



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-01177

Appearances

For Government: Rhett Petcher, Esquire, Department Counsel
For Applicant: *Pro se*

02/05/2018

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On August 23, 2015, the Department of Defense (DOD) Consolidated Adjudication Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations).¹ After an incomplete response to the SOR, DOHA, on March 23, 2016, accepted Applicant's subsequent confirmation that his answers were complete. He also requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). I was assigned the case on March 1, 2017. The matter was scheduled on May 12, 2017, for a June 8, 2017, hearing. The hearing was convened as scheduled.

The Government offered eight documents, which were accepted into the record without objection as Government exhibits (GExs.) 1-8. It also offered a document for inclusion as a Hearing Exhibit (HE). It was accepted without objection as HE 1.

¹ 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 or after September 1, 2006. Since that time, the AG has been again amended. The present AG, applied here, is in effect for any adjudication on or after June 8, 2017.

Applicant gave testimony. The record was left open through July 1, 2017, to provide the parties with sufficient time to submit additional materials. In the interim, a transcript (Tr.) of the proceedings was received on June 23, 2017.

On July 1, 2017, I received a document from the Government that was submitted by the Applicant on June 23, 2017. Noting no objection, it was accepted into the record as AEx. A and the record was closed. After review of the record as a whole, I find that Applicant mitigated financial considerations security concerns.

Findings of Fact

Applicant is a 57-year-old truck driver who has earned a high school diploma. He has 40 years of experience in his field. He has worked for his present employer for about 18 years. Applicant currently earns a gross income of about \$52,000 a year. He has maintained a secret security clearance for at least the past 15 years. (Tr. 16; GEx. 2 at 25/29))

Married, Applicant has two grown children, a son and a daughter.² Applicant's wife, a caregiver, handles the couple's finances. Applicant has not received financial counseling.

At issue in this matter is a single delinquent debt.³ It represents Applicant's only delinquent debt and there is no evidence of past delinquent debts. Although he does not recall the event from about a decade ago, he co-signed, with his daughter, who is now 32 years old, on a student loan for almost \$17,000. (Tr. 21-22, 24; GEx. 4 at 2) Applicant first became aware of his personal obligation on the student loan when he got a letter from the lender concerning the loan shortly thereafter. That inspired him to motivate his daughter to diligently honor her obligation on the loan, which was assumed for her postsecondary education, and make timely payments. (Tr. 22) Unbeknownst to Applicant, his daughter became delinquent on the account in about August 2011. She resumed payments, but they were discontinued in about June 2015. (GEx. 4 at 2)

Applicant discovered that his daughter was delinquent on the student loan when he received the August 2015 SOR, reflecting the account as having a \$15,423 outstanding balance. For the most part, he had considered the loan to be taken care of by his daughter, although he had occasionally made requested payments when the lender contacted him directly to do so. (Tr. 23) Concerned, he has asked her to give him documentation showing her past payments, but she told him she was unsuccessful in

² Applicant described his son as responsible and in control of his student loan obligations. Regarding his unmarried daughter, he noted: "[s]he is a waitress and then she's got an attitude like nothing bothers her." (Tr. 42) He also noted, however, that she has expressed her intent to honor this student loan balance.

³ SOR allegation 1.a is for a student loan account with a charged-off balance of about \$15,423. (GEx. 4 at 3) It is his daughter's only student loan.

getting such documentation from the lender. He has stressed to her the importance of addressing her obligations and accounts.

At the hearing, the evidence showed that the balance due on the student loan had been reduced from approximately \$15,423, as reflected in the SOR, to \$12,701. (Tr. 26; GEx. 8 at 2) Applicant later provided documentary evidence reflecting eight payments over nine months (October 2016 to June 2017) on the account, and a revised balance due of \$12,456. (AEx. A) No payment plan or methodology was referenced in the evidence submitted. Rather, it noted: "You may submit any future payments to [the entity authorized to accept payments on the account], or you may call . . . for other convenient payment options. (AEx. A)

Aside from his responsibility on this student loan, Applicant is in good financial shape. His most recent credit report (June 2017) reflects one other past-due debt, but it is a duplicate entry for the student loan account at issue. (GEx. 8 at 2) Applicant owns his residence, a double-wide trailer mobile home, and the land on which it is situated. Applicant has three payments remaining on his truck. He only provides occasional financial assistance to his daughter, such as for missed student loan payments. His son is self-sufficient. Applicant is current on all tax obligations.

