



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



In the matter of:)
)
) ISCR Case No. 12-11453
)
Applicant for Security Clearance)

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

10/25/2017

Decision

CREAN, Thomas M., Administrative Judge:

Applicant did not provide sufficient documentation to mitigate security concerns for financial considerations under Guideline F. Eligibility for access to classified information is denied.

Statement of the Case

On May 10, 2016, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for employment with a defense contractor. (Item 2) A security investigator from the Office of Personnel Management (OPM) interviewed Applicant on September 7, 2012. (Item 3, Personal Security Investigation (PSI))¹ After reviewing the results of the OPM investigation, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance.

¹ The dates for the e-QIP and PSI are correct. Applicant was interviewed in 2012 concerning his delinquent debts. His initial request for a security clearance was denied pending a more complete investigation. Applicant submitted an e-QIP in May 2016 and listed the same financial issues that were investigated by OPM in the 2012 investigation.

On September 30, 2016, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F. (Item 1) The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective in the DOD on September 1, 2006.

Applicant answered the SOR on November 3, 2016, admitting the 16 allegations of delinquent student loan debt under Guideline F. He elected to have the matter decided on the written record. (Item 1) Department Counsel submitted the Government's written case on November 30, 2016. (Item 5) Applicant received a complete file of relevant material (FORM) on December 6, 2016. He was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant did not respond to the FORM. I was assigned the case on October 1, 2017.

While this case was pending a decision, the Director of National Intelligence issued Security Executive Agent Directive 4, establishing National Security Adjudicative Guidelines for *Determining Eligibility for access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs) which he made applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The new AGs supersede the September 1, 2006 AGs and are effective "for all covered individuals" on or after June 8, 2017. Accordingly, I have evaluated Applicant's security clearance eligibility under the new AGs.

Procedural Issues

Applicant was advised in the FORM that the summary of the PSI (Item 3) was not authenticated and could not be considered over his objection. He was further advised that he could make any corrections, additions, or deletions to the summary to make it clear and accurate, and could object to the admission of the summary as not authenticated by a Government witness. He was additionally advised that if no objection was raised to the summary, the Administrative Judge could determine that he waived any objection to the admissibility of the PSI summary. Applicant did not respond to the FORM, so he did not raise any objection to consideration of the PSI. Since there is no objection by Applicant, I will consider information in the PSI in my decision.

Findings of Fact

After thoroughly reviewing the case file, I make the following findings of fact. Applicant is 35 years old. He graduated from high school in May 2000. Applicant received a bachelor's degree in December 2006. After receiving his bachelor's degree, he attended the same college for a master's degree. He did not remain in school to receive a master's degree. He worked for various companies in various capacities after leaving school in 2009 until starting work as a computer engineer for a defense

contractor in January 2015. He reported only one period of unemployment from August to November 2009. Applicant never married and has no children. He submitted a security clearance application in 2012. The application was denied pending a further background investigation. (Item 2, e-QIP, dated May 10, 2016; Item 3, PSI, dated September 12, 2012)

The SOR alleges and a credit report (Item 4, dated May 19, 2016) confirm 18 allegations of delinquent student loan debt. The total amount of delinquent debt is over \$300,000. On the e-QIP, Applicant estimated his private lender student loan debt was in excess of \$150,000. In the PSI, he estimated the total student loan debt to be in excess of \$300,000. He told the investigator that the required payments on student loans of this amount were in excess of \$1,700 monthly. He reported that his income was much less than the anticipated monthly payments. He was advised by a financial adviser to let the loans go to judgment so only 25% of his income would be garnished to pay the judgment. (Item 3, PSI at 3-5)

In his response to the SOR, Applicant stated he did not assess the potential job market and search for employment until after receiving his bachelor's degree in 2006. The result of his evaluation was that he would need a master's degree. He continued in school using student loans. In 2009, before receiving his master's degree, he no longer had the desire to continue his education, so he left school. He did not complete his master's degree even though he received student loans for the degree. He left school early to gain employment and start to repay his debts. He initially did not find the employment or income he anticipated to start to repay his student loans. He could not repay his student loans but he was able to repay some credit cards. On the advice of a financial adviser, Applicant chose to let his student loans go to judgment to lower the required payments on the student loans. He states that judgments and garnishment orders have been granted against him. However, he did not present any documents to show that his wages have been garnished or that he made any payments on his student loans. (Response to SOR, dated November 3, 2016)

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 must be considered 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(a), 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 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.

