



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



In the matter of:)
)
) ISCR Case No. 16-01046
)
)
Applicant for Security Clearance)

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

01/19/2018

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense's (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for access to classified information is denied.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on July 1, 2016, the DoD issued a Statement of Reasons (SOR) detailing security concerns. On August 4, 2016, Applicant answered the SOR and elected to have the matter decided without a hearing. On September 1, 2016, Defense Office of Hearings and Appeals (DOHA) Department Counsel (DC) submitted the Government's case in a File of Relevant Material

¹ 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 (Sept. 1, 2006 AG) effective within the DoD on September 1, 2006, and as amended on June 8, 2017.

(FORM). The FORM contained seven attachments (Items). On September 14, 2016, Applicant received a copy of the FORM, along with notice of his opportunity to object to the Government's evidence and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. He had 30 days from his receipt of the FORM to submit any additional information in response to the FORM. The response was due on October 14, 2016. No additional information was received from Applicant. On August 8, 2017, I was assigned the case.

While this case was pending a decision, the Director of National Intelligence issued Security Executive Agent Directive 4, establishing the *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 Sept. 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.²

Findings of Fact

In Applicant's answer to the SOR, he admitted the 12 delinquent obligations set forth in the SOR. His SOR answer provided no additional information on the debts. I incorporate Applicant's admissions as facts. After a thorough review of the pleadings and exhibits, I make the following additional findings of fact.

Applicant is a 38-year-old machinist who has worked for a defense contractor since February 2014, and he seeks to obtain a security clearance. (Item 3) In his Electronic Questionnaires for Investigations Processing (e-QIP), completed in March 2015, he indicates from December 1997 through December 2001, he served honorably on active duty with the U.S. Marine Corps. (Item 3) However, on his e-QIP he lists the date of discharge as December 2005. (Item 3) He indicated he was discharged in December 2005 following four years of being part of the inactive reserves.

Applicant is married, has one son age 13 and two stepsons ages 16 and 20. (Item 3) He was unemployed from June 2012 to July 2012. (Item 4)

In Applicant's March 2015 e-QIP, he listed \$8,000 due following the voluntary repossession (SOR 1.a, \$11,648) of a 2012 automobile. He indicated he planned to resolve his debts as "soon as possible." (Item 3) In his October 2015 Enhanced Subject Interview, he stated he had not received any correspondence from the creditor following the repossession. (Item 4) He indicated he experienced financial difficulties when his hourly rate of pay was reduced from \$23 per hour to \$18 per hour. (Item 4) This reduction in pay occurred sometime between March 2013 and February 2014. He did not indicate the extent as to how long the reduction occurred.

² Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case. The new AGs are available at http://ogc.osd.mil/doha/5220-6_R20170608.pdf.

During Applicant's subject interview, all of the SOR delinquent obligations were discussed except the \$103 collection debt³ (SOR 1.g). He acknowledged owing the \$103 telephone service debt (SOR 1.j) and the \$283 telephone provider debt (SOR 1.k). He stated the educational debts (SOR 1.b \$2,210; SOR 1.c, \$1,876; SOR 1.f, \$565) were tuition expenses that he believed should have been covered by his G.I educational benefits. The medical obligations (SOR 1.d, \$1,275; SOR 1.e, \$789; SOR 1.i. \$236) resulted from a surgery he had. He believed his medical insurance should have paid the debts. (Item 4)

Applicant did not know why the \$840 judgement (SOR 1.h) was so large when his credit card limit was only \$200. (Item 4) He thought he had paid a different credit card debt (SOR 1.i, \$1,737) that had been placed for collection. (Item 4)

During Applicant's October 2015 subject interview, he also stated he planned on obtaining a credit report "as soon as possible to begin to research the educational and credit card" accounts and "plans to try to pay off the arrearages of his other accounts as soon as possible." (Item 4)

No response to the FORM was received from Applicant. He provided no documentation showing payment of any of his delinquent obligations. He did not set forth what efforts he undertook to pay, contract his creditors, or otherwise resolve his delinquent debts, nor did he provide any documentation as to payment on or current status of his delinquent debts.

