



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



In the matter of:)
)
) ISCR Case No. 15-06735
)
Applicant for Security Clearance)

Appearances

For Government: Bryan J. Olmos, Esq., Department Counsel
For Applicant: *Pro se*

04/13/2017

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On June 6, 2016, the Department of Defense (DOD) 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on June 28, 2016, and elected to have the case decided on the written record in lieu of a hearing. On August 31, 2016, he confirmed that he wanted to change his request to a hearing before an administrative judge. The case was assigned to me on December 1, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 20, 2016, scheduling the

hearing for January 25, 2017. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant testified, called a witness, and submitted Applicant's Exhibits (AE) A through L, which were admitted without objection. DOHA received the hearing transcript (Tr.) on February 3, 2017.

Findings of Fact

Applicant is a 42-year-old employee of a defense contractor. He has worked for his current employer or a predecessor contractor at the same location since 1998. He seeks to retain a security clearance. He has two associate's degrees and a bachelor's degree, which was awarded in 1998. He is married with a stepchild.¹

The SOR alleges eight student loans in collection totaling \$57,628. Applicant admitted owing all the loans. He has made inconsistent payments on the loans throughout the years, and because of interest, the amount owed is more than double what he borrowed. It is also less than what was owed in April 2015, when the balance totaled \$60,829.²

Applicant's pay was garnished \$222 every two weeks from September 2015 through January 2017 to pay his student loans. In March 2016, the IRS withheld \$2,338 from his 2015 income tax refund and applied it to his student loans. In September 2016, Applicant entered into a repayment agreement under the loan rehabilitation program in which he agreed to pay \$107 per month for nine months, which was in addition to the amount that was being garnished from his pay. The garnishment ended in January 2017 after he made five payments under the rehabilitation program. In January 2017, the balance on the loans was \$50,944.³

Applicant accepted responsibility for allowing his student loans to languish. He reported his defaulted student loans on his security clearance application in September 2014. He credibly testified that he intends to increase his payments to \$600 per month and continue to pay his student loans. He stated that he has matured and learned a valuable lesson. He is recently married, and they both want financial stability. He knows that the loans have to be paid, and that failure to do so could adversely affect his security clearance and a job that he loves.⁴

Applicant's manager testified to Applicant's excellent job performance, reliability, judgment, and trustworthiness. He also testified that Applicant has "matured and grown over the years."⁵

¹ Tr. at 23, 35, 39; GE 1.

² Tr. at 16-19; Applicant's response to SOR; GE 1-5; AE C.

³ Tr. at 22; Applicant's response to SOR; AE A-I, K, L.

⁴ Tr. at 16-38, 51-53; Applicant's response to SOR.

⁵ Tr. at 40-49.

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 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 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."

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 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 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. The following are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant neglected his student loans, and they went into default. The above disqualifying conditions are applicable.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following 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;
- (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.

The balance on Applicant's student loans totaled \$60,829 in April 2015. His pay was garnished \$222 every two weeks from September 2015 through January 2017 to pay the loans. In March 2016, the IRS withheld \$2,338 from his 2015 income tax refund and applied it to his student loans. He made five \$107 payments between September 2016 and January 2017 under the loan rehabilitation program. In January 2017, the balance on the loans was \$50,944. He credibly testified that he intended to increase his payments to \$600 per month and continue to pay his student loans.

Applicant receives minimal credit in mitigation under AG ¶¶ 20(a) and 20(d) because most of the payments were involuntary. Nonetheless, he has reduced the balance on his student loans by almost \$10,000. He has a viable plan to pay his student loans. There are clear indications that the student loans are being resolved and are under control. AG ¶ 20(c) is applicable.

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. Applicant acknowledges that he neglected his financial responsibilities when he failed to pay his student loans. He owes about \$10,000 less in student loans than he did in 2015. Applicant is incentivized to pay his student loans. More importantly, I am convinced that he realizes it is the right thing to do.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the 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:	For Applicant
---------------------------	---------------

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

Edward W. Loughran
Administrative Judge