



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-08421

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: *Pro se*

01/18/2018

Decision

KILMARTIN, Robert J., Administrative Judge:

Applicant has mitigated the security concerns under Guideline F, financial considerations. Applicant's eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on November 24, 2014. On May 31, 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 the 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

Applicant answered the SOR on June 29, 2016, admitting seven of the nine SOR allegations in a two-page detailed statement. Applicant denied SOR ¶¶ 1.f and 1.g as these alleged debts are being disputed. The alleged delinquent debts in SOR ¶¶ 1.a through 1.i. total approximately \$81,000. Applicant also requested a hearing before an administrative judge. The case was assigned to me on July 25, 2017. On November 27, 2017, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for December 6, 2017. I convened the hearing as scheduled.

Government Exhibits (GE) 1 and 2 were admitted into evidence without objection. At the hearing, Applicant testified on his own behalf. DOHA received the transcript (Tr.) on December 11, 2017. I granted Applicant's request to leave the record open until December 20, 2017, so that he could provide substantiating documentation.² He provided supplemental documents including: his marital dissolution agreement; letters to the creditors in SOR ¶¶ 1.f and 1.g disputing those debts; and earnings statements showing that his pay has been garnished every pay period since early 2015, in the amount of \$116, later increasing to \$264, to repay his student loans. He was paid twice a month. He also produced a payment history from the student loan holder, confirming a steady stream of payments and a consistent track record in resolving the delinquencies at SOR ¶¶ 1.a, 1.d, 1.e and 1.g that comprise his student loans. Collectively, these supplemental documents were marked as AE B.

Findings of Fact³

Applicant is 37 years old. He graduated from high school in 1998, and he obtained his associate's degree in 2000, and bachelor's degree in 2002. Applicant has been employed with federal contractors since 1998 maintaining aircraft or flight simulators. He had a few gaps in employment between contractors. He has had a security clearance since 2010. Applicant was married in 2002 and divorced in 2013. He had one son, age 14, from that marriage. He pays \$689 a month in child support. (Tr. 26) Applicant remarried in 2015 and he has another son, age 2. Applicant took a substantial pay cut from \$88,000 to \$52,000 per year when he moved from state A to state B to try to save his relationship with his first wife. (Tr. 41) Today, he earns \$90,000 per year. (Tr. 42)

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.

² Tr. at 20.

³ Unless stated otherwise, the source of the information in this section is Applicant's November 24, 2014 Security Clearance Application (SCA).

Applicant testified that he consolidated his four delinquent student loans with one creditor, and he provided documents establishing that a repayment plan was initiated in June 2015. (AE A, Tr. 15) The SOR alleged four delinquent student loans placed for collections totaling approximately \$46,700. They constitute the majority of his delinquencies totaling \$82,425. At the hearing, Applicant testified that he is current on these student loans now and the balance is \$68,275. (Tr. 15) He has been making payments on these loans in the amount of \$367 per month to the creditor since May 2017. (Tr. 17)

Previously, he had been making monthly payments directly to Department of Education in the amount of \$498 for 15 months. (Tr. 19) He stopped payments in 2013 when he moved across country and took a pay cut while he was embroiled in a divorce and expensive custody dispute. (Tr. 36, 50) He testified that his student loan payments were deferred for six months following graduation. He then started payments of approximately \$116 each pay period for several years. Then, he “let the student loans slip” by repeatedly getting deferrals, and the interest continued to build. (Tr. 23) The IRS attached his income tax refund in 2013 to apply to the delinquent student loans. (Tr. 52) Applicant provided supplemental documents showing that since June 2015, his pay has been garnished in the initial amount of \$116 every two weeks, later increased to \$264 per pay period up to May 2017. (AE B) He has established a consistent track-record of payments.

Applicant testified that the debt at SOR ¶ 1.b in the amount of \$20,244 was for a repossessed automobile. He co-signed for this automobile loan, but it was his ex-wife’s vehicle and her responsibility. (Tr. 62) The divorce agreement shows that this was assigned to his ex-wife and she was responsible for the payments. (AE B) The deficiency after it was repossessed was \$5,200. (Tr. 29) Similarly, Applicant produced a letter showing that he is actively disputing the delinquency alleged at SOR ¶ 1.c for \$13,478 (AE B) This was also for a vehicle that his ex-wife simply abandoned. (Tr. 32)

Applicant disputes the delinquent debt alleged at SOR ¶ 1.f for \$1,198. This was for a cable-internet bill that his ex-wife was required to pay according to their marital dissolution agreement. (AE B, Tr. 28) She kept the phone number when they separated. He is actively disputing this debt. (Tr. 62) Similarly, he produced supplemental documentation showing that he has long denied the alleged debt at SOR ¶ 1.h for \$366 owed to a utility provider. Applicant and his ex-wife had moved from the house in question, where the utility was used, in 2011. (Tr. 45) The creditor has agreed that this was a mistake. (AE B)

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 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.

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 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 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;

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).

(d) the individual initiated and is adhering to 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 was divorced in 2013 around the same time that he took a roughly \$35,000 pay cut. He was involved in an expensive-custody dispute over his young son. He incurred expenses moving across country to try to save his relationship, before the divorce. To some extent, these conditions were beyond his control. He has now produced relevant and responsive documentation, demonstrating that he acted responsibly under the circumstances. Applicant has 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. The delinquent debts have been resolved or are being resolved. The mitigating conditions enumerated above apply with the exception of AG ¶ 20(c).

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):

(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 those guidelines. Most importantly, Applicant has addressed the specific allegations in the SOR and taken affirmative measures to resolve them. He has a steady work history and a well-paying job. He has the means to

resolve all of his remaining debts. I am confident that he will do so, and continue with his payments on the student loan repayment plan. He has met his burden of production.

Applicant's finances no longer remain a security concern. There is sufficient evidence to conclude that Applicant's financial problems are under control. The record evidence leaves me with no questions or doubts as to Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has 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 through 1.i: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is granted.

Robert J. Kilmartin
Administrative Judge