Applicant maintains a checking account with a growing reserve of a few thousand dollars, and he is able to satisfy his monthly bills with household income. All money leftover each month rolls over to the saved funds reserve within his checking account. Those sums are kept for emergencies and anticipated needs, such as paying for upcoming expenses not covered by medical insurance related to his wife's stage-four stomach cancer. With regard to the student loan at issue, Applicant intends to continue encouraging his daughter to honor her payments, and to make payments on her behalf when she fails to do so. He is committed to seeing this debt wholly satisfied.

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 the AG, 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 in making a decision.

The protection of the national security is the paramount consideration. Any 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 record evidence.

Under the Directive, the Government must present evidence to establish controverted facts alleged in the SOR. Under the Directive, 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 seeking access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. This relationship transcends normal duty hours. The Government reposes a high degree of trust and confidence in those to whom it grants access to classified information. Decisions include consideration of the possible risk an applicant may deliberately or inadvertently fail to safeguard classified information. Decisions are in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant.

Analysis

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 or sensitive information.

Here, the Government introduced credible evidence indicating that Applicant co-signed on a student loan for his daughter which was charged-off. This is sufficient to invoke financial considerations disqualifying conditions:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the inability to do so; and

AG ¶ 19(c): a history of not meeting financial obligations.

Under these facts, four conditions could potentially mitigate the finance-related security concerns posed here:

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;

AG ¶ 20(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, a death, divorce or separation,

clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit counseling service, and there are clear indications that the problem is being resolved or is under control; and

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Until he received the SOR, Applicant believed repayment on the student loan debt at issue was generally under control. This was based on his assumption that his adult daughter was responsibly making timely payments on her student loan, just as her brother has been doing on his own. Since learning that his daughter has been periodically irresponsible with the debt, Applicant has become more active in terms of teaching his daughter the importance of financial responsibility and personally making needed payments on the loan when her payments become irregular.

This process has clearly reinforced to him his equal responsibility on the student loan, and he is both willing and financially able to make payments that supplement his daughter's payments on the loan. Moreover, he presented documentary evidence that the student loan account balance has decreased from nearly \$17,000 to \$12,456, with a \$3,000 decrease in the balance since the SOR was issued. This is the result of, at least in part, his advice to his daughter regarding financial responsibility, and his helping her financially on the debt when needed. Therefore, I find AG ¶ 20(a) AG ¶ 20(d) apply. No other conditions apply.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the her conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d). Here, I have considered those factors. I am also mindful that, under AG ¶ 2(a), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

Applicant is a 57-year-old truck driver with 40 years of experience in his field. He has worked for his present employer for about 18 years, and successfully maintained a security clearance without adverse incident for at least 15 years. He has a high school diploma, earns about \$50,000 a year, and was only three payments away from owning his truck at the time of the hearing. He also owns his home, has helped educate two children, and has no other delinquent debts on record. In general, he lives well within his means.

Applicant was late in learning that the student loan on which he co-signed with his daughter had been charged off. This is due in part because his wife, who has been suffering from advanced stomach cancer, handled household accounts, and partly due to his assumption that his daughter was responsibly managing her sole student loan. Initially, this seemed a safe assumption as his son was responsibly honoring his student loan obligation. However, he subsequently discovered that his daughter is less disciplined than her sibling and parents. Consequently, Applicant has tried to educate her on the importance of financial responsibility, while making contributions toward the loan balance when needed.

Since becoming more active in terms of this delinquent student loan, notable progress has been made. The loan balance has been reduced from almost \$17,000 to \$12,456, with a \$3,000 reduction in the balance between the time the SOR was issued and the hearing. Applicant has cash reserves for emergencies and is willing to make needed payments when his daughter cannot or does not. He is committed to seeing this loan satisfied. Meanwhile, the entity now handling the loan payments is apparently willing to take payments on imprecise dates as long as payments are made, giving the daughter some flexibility. Based on the documentary evidence introduced, it is not displeased with the regularity of payments made from October 2016 through June 2017. As long as Applicant continues to make or assure payments are made on this account, there is no reason to conclude the owed balance will not be fully honored. In light of these factors, I find Applicant has mitigated 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

Subparagraph 1.a:

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 grant Applicant a security clearance. Eligibility for access to classified information is granted.

Arthur E. Marshall, Jr.
Administrative Judge