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 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 adjudication process is an examination of a sufficient period and a careful weight 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 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

³ The collection obligations in SOR 1.g and SOR 1.j are both \$103 and may be the same obligation, but no documentation was provided establishing the two debts are the same obligation.

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 to obtain 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 Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination of 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

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

Failure 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 An individual who is financially overextended is at greater risk of having to engage in illegal acts or other questionable acts to generate funds.

An individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant

with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

AG ¶ 19 includes two disqualifying conditions that could raise a security concern any may be disqualifying in this case: “(a) inability to satisfy debts” and “(c) a history of not meeting financial obligations.”

The Government’s substantial evidence and Applicant’s own admissions raise security concerns under AG ¶¶ 19(a) and 19(c). Applicant has 12 delinquent accounts totaling more than \$21,000. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. September 22, 2005))

Five of the seven Financial Considerations 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 (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 person has received or is receiving 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;

(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.

During Applicant’s October 2015 interview, all of Applicant’s delinquent obligations were discussed except for one \$103 debt. At that time, he intended to obtain a credit report and intended to pay off his arrearages as soon as he could. He acknowledged owing the one of the \$103 debts and the \$283 debts during the interview. He has provided

no documentation showing that even the three smallest delinquent obligations of less than \$300 each have been paid.

Applicant's debts remain unpaid and were not occur under unusual conditions. There is not showing the failure to timely pay those obligations was an unusual condition unlikely to recur. Sometime before February 2014, his hourly pay had been reduced from \$23 to \$18 per hour. This reduction occurred more than three and a half years ago. He provided insufficient information to show how the pay reduction affected his finances at the time or any adverse effect on his current finances. He provided insufficient evidence to conclude that his financial problems are unlikely to recur. His delinquencies continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

In 2012, Applicant was unemployed for two months. Unemployment is a circumstance beyond his control that impacted his ability to maintain financial stability. However, he has been full-time employed since February 2014, and the delinquent obligations have yet to be addressed. He provided no evidence of what responsible steps he took to pay or resolve his debts. The second prong of AG ¶ 20(b) does not apply.

There is no evidence of financial counseling or clear indications that Applicant's financial problems are being resolved or are under control. AG ¶ 20(c) does not apply. There is no showing of Applicant having made good-faith payments towards his delinquent obligations, or evidence to establish that he is executing a reasonable ongoing plan to pay or resolve his debts. AG ¶ 20(d) does not apply.

Applicant asserted his G.I. Education benefits should have paid his tuition debts and his medical insurance should have paid his medical expenses. He did not provide documentation showing these debts were paid or that he disputed these debts. AG ¶ 20(e) does not apply because he has not provided documented proof substantiating the basis of the dispute over these debts. AG ¶¶ 20(f) and (g) do not apply.

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.

I have considered Applicant's service in the U.S. Marine Corps on active duty. His military service merits considerable respect.

Applicant has been aware of the Government's security concern about his delinquent debts since his October 2015 interview when he was specifically confronted about his delinquent accounts. Additionally, the July 2016 SOR and September 2016 FORM put him on notice of the Government's concern about his delinquent accounts. There is no evidence he has contacted his creditors. He provided no information regarding his past efforts to address his delinquent debt and has failed to show documentation he has established repayment agreements to address the delinquent debts. There is no documentation that even the smallest of his delinquent obligations have been paid.

In requesting a decision without a hearing, Applicant chose to rely on the written record. In so doing, however, he failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding his circumstances, articulate his position, and mitigate the financial security concerns. He failed to offer evidence of financial counseling or provide documentation regarding his past efforts to address his delinquent debt. By failing to provide such information, and in relying on only the limited response in his SOR Answer, the financial considerations security concerns remain.

The issue is not simply whether all the delinquent obligations have been paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(e)) Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from his 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, Financial Considerations: AGAINST APPLICANT

Subparagraphs 1.a – 1.l: 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 a security clearance. Eligibility for access to classified information is denied.

CLAUDE R. HEINY II
Administrative Judge