



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



In the matter of:)
)
) ISCR Case No. 15-06328
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

05/15/2017

Decision

MURPHY, Braden M., Administrative Judge:

Applicant has significant unresolved delinquent debts. He failed to 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 15, 2016, 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 (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, 1992), as amended (Directive); and the adjudicative guidelines effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on May 26, 2016, and elected to have his case decided on the written record in lieu of a hearing. On June 15, 2016, Department Counsel

submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 5. Applicant received the FORM on June 20, 2016. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not respond to the FORM, or object to the Government's evidence. The SOR and the answer (Items 1 and 2) are the pleadings in the case. Items 3 through 6 are admitted into evidence without objection. The case was assigned to me on April 27, 2017.

Findings of Fact

Applicant admitted all the allegations but for SOR ¶ 1.f, with explanations. I have incorporated his admissions and statements into the findings of fact. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is 27 years old. He has never married and has no children. From July 2007 until January 2011, he attended a military academy. He was removed from the academy following an honor code investigation. He was then unemployed while awaiting transfer to the regular military. He was a military trainee from May 2011 until October 2011, when he medically discharged.¹

Applicant was then unemployed until August 2012. From then until December 2013, he held a variety of jobs in retail. In December 2013, he was terminated from a position at a drug store after several unexcused absences. This occurred after he was injured in an auto accident and missed work as a result. He did not have medical insurance at the time.²

Applicant returned to college full-time in August 2013. He graduated in May 2015. He completed a security clearance application (SCA) in April 2015, in connection with a position in the defense industry. At the time of his background interview, in May 2015, he had not yet started the position, and had been unemployed since December 2013. There is no indication in his answer that he has begun working again.³

While at the military academy, Applicant took out several credit cards which are now delinquent (SOR ¶¶ 1.b for \$1,713, 1.c for \$692 and 1.d for \$555), as well as a "career kickoff loan" (SOR ¶ 1.a for \$33,649), with the expectation that he would pay the debts back after he had graduated and begun his military career. After he was removed from the service academy, however, he was told to begin making payments on the loan. He made three payments, but was not able to continue them after he was discharged

¹ Item 2; Item 3 at 2.

² Item 3 at 3.

³ Item 2; Item 3 at 2-3.

from the military.⁴ The loan account was charged off in March 2012.⁵ He disclosed these debts on his SCA.

Applicant has contacted the creditors for his credit card debts, and intends to pay them after he pays off his medical debts. He received a letter from the creditor for SOR debt ¶ 1.a indicating that the debt has been closed or charged off. He has taken no action on this debt and does not indicate any intention to do so in the future.

SOR debts ¶¶ 1.g (\$83) and 1.h (\$26) have been paid. Applicant intends to pay SOR debt ¶ 1.e (\$120). SOR debt ¶ 1.f (\$120) is a duplicate of SOR debt ¶ 1.e. All of the debts in the SOR are found on Applicant's April 2015 credit report.⁶

Applicant submitted no documents with his answer, and he did not respond to the FORM. He provided no information about his current monthly income or expenses, his overall financial situation, his ability to pay his debts, or any action he has taken to do so. There is no indication he has been through credit counseling.

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

⁴ Item 2 at 32-35; Item 3 at 4-6.

⁵ Item 2; Item 5.

⁶ Item 5.

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.

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 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.⁷

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

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 took out a loan and several credit cards during his time at the military academy. These accounts and others later became delinquent. The record is sufficient to establish 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:

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

Applicant's inability to pay his credit card debts and his "career kickoff loan" is a direct consequence of his removal from the academy following an honor code investigation. That is not a circumstance beyond Applicant's control. He was medically discharged from the military a few months later. He has not had stable employment since then. This impacted his ability to pay these debts, and the others that accrued during this period. What happened to Applicant since he left the academy was a series of circumstances beyond his control, even though his removal from the academy was not. The first prong of AG ¶ 20(b), therefore, has some application. For the full application of AG ¶ 20(b), however, Applicant must provide evidence that he acted responsibly under the circumstances.

The debts at SOR ¶¶ 1.e, 1.g and 1.h occurred during his recent period of employment instability. Applicant is also taking steps to resolve them. AG ¶ 20(b) applies

to these debts. Applicant incurred the credit card debts and the loan debt (SOR ¶¶ 1.a, 1.b, 1.c and 1.d) when he was at the military academy, and they became delinquent after he was removed. He has not shown sufficient evidence that he has acted responsibly in resolving them. AG ¶ 20(b) does not apply to these debts.

Applicant's delinquencies are ongoing. He provided insufficient evidence to conclude that his financial problems are unlikely to recur. His delinquent debts and overall financial situation continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

There is no indication that Applicant has participated in financial counseling. Without additional evidence, there are not clear indications that Applicant's financial problems are being resolved or are under control. AG ¶ 20(c) does not apply.

Applicant has paid or resolved two of his smaller debts. One of them remains and he intends to pay it. AG ¶ 20(d) applies to SOR debts ¶¶ 1.e, 1.g and 1.h. The credit card debts and the charged-off loan, however, remain unresolved. As to SOR debt ¶ 1.a, a delinquent debt is not considered mitigated because the creditor has charged off the account. This is because the creditor's decision to charge off the debt for accounting purposes does not affect the debtor's obligations to the creditor.⁸ Applicant has not provided sufficient evidence to establish that he has implemented a reasonable plan to resolve his remaining debts. AG ¶ 20(d) does not apply to them.

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.

⁸ ISCR Case No. 09-01175 at 2 and fn. 1. (App. Bd. May 11, 2010).

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. The record evidence leaves me with 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.d:	Against Applicant
Subparagraphs 1.e-1.h:	For 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.

Braden M. Murphy
Administrative Judge