



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



In the matter of:)
)
) ISCR Case No. 15-06684
)
Applicant for Security Clearance)

Appearances

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

01/23/2017

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 June 13, 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 July 5, 2016, and requested a hearing before an administrative judge. The case was assigned to me on September 8, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 17, 2016. I convened the hearing as scheduled on December 6, 2016. The Government

offered exhibits (GE) 1 through 4, which were admitted into evidence without objection. Applicant testified and did not offer any exhibits. I held the record open until December 20, 2016, to permit Applicant an opportunity to provide exhibits. He did not provide any exhibits and the record closed. DOHA received the hearing transcript (Tr.) on December 14, 2016.

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 29 years old. He graduated from high school and completed some college courses, but did not earn a degree. He served in the military from 2005 to 2009, and was honorably discharged. He married in 2005. He adopted his wife's two children, who are now ages 13 and 12. They have two children of their own, ages 10 and 4. Applicant has been employed with a federal contractor since 2010. He experienced about one month of unemployment after he was discharged from the military, but has otherwise been steadily employed. Applicant's wife is also employed.¹

Applicant stated when he was discharged from the service he had some debt and paid the majority of it. He purchased a home in February 2010. He and his grandmother jointly purchased a vehicle in 2011. It experienced mechanical problems in 2013. He could not afford to have it repaired, and it was repossessed (SOR ¶ 1.h \$14,418). Applicant testified that he made a payment arrangement with the collection company that holds the debt to pay \$50 a month, and he has been making payments for at least a year. He stated that he gives his grandmother the money and she makes the payments. He does not know the current balance of the debt. He did not provide documentary evidence to show his agreement or payments.²

The debts in SOR ¶¶ 1.a (\$200), 1.b (\$964), 1.c (\$186), and 1.j (\$79) are medical debts. Applicant believed these debts are from one to four years old and were charges for both him and his family that were not covered by insurance. They are unpaid.³

The debts in SOR ¶¶ 1.d (\$4,585) and 1.e (\$1,558) are credit card debts. Applicant testified he had these debts when he was discharged from the military. He thought his wife paid them. He was unaware of them until he was interviewed by a government investigator in February 2015. He did not provide proof that the debts are paid or resolved. His April 2016 credit shows that the account in SOR ¶ 1.e is in dispute. No other information was provided.⁴

¹ Tr. 15-19.

² Tr. 20-22, 35.

³ Tr. 22-28, 33-34, 39.

⁴ Tr. 28-31, 33; GE 4.

The debts in SOR ¶¶ 1.f (\$1,218) and 1.g (\$1,025) are for appliances that were purchased in 2012. Applicant stopped making payments on the accounts in 2013 when he had car problems. He testified he paid the debts two or three months ago using a loan from his pension plan. He stated that he would provide supporting documents to show the debts are paid. He did not.⁵

Applicant stated he does not recognize the debt in SOR ¶ 1.i (\$1,925). He indicated he attempted to contact the creditor, but was unsuccessful. He has not taken any other action to dispute or resolve the debt.⁶

In February 2015, Applicant was interviewed by a government investigator and was made aware that his delinquent debts were a security concern. At the time, he indicated he would contact creditors and establish payment plans or settle the debts after confirming their validity. He told the investigator that he was aware of the debts alleged in the SOR except for a couple of the medical debts. He testified that he tried to resolve the debts in ¶¶ 1.f, 1.g, 1.h, and 1.i, but did not provide evidence to support his statement. He stated it occurred to him after his interview that he should obtain a credit report, but he was too busy with his children. He stated he had a difficult financial time in 2012 and 2013 due to car problems; his wife's unemployment; and her health issues before and after the birth of their youngest child.⁷

Credit reports from December 2014 and April 2016 confirm the debts alleged. Applicant stated he will resolve his financial problems. He does not presently have a budget, but plans to make one. He has approximately \$400-\$550 in savings and lives paycheck to paycheck. He has not had financial counseling, but plans to get it in the future.⁸

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 ¶

⁵ Tr. 23-27, 35.

⁶ Tr. 31-33; GE 3.

⁷ Tr. 35, 40; GE 2.

⁸ Tr. 33, 36, 40-41; GE 3, 4.

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.”

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.⁹

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.

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.

⁹ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant has numerous debts that are unpaid or unresolved. Some of the debts are from 2010. 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 attributed his debts to financial difficulties from 2012 and 2013 when he had car problems and his wife's unemployment and medical issues. These conditions were beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant has been aware of the security concerns since February 2015 when he was interviewed about his delinquent debts. He failed to provide sufficient evidence to show he has acted responsibly toward his delinquent debts. He has not provided proof that he paid, arranged payments plans, or resolved the debts alleged. AG ¶ 20(b) partially applies.

Applicant has not participated in financial counseling. There is insufficient proof to conclude his financial problems are being resolved or are under control. AG ¶ 20(c) does not apply. There is insufficient proof to conclude Applicant has made good-faith payments toward the resolution of any of the alleged debts. AG ¶ 20(d) does not apply. Applicant believed he paid the debts in SOR ¶¶ 1.d and 1.e. His April 2016 credit report shows the debt in SOR ¶ 1.e is being disputed. I find this is sufficient evidence to apply AG ¶ 20(e) to the debt in SOR ¶ 1.e. No other information was provided regarding the remaining debts.

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 29 years old. Except for a month of unemployment in 2009, he has been employed steadily since 2005. His wife is employed. He acknowledges his delinquent debts. He has not provided sufficient evidence to show he is paying or resolving the debts alleged. Applicant has not established 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 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.d: | Against Applicant |
| Subparagraph 1.e: | For Applicant |
| Subparagraphs 1.f-1.i: | 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