



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



In the matter of:)
)
) ISCR Case No. 16-00513
)
)
Applicant for Security Clearance)

Appearances

For Government: Andrew Henderson, Esq., Department Counsel
For Applicant: *Pro se*

March 8, 2018

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of the Case

On August 6, 2016, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline F.¹ The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant’s security clearance.

Applicant answered the SOR on October 11, 2016, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on November 30, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 27, 2017, scheduling the hearing for February 22, 2017. The hearing was convened as scheduled. The Government offered Exhibits (GXs) 1 through

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

6, which were admitted without objection. Applicant testified on his own behalf. The record was left open until April 29, 2017, for receipt of additional documentation. Applicant presented two documents, which I marked Applicant's Exhibits (AppXs) A and B, which were also admitted without objection. DOHA received the transcript of the hearing (TR) on March 1, 2017.

Findings of Fact

Applicant admitted to the allegation in SOR ¶ 1.d. He denied SOR allegations ¶¶ 1.a.-1.c., and 1.e. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 33-year-old employee of a defense contractor. (GX 1 at page 5.) He has been employed with the defense contractor since August of 2014. (GX 1 at page 10.) He has held a security clearance since 2005, as he was on active duty for ten years with the Army National Guard from 2002-2012. (GX 1 at pages 18 and 36-37.) Applicant received a medical discharge in 2012. (GX 1 at page 18.) He is married, and has three children. (GX 1 at pages 20, and 25-27.)

Guideline F – Financial Considerations

1.a. Applicant denies that he has a past-due medical debt in the amount of about \$19,028. He avers that this is his estranged father's debt. Applicant and his father have the same name, with the father being "Senior," and "Junior." (TR at page 15 line 5 to page 15 line 17, and GX 1 at page 25.) Applicant has successfully contested this alleged debt; and as a result, it has been "deleted" from his TransUnion credit report. (AppX B at page 4.)

1.b. and 1.c. Applicant denies that he has past-due debts totaling about \$2,305 to Creditor B. He also avers that these are his estranged father's debts. (TR at page 15 line 18 to page 17 line 6, and GX 1 at page 25.) Applicant has successfully contested these alleged debts; and as a result, they have been "deleted" from his TransUnion credit report. (AppX B at pages 1 and 3.)

1.d. Applicant admits that he owed Social Security about \$13,577 in past-due indebtedness. When Applicant was medically discharged from active duty, he started to receive Social Security benefits. (TR at page 17 line 7 to page 19 line 5.) He became bored doing little or nothing while living on Social Security; and as a result, he "decided to go back to work." (*Id.*) Applicant is thus required to pay back the Social Security benefits, which he has been doing by way of garnishment. (TR at page 17 line 7 to page 19 line 5, and AppX B at page 7.) In 2016, he paid back about \$9,598, as evidenced by a form from the Social Security Administration. (AppX B at page 6.) I find that Applicant is making a good-faith effort to address this debt.

1.e. Applicant denies that he has a past-due debt of about \$2608 to Creditor E. He avers that this is his estranged father's debts. (TR at page 15 line 18 to page 17 line

6, and GX 1 at page 25.) Applicant has successfully contested this alleged debt; and as a result, it has been “deleted” from his TransUnion credit report. (AppX B at page 5.)

Policies

When evaluating an applicant’s national security eligibility, 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 are to be used in evaluating an applicant’s national security eligibility.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing 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 national security eligibility 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states the “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person who applies for access to classified information seeks to enter 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 protect or 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 Executive Order (EO) 10865 provides that adverse 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. One is potentially applicable in this case:

(a) inability to satisfy debts.

Applicant has a past-due debt to the Social Security Administration. The evidence is sufficient to raise this disqualifying condition.

AG ¶ 20 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 20 including:

(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 (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; 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's financial problems are directly attributed to his military service, from which he was medically discharged. He is now paying down his Social Security debt. He has demonstrated that future financial problems are unlikely. Mitigation under AG ¶¶ 20(a), 20(b), and 20(e) have been established.

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(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. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant mitigated the Financial Considerations security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	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 national security eligibility and a security clearance. Eligibility for access to classified information is granted.

Richard A. Cefola
Administrative Judge