



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



In the matter of:)
)
) ISCR Case No. 15-04327
)
Applicant for Security Clearance)

Appearances

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

04/30/2018

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On February 26, 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 (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) effective within the DOD on September 1, 2006. On June 8, 2017, new AG were implemented and are effective for decisions issued after that date.¹

¹ I considered the previous AG, effective September 1, 2006, as well as the new AG, effective June 8, 2017. My decision would be the same if the case was considered under the previous AG.

Applicant answered the SOR on March 26, 2016, and requested a hearing before an administrative judge. The case was assigned to me on August 23, 2017. Due to a hurricane and delays associated with federal funding, the hearing was scheduled and canceled several times. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 2, 2018. I convened the hearing as scheduled on April 19, 2018. The Government offered exhibits (GE) 1 through 5. Applicant testified and offered Exhibits (AE) A and B. There were no objections to any exhibits, and they were admitted into evidence.² The record was held open until May 3, 2018, to permit the submission of additional documents. Applicant submitted AE C through E. There was no objection and they were admitted into evidence. DOHA received the hearing transcript on April 27, 2018.

Findings of Fact

Applicant admitted all of the allegations in the SOR, except ¶ 1.a. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 32 years old. He attended a military service academy for three years, but sustained an injury, had academic difficulty, and did not graduate. He then attended a state college, took off two semesters, returned to college, and received his bachelor's degree in 2012. He is not married and has no children. He has been employed since graduating college.³

Applicant credibly testified that the debts in SOR ¶¶ 1.a, 1.b, and 1.c were paid in March 2016. He stated that he was unaware the debts were delinquent, but he likely did not receive the bills because he moved several times. He stated they are no longer on his November 2017 credit report. He was unable to obtain receipts because they were in his vehicle, which had been broken into.⁴

Applicant's student loans became delinquent when he stopped attending school for two semesters. When he reenrolled in school, the student loans remained in default status, and were due immediately even though he was back at school. He could not pay them at that time. The student loans are alleged in SOR ¶¶ 1.d through 1.m. In March 2016, he consolidated the student loans. He stated that one of the student loans was not consolidated, and it is either ¶ 1.h or ¶ 1.m, but he has been unable to determine which one. Despite researching, he was unable to determine why this loan could not be included in the consolidation. He has the money to pay it, but is still trying to find the correct creditor. He has been paying \$592 a month since March 2016 toward the consolidated loans. He increased his monthly payments based on his income since he began paying. He testified that he was not proactive in paying his student loans after he graduated

² Hearing Exhibit I is the Government's discovery letter.

³ Tr. 14-19.

⁴ Tr. 22-24; AE B.

because he had other debts, and wanted to wait until his finances were stable. He knew he was responsible for his student loans and always intended on paying them. He felt overwhelmed with them, but since his student loans were consolidated, he feels his finances are under control. He agreed that receipt of the SOR was the impetus for him to address his delinquent student loans.⁵

Applicant took a loan from his 401(k) account in approximately March 2018. He planned to use the loan to pay any remaining outstanding accounts he has and once he finds the correct creditor on the last student loan, he will pay it. He then intends to repay the pension loan.⁶

After the hearing, Applicant stated that he attempted to contact the creditor for the student loan that he could not consolidate. He was unable to find the current creditor of the loan. The original creditor transferred him to a third party that handled the loan and twice he was informed that the loan had been paid in full and had a zero balance. He was then referred to the national student loan data base that maintains a record of all current and former student loans and grant. Applicant attached an image of his profile from the data base, which did not show any outstanding loans. He indicated that it is possible that the student loans were not updated after he consolidated them, or he has not yet found out the new creditor, if that loan was sold. He stated he would continue to search for a definitive status on the loan and will pay it in full once he locates the creditor. He has his 401(k) loan money to resolve the student loan.⁷

Applicant testified that in the past he had contacted a debt-repair company regarding the debt in SOR ¶ 1.n (\$1,969). It was an old loan he received when he started college. Because of its age, it was close to the statute of limitations, and he was advised to not start payments, which would revitalize it. He stated he was in college then and did not have the money to pay it when it became due. Applicant provided a document after the hearing to show he recently paid the debt. Applicant does not have any other delinquent debts. All of his current expenses are paid.⁸

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. 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.

⁵ Tr. 21, 30-36, 53-54; AE A.

⁶ Tr. 28-30, 46-48.

⁷ AE C and D.

⁸ Tr. 25-28, 48-49; AE E.

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 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. Directive ¶ E3.1.15 states 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 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." 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 relating to the guideline for 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 misuse, 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (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 had delinquent debts and student loans from at least 2012 that he was unable or unwilling to resolve. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (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;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a 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 delinquent debts and student loans that he did not address until after he receive the SOR. He explained his financial problems began when he stopped attending college for two semesters and his student loans became due. Because he had returned to college, he did not have the money to pay the loans. He was aware of a

student loan that went unpaid for years. These factors were within his control. For the full application of AG ¶ 20(b) Applicant must have acted responsibly. Applicant was working full time and has no dependents. His failure to address his debts and student loans until after receipt of the SOR does not equate to acting responsibly. AG ¶ 20(b) does not apply.

Applicant paid the medical debts he was unaware of. He recently paid the student loan that he was advised to not pay and let the statute of limitation run. He consolidated his student loans and has been making steady payments since March 2016. He obtained a loan from his pension plan to cover one student loan that he is continuing to research. Applicant's resolution of his delinquent debts and consistent payments toward his consolidated student loans since March 2016 shows that there are clear indications that his financial problems are under control. AG ¶ 20(c) partially applies. Although his actions did not take place until after receipt of the SOR, he has resolved his delinquent debts and is repaying his student loans. I find he is adhering to a good-faith effort to repay overdue creditors and resolve his financial issues. AG ¶ 20(d) applies.

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 ¶ 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 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(d) were addressed under that guidelines, but some warrant additional comment.

Applicant is 32 years old. He does not have a stellar financial record, but he made an earnest effort to begin resolving his delinquent debts and student loans after receiving the SOR. I considered his age when he accumulated the debt and student loans, and his recent actions as a more mature adult. Applicant understands the importance of continuing to pay his student loans and to not accumulate new delinquent debts. I believe

he is committed to paying all of his financial obligations. The record evidence does not leave me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant 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: FOR APPLICANT

Subparagraphs 1.a-1.n: For Applicant

Conclusion

In light of all of the circumstances, it is clearly consistent with national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge