



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



In the matter of:)
)
) ISCR Case No. 15-07772
)
Applicant for Security Clearance)

Appearances

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

09/22/2017

Decision

KILMARTIN, Robert J., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application (SCA) on March 12, 2015. On June 9, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD CAF acted 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 (AGs) implemented by DOD on September 1, 2006.

On December 10, 2016, the Director of National Intelligence signed Security Executive Agent Directive 4 (SEAD 4), implementing new AGs effective within the DOD on June 8, 2017. Accordingly, I have applied the June 8, 2017 AGs in this decision.¹

¹ 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 version.

Applicant answered the SOR on June 24, 2017, admitting all of the SOR allegations and he elected to have his case decided on the written record. He also attached a one-page statement.

Department Counsel submitted the Government's file of relevant material (FORM) on July 27, 2016. Applicant received the FORM on August 30, 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 6, is admitted into evidence without objection. The case was assigned to me on September 15, 2017.

Findings of Fact²

Applicant is 34 years old. He graduated from high school in 2001, and enlisted in the U.S. Army. However, he could not pass the entry physical and received a discharge in October 2001 because he couldn't start basic training. Applicant has been employed as an antenna technician for a federal contractor since September 2008. He has never married and he reports no children.

He disclosed some of his delinquent debts in section 26 of his March 2015 SCA, and explained that he only became aware of his credit reports and debts when he started the SCA process. He had not made payments on some of his delinquent debts since 2009. He also claimed to have contacted a consumer-credit-counseling firm to consolidate his delinquent debts and start a payment plan of \$711 per month, for 30 months. In his SCA, Applicant stated his intent to pay these debts in full. However, he has produced no evidence of the plan or any track record of actual payments in accordance with the plan.

The SOR alleged seven delinquent debts totaling approximately \$20,000 for general credit card and consumer debt. Applicant admitted to these delinquent debts in his Answer to the SOR. In a one-page handwritten statement attached to his Answer, Applicant stated that some of the smaller debts resulted from his forgetting to pay due to being gone so often for work. "These can be paid in these coming weeks. The larger ones are from several years ago. Those can be paid after hopefully receiving my clearance" In his clearance interview, Applicant explained that most of these alleged delinquent debts resulted from revolving-credit-card accounts that he opened before 2009. He could not make payments on these numerous credit cards due to a lack of income. SOR ¶¶ 1.a, 1.b, 1.d, 1.f and 1.g all relate to credit card debts that were placed for collection. SOR ¶ 1.c was for a personal loan that Applicant took out, and it was charged-off in the amount of \$330.

² Unless stated otherwise, the source of the information in this section is Applicant's March 12, 2015 security clearance application (SCA) and the summary of his security clearance interview on August 10, 2015.

When confronted by the clearance interviewer, in each instance, Applicant stated that he had ignored postal correspondence from the creditors, and he intended to contact the collection agencies to pay these off by the end of 2015. However, he has produced no documents to demonstrate that he followed through. Applicant also stated in his clearance interview that he used the credit-counseling agency only for payments of \$730 in May 2015, and \$740 in June 2015.³ Then, he stopped making payments when he realized that he would be better to pay the creditors directly himself. However, Applicant submitted no documentary evidence to demonstrate that he actually made payments directly to the creditors.

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, 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, Appendix A, ¶ 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, Appendix A, ¶ 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

³ Item 4, p. 6.

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.”

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

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, clearance interview and answer to the SOR. 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.⁴ Applicant has not met that burden.

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

Applicant has been employed continuously since 2008. He has provided no explanation for his inability or unwillingness to pay his delinquent debts, other than a lack of income. He has not established any conditions that were beyond his control. Moreover, he has not produced relevant and responsive documentation, demonstrating that he acted responsibly under the circumstances. Applicant has not met his 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. He claims to have made previous payments to the credit-counseling firm in May and June 2015, pursuant to a plan, but produced no substantiating documents. The one charged-off debt has not been resolved. The seven delinquent debts have not been resolved. 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, Appendix A, ¶ 2(d):

⁴ 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, Appendix A, ¶ 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, Appendix A, ¶ 2(d) were addressed under that guideline. Most importantly, Applicant has not addressed the specific allegations in the SOR and taken affirmative measures to resolve them. He 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. The record evidence leaves me with 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 through 1.g: 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