



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 16-01319

Appearances

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

03/26/2018

Decision

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

Statement of the Case

On October 5, 2016, 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 On November 4, 2016, Applicant responded to the SOR, admitting one of the two allegations raised and requesting a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). I was assigned the case on March 7, 2017. The matter was scheduled on May 12, 2017, for a June 6, 2017, hearing. The hearing was convened as scheduled.

The Government offered five documents, which were accepted into the record without objection as Government exhibits (GExs.) 1-5. Applicant gave testimony and offered five documents, accepted without objection as Exs. A-E. The record was left

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.

open through July 16, 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 21, 2017. With no additional material received, the record was closed on July 17, 2017. After review of the record as a whole, I find that Applicant mitigated financial considerations security concerns.

Findings of Fact

Applicant is a 38-year-old electrical engineer who has worked for the same entity for about 11 years. His salary has slowly risen over that time at a pace of about \$2,000 a year. His most recent raise brought his annual salary to about \$71,000. He is also eligible for modest (approximately \$800-900) company share distributions every few years. Applicant was first awarded a security clearance in 2008. He has earned a bachelor's degree in electrical engineering and he is currently working on a master's degree in the same discipline. Applicant received financial counseling in around 2014. He and his wife, who earns about \$3,000-4,000 a year while also serving as a homemaker, have two very young children.

At issue in the SOR are two allegations, related to (allegation 1.a) a delinquent student loan placed for collection in the approximate amount of \$38,092 and (allegation 1.b) a mortgage-related loan, misidentified in the SOR as a student loan, that was at least 149 days past due in the approximate amount of \$4,735.

As an undergraduate student, Applicant financed his education with student loans.² At graduation in 2005, his student loans were subject to deferment. Thereafter, with his deferment status continued for some time, he assumed most correspondence from his lender concerned tax information or some other issue unrelated to payment. (Tr. 23) By 2014-2015, Applicant was living paycheck to paycheck. (Tr. 25) He was short on available funds due to his car having been damaged and broken into twice, and due to his desire to place one child into preschool so the child could have some social interaction.

In early-to-mid 2015, Applicant received notice that his student loan account was in default and that garnishment would soon be instituted. Garnishment was commenced in July 2015, draining about \$700 per month from income he needed for everyday expenses. (Tr. 31) He contacted the lender and entered a loan rehabilitation program in order to put his loan back into good standing. Applicant is now making regular monthly payments of \$272 a month and his outstanding balance has been reduced to about \$33,600. (Exs. A-B) He is comfortably making payments on this account.

In 2016, around the time Applicant and his wife had their second child, Applicant realized something had to be done about their finances. He and his wife analyzed their expenses and made many cuts in their budget. (Tr. 25) First thing, based on practices

² With the exception of one class, that Applicant financed with a student loan on which he is making regular payments, Applicant's graduate program is paid for by his employer. (Tr. 20)

learned when he received financial counseling, he started timely paying off his credit cards through electronic deductions.

Around the same time, Applicant reviewed materials related to his mortgage, a loan account first opened in August 2011.³ In about September 2016, Applicant was notified of an imminent transfer of the account to a new loan servicer.⁴ (Tr. 34, 36, 54-55) Applicant's June 2017 credit report shows that the loan was transferred sometime around August 2016. (Ex. C) A mortgage statement on a loan account originated in August 2011 that appears to be the successor holder of the loan, based on the timing and balances reflected, was offered by Applicant. That same entity appears to be the successor entity in the June 2017 credit report. That new lender was never previously noted in Applicant's credit reports. The statement shows payments going back to at least January 2017. That statement no longer reflects a past-due amount. (Tr. 36' Ex. D, Ex. E). The June 2017 credit report reflects no past due balance, with the new creditor noting the account status is "open/never late." (Ex. C)

At present, Applicant has a net monthly income of about \$3,218. (Tr. 43) This sum represents his take-home pay after, among other things, his monthly payment to his student loan account. Regular expenses include \$400 a month for food, \$100 for clothing, \$200 for petrol and car-related expenses, \$541 for car payments, about \$25 for medical care, and \$30 a month for entertainment. Combined, he has a credit card balance of under \$1,000. Applicant has a net monthly remainder of about \$500, which he can set aside to build for future exigencies.⁵ He no longer characterizes himself as living paycheck-to-paycheck, noting "we are a lot better off than we were two or three years ago." (Tr. 53, 56) His financial outlook is poised to improve when he finishes his master's degree program in May 2018, and when his wife can be more flexible in terms of her work once their toddler enters preschool.

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

³ It has shown to have had a past due balance of at least 149 days past due in the approximate amount of \$4,735 in a March 2016 credit report as reflected in the SOR at allegation 1.b. (Ex. 4)

⁴ The last credit report showing the debt held by the creditor noted in the SOR was the March 17, 2016, credit report in Ex. 4.

⁵ When needed, Applicant can supplement his monthly income or income savings with his wife's net monthly income of about \$160.

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 had two delinquent accounts, amounting to almost \$43,000 in debt. 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, five 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;

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

AG ¶ 20(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 delinquent debt arose in part from two costly automobile break-ins which were accompanied by damage to the car. In response to the strain caused by these costs, in addition to more anticipated costs like the arrival of a second child and the desire to put their older child into daycare, Applicant and his wife analyzed their finances, made cuts where appropriate, and attempted to economize. Given these facts, AG ¶ 20(b) applies.

Applying concepts learned during financial counseling received in around 2014, Applicant's economizing helped the couple analyze and prioritize their expenditures and their debts. Learning that his student loans were in default due to his oversight, he alleviated the resultant strain on the family coffers by rehabilitating the student loans in 2016. Applicant now pays a more reasonable monthly payment toward the loans in a direct, timely manner, and the account is no longer delinquent. A past-due sum owed toward his mortgage was apparently addressed by either Applicant or the new lender inasmuch as Applicant's most recent mortgage statement reflects months of regular payment established and no arrearage. Today, Applicant's June 2017 credit report does not reflect a past due amount owed and notes that the status is "open/never late."

With the two delinquent debts at issue addressed, it was shown that Applicant's overall finances have improved. While economizing is still warranted, Applicant no longer lives paycheck-to-paycheck. He will soon complete his graduate degree, thus making him a more valuable commodity within his field. His toddler will be leaving home

for preschool in a year or two, freeing his wife to return to the workplace should she so choose. By the majority of measures, Applicant seems to have recovered from his financial setback and he has shown he can address such issues. AG ¶ 20(c)-(d) 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 his 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 38-year-old electrical engineer. He has worked for the same defense contractor employer for about 11 years. He has completed a bachelor's degree in electrical engineering, and is now poised to graduate with a master's degree in the same discipline. At work, he has risen to a salary of \$71,000, income supplemented by \$3,000-\$4,000 a year by his wife. Applicant's wife's present earning potential is curbed by her duties at home, while caring for their toddler full-time. Applicant received financial counseling in about 2014.

Applicant's oversight led to a delinquent student loan balance. Once discovered to be in garnishment, Applicant quickly arranged to rehabilitate his loans in order to repay them personally at a more reasonable rate. Today, he is in timely repayment on the debt and he is no longer considered delinquent. A delinquent debt owed to Applicant's mortgage has been resolved and today, according to the new creditor's own mortgage statement and Applicant's June 2017 credit report, is in timely repayment with no delinquency. Applicant is living within his means and potential for future debt has been diminished by his savings for future exigencies. Continuing as he is at present, Applicant has the skills and abilities to keep current on his financial obligations. More importantly, he understands that anything less than vigilance with regard to his finances will again raise serious concerns related to his employment. Consequently, I find financial considerations security concerns are mitigated.

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.b:

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