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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion for 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 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 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 and sensitive information)

Analysis

Financial Considerations

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. (AG ¶ 18) The financial security concern is broader than the possibility that an individual might knowingly compromise classified information to raise money. It encompasses concerns about an individual’s responsibility, trustworthiness, and good judgment. Security clearance adjudications are based on an evaluation of an individual’s reliability and trustworthiness. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect classified information.

Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in another aspect of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to meet his financial obligations. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is required to manage his or her finances in such a way as to meet financial obligations.

Adverse information in credit reports can normally meet the substantial evidence standard to establish financial delinquency. Credit reports reveal, and Applicant admits, that he incurred significant student loan debts which are reported as delinquent. The evidence is sufficient to raise the following Financial Considerations Disqualifying Conditions security concerns under AG ¶ 19:

- (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 received significant student loans without knowing if he could find the type of employment with the salary needed to repay those loans. The amount of student loan debt without the ability to repay the debt raises questions about Applicant's financial responsibility. His financial irresponsibility reveals that he may be unreliable, untrustworthy, unconcerned, and careless as to his financial obligations, and raises issues about Applicant's willingness and ability to meet his financial obligations. Once the Government has established the adverse financial issue, the Applicant has the responsibility to refute or mitigate the issue.

I considered the following Financial Consideration Mitigating Conditions under AG ¶ 20:

- (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 problems were largely beyond the person's control (e.g. loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem from a legitimate and credible sources, such as a non-profit credit counselling service, and there are clear indications that the problem is being resolved or is under control; and

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

The mitigating conditions do not apply. Applicant applied for and accepted significant student loans without knowing whether his future employment would enable him to reasonably and responsibly repay those loans. He even received student loans for his master's degree which he did not complete. His student loans are numerous, recent, and not incurred under circumstances making recurrence unlikely. He could again receive student loans to either complete his master's degree or pursue further course of study. In his response to the SOR, Applicant did not provide sufficient information to explain why he incurred delinquent debt and believed he could repay the loans. He was advised in the FORM that he needed to provide proof of payment or resolution of the debts. He has not documented his plan, if any, to resolve his financial problems and his efforts to pay and resolve his delinquent debts. He also did not provide information concerning financial counseling. Accordingly, he has not established a good-faith effort to pay his debts.

Applicant has not acted responsibly because he has not provided information on his plans to pay his delinquent student loans. There is no clear evidence that he understands the significance of his student loan debt and the need for a reasonable and responsible plan and steps to resolve his debt problems. His finances are not under control. Overall, he has not provided evidence or proof that he acted with reason and responsibility towards his finances. His lack of documented actions to resolve his financial problems are a strong indication that he may not protect and safeguard classified information. In sum, Applicant did not present sufficient information to mitigate financial security concerns.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for access to classified information 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(d):

(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 access to classified information must be an overall common-sense 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. In requesting an administrative determination, Applicant chose to rely on the written record. In so doing, he failed to supplement the record with relevant and material facts regarding his financial circumstances; to adequately articulate his positions; and to provide facts to mitigate the financial security concerns. In short, the file lacks sufficient evidence provided by Applicant to establish that he paid, arranged to pay, settled, compromised, disputed, or otherwise resolved his student loan accounts. The record lacks corroborating or substantial documents and details to explain his finances.

Applicant did not demonstrate appropriate management of his finances and a consistent record of action to resolve financial issues. His lack of demonstrated financial action is a firm indication that he may not adequately safeguard classified information. Overall, the record evidence leaves me with questions and doubts concerning Applicant's judgment, reliability, and trustworthiness. He has not established his suitability for access to classified information. For all these reasons, I conclude Applicant did not provide sufficient information to mitigate financial 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.q: 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 eligibility for access to classified information. Eligibility for access to classified information is denied.

THOMAS M. CREAN
Administrative Judge