



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



In the matter of:)
)
) ISCR Case No. 15-08592
)
)
Applicant for Security Clearance)

Appearances

For Government: Douglas Velvel, Esq., Department Counsel
For Applicant: *Pro se*

11/16/2016

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 March 23, 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 April 24, 2016, and requested a hearing before an administrative judge. The case was assigned to me on August 4, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 16, 2016. I convened the hearing as scheduled on October 19, 2016. The Government

offered exhibits (GE) 1 and 2, which were admitted into evidence without objection. Applicant testified and offered Applicant's Exhibits (AE) A through E, which were admitted into evidence without objection. I held the record open until October 27, 2016, to permit Applicant an opportunity to provide additional documents, which he did. They are marked as AE F through H, and admitted without objection. DOHA received the hearing transcript (Tr.) on October 27, 2016.

Findings of Fact

Applicant admitted 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 38 years old. He is a high school graduate and attended college full time in 2002 for one year. He resumed his college studies in 2009 to 2011. He has not earned a degree. He married in May 2016 and has three stepsons, ages 16, 14 and 11. His wife receives child support. She is employed. Applicant served in the military from 1997 to August 2001, when he was honorably discharged. Applicant worked from July 2006 to April 2014, but voluntarily left this employment because he wanted a healthier environment. He was unemployed from April 2014 to August 2015. He indicated he worked helping his brother during this time. He has been employed by a federal contractor since August 2015.¹

Applicant attributed his financial difficulties to a rough couple of years he experienced. He had surgery on his hand, but he continued to be paid by his employer. He suffered from depression and was on medication. He moved to another state in anticipation of a job, but it was not what he thought it would be. He returned home to be with his brother who had post-traumatic stress disorder. His brother provided him financial support until September 2015. A credit report from August 2015 supports the debts alleged.²

Applicant purchased a vehicle in 2010 (SOR ¶ 1.a - \$8,818). He made payments for four years. When he left his employment in 2014, he could not afford to make the payments. He testified that he received a loan extension, but he could not pay what was owed. He sold the car in 2014 for \$500 and kept the money. He did not pay the creditor.³

The debt in SOR ¶ 1.b (\$656) is for a credit card placed in collection. Applicant admitted he defaulted on the card in April 2014. He used the credit card to pay other debts. He has not contacted the creditor or made any payments on the card.⁴

¹ Tr. 15-20.

² Tr. 53-60; GE 2.

³ Tr. 32-39.

⁴ Tr. 39-41.

The debt in SOR ¶ 1.c (\$27,345) is for a student loan Applicant obtained in 2002. He testified he had no idea how much the loan was for. He believed he had scholarships, federal funds, and private loans that were funding his education. He attended college for a year and he got sick. He had a difficult time adjusting to living by himself. He moved back home. The loans were in forbearance for a period, and he made sporadic payments. He testified that in about 2006, he began working, and he made payments of \$200 a month for one year. He stopped making the payments because he thought he originally owed \$18,000 and it had increased to \$22,000, even though he was making payments. He discussed the loan with the creditor, but disagreed with the amount owed. He testified he could not afford to pay the loan, so he stopped. He has not made any effort to repay the loan from 2007 to 2016.⁵

The debt in SOR ¶ 1.d (\$981) is a cell phone debt. He stopped paying the bill in 2014 when he left his job. The services were discontinued. He did not attempt to pay the delinquent bill.⁶

In April 2016, Applicant contacted an attorney. His attorney recommended he file bankruptcy. Applicant has additional delinquent debts that are not included in the SOR, including a repossessed vehicle for which he owes approximately \$7,000. He estimated he had about \$30,000 of debts and his wife has about \$60,000, which includes medical and consumer debts.⁷ Applicant filed Chapter 7 bankruptcy in July 2016. His bankruptcy attorney recently contacted the creditor for the student loan, so the information could be included with his bankruptcy. Applicant believes his student loan is with a private creditor and will be included with his bankruptcy. He completed the mandatory financial counseling requirements in September 2016. He has a budget. His debts have not yet been discharged. It is unknown what debts will be discharged and when.⁸

Applicant acknowledged he made poor financial decisions in the past. He is responsible for his actions and wants to do the right thing. He understands he may have been reckless and wants to fix his errors so he can provide a better life for his family. He testified that if the attorney had not recommended he file bankruptcy, he would have made payments on his debts to get his finances in order.⁹

⁵ Tr. 20-31.

⁶ Tr. 41-42.

⁷ Tr. 49-50. I have not considered for disqualifying purposes the additional delinquent debts that were not alleged in SOR. I will consider them when considering mitigation and the whole person.

⁸ Tr. 29-31, 43-48, 68-70; AE A., D, E, G, H.

⁹ Tr. 43, 55, 73; AE F.

Applicant provided two character letters. In them he is described as dependable, reliable, and hard-working. He has a good work ethic and a solid attendance record. He also works well with customers, peers, and supervisors.¹⁰

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."

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.

¹⁰ AE B, C.

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.¹¹

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 financial delinquencies that are unpaid or resolved. 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

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

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 disagreed with the balance he owed on a student loan. He never resolved the dispute with the creditor. He stopped making payments and abandoned the debt in 2007. He has not contacted the creditor, but stated his attorney did. Applicant experienced financial problems after he voluntarily left his job in 2014. He has not made payments towards his debts. After he received the SOR, he contacted an attorney and filed Chapter 7 bankruptcy. It is unknown what debts are included in the bankruptcy. 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.

In April 2014, Applicant left his job voluntarily because he wanted to be in a healthier environment. This was a decision within his control. He was unable to pay his debts. He did not provide evidence that once he began working again in August 2015 that he addressed his delinquent debts. He did not contact a bankruptcy attorney until after he received the SOR. AG ¶ 20(b) does not apply because the conditions were within his control and he did not act responsibly under the circumstances.

Applicant completed the financial counseling required to file bankruptcy. He stated he has a budget. There is evidence that he filed Chapter 7 bankruptcy, but the debts have not been discharged. Although bankruptcy is a legal means to resolve debts, it does not constitute a good-faith effort to repay one's creditors or show responsible conduct regarding one's finances. Only the first part of AG ¶ 20(c) applies. There are not clear indications that Applicant's financial problems are resolved or under control. AG ¶ 20(d) does not apply.

Applicant testified that he disputed the balance he owed on his student loan that he had made monthly payments on in 2006. He did not resolve the dispute with the creditor. He stopped paying the loan and has not had contact with the creditor since at least 2007. He indicated his bankruptcy attorney contacted the creditor. He believes this is a private student loan and will be included in his bankruptcy. No additional information is provided about this debt. 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 38-year-old veteran. He voluntarily left his job in 2014. When he began working again in August 2015, he did not address his delinquent debts. After receiving the SOR, he and his wife filed Chapter 7 bankruptcy. It is unknown what debts will be discharged. His debts are not resolved. Applicant does not have a reliable track record of acting responsibly toward 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
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Subparagraphs 1.a-1.d:	Against Applicant
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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