect the evidence by changing the amount alleged to \$4,581. There was no objection and the motion was granted.

Findings of Fact

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

Applicant is 30 years old. He graduated from high school and attended college for two and a half years, but did not earn a degree. He was a full-time student from 2006 to 2008. He then took off a semester and attended a different college part time from 2009 into 2010, while also working. He had difficulty working and going to school at the same time. He worked from 2011 to 2013. He began working for his current employer in August 2013. He is not married and has no children.²

The debts in SOR ¶¶ 1.a (\$6,044), 1.b (\$3,602), 1.n (\$24,878), 1.o (\$9,276) and 1.p (\$4,581) are student loans. Applicant testified that in early 2014 he was making monthly payments on student loans. Then in the summer of 2014 he contacted the creditors for the loans in SOR ¶¶ 1.n and 1.p and made two lump sum payments totaling \$13,000. Credit reports reflect these loans were settled. Applicant testified he made monthly payments on the loan in SOR ¶ 1.o and in October 2008 he settled the account for \$5,500. He provided proof the account is resolved. He was aware he owed other student loans and attempted to make arrangements to pay them in May 2015, but the plan was never implemented. He intends to arrange a payment plan and pay these loans.³

From 2011 through 2013, Applicant had health problems and incurred medical debts. He was uninsured and unable to pay them. They are reflected in SOR ¶¶ 1.d through 1.g, 1.i through 1.m, and 1.q. They have not been paid or resolved.⁴

¹ HE II is Department Counsel's email response that she did not object to the AE A.

² Tr. 15-24.

³ Tr. 20, 27-45, 53-58; GE 2 at page 8, GE 4; AE A.

⁴ Tr. 19, 46-47, 58.

Applicant defaulted on the debt in SOR ¶ 1.c (\$1,444) in approximately 2009. It is not paid. The debt in SOR ¶ 1.h (\$285) is an overdraft on an account. Applicant was unaware of it until he received the SOR. He has not resolved it. Applicant disputed the charge from his utility company as an inaccurate amount owed. The utility account in SOR ¶ 1.k (\$200) is reflected in Applicant's credit report as in collection. It is unresolved. The debt in SOR ¶ 1.r (\$424) is a cell phone account. Applicant believed it was paid, but did not provide documented proof.⁵

Applicant received some financial counseling in 2014 and was advised to save some money so he is in a better financial situation to pay his bills. He earns about \$56,000 annually after taxes and now has medical benefits. He has some money in savings so he can take a licensing test that if he passes will increase his income and ability to repay his debts.⁶

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, 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 not drawn 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 to obtain a favorable security decision."

⁵ Tr. 42, 45-53, 58.GE 4.

⁶ Tr. 61-72.

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 of potential, rather than actual, risk of compromise of classified information.

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 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.⁷

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and the following two are potentially applicable:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

⁷ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant has unresolved financial delinquencies. The above disqualifying conditions apply.

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 (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 numerous debts including student loans that are unpaid or unresolved. He began incurring the loans and defaulted on them after he left college in 2010. He has numerous medical and other debts that are not paid. There is insufficient evidence to apply AG ¶ 20(a) as Applicant's debts are recent, multiple, and not resolved. His financial difficulties did not occur under circumstances making them unlikely to recur.

Applicant's medical debts were beyond his control when they were incurred because he did not have medical insurance. The other debts, especially his student loans, were within his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. He did not provide evidence that once he was gainfully employed he contacted the creditors to resolve his medical debts. He did make lump-sum payments to resolve three student loans. AG ¶ 20(b) partially applies.

Applicant participated in some financial counseling in 2014. He paid three of his student loans before he received the SOR. AG ¶ 20(d) applies to SOR ¶¶ 1.n, 1.o, and 1.p. Applicant still has many delinquent debts that he has not paid. There is insufficient

evidence to conclude that Applicant's financial problems are under control. The first part of AG ¶ 20(c) applies. Although Applicant disputed some debts, he did not provide documents to substantiate his dispute or evidence that he is resolving the issues. AG ¶ 20(e) does 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 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 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 a 30 years old. He paid three of his student loans before he received the SOR. I found his testimony credible that he intended to pay the remaining loans. He has numerous other delinquent debts that he has not yet resolved. At this juncture, Applicant does not have a reliable track record of responsibly addressing his financial obligations. Applicant's conduct raises questions about his judgment, reliability, and trustworthiness. 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 failed to mitigate financial considerations guideline 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.m:	Against Applicant
Subparagraphs 1.n-1.p:	For Applicant
Subparagraphs 1.q-1.r:	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 a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge