



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



In the matter of:)
)
) ISCR Case No. 16-01331
)
)
Applicant for Security Clearance)

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

November 30, 2017

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of the Case

On September 16, 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 (Answer) on October 11, 2016, and requested a hearing before an administrative judge. The case was assigned to me on December 13, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 24, 2017, scheduling the hearing for February 23, 2017. The hearing was convened as scheduled. The Government offered Exhibits (GXs) 1 through 6, which

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.

were admitted without objection. Applicant testified on his own behalf and called one witness. The record was left open until March 23, 2017, for receipt of additional documentation. On March 21, 2017, Applicant offered Applicant's Exhibit (AppX) A, which was admitted without objection. DOHA received the transcript of the hearing (TR) on March 1, 2017.

Findings of Fact

Applicant admitted all the allegations of the SOR, except for allegation ¶ 1.h., which is a duplicate of allegation ¶ 1.b. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Guideline F – Financial Considerations

Applicant is a 32-year-old employee of a defense contractor. He has been employed with the defense contractor since October of 2012. (GX 1 at pages 5 and 12.) He has held a security clearance, off and on, since about January of 2007, when he went on active duty with the U.S. Army. (TR at page 16 line 13 to page 17 line 13, and GX 1 at pages 32~33.) He is not married, and has no children. (GX 1 at pages 20~21.)

1.a. Applicant filed for the protection of a Chapter 7 bankruptcy in September of 2005, and had "around \$15,000" of debt discharged in December of 2005. (TR at page 14 line 22 to page 16 line 12.) He was an immature 20-year-old, who went on active duty about 13 months later, was deployed to Iraq, injured in combat, and medically discharged in 2010. (*Id.*)

The vast majority of Applicant's admitted past-due debts are the result of student loans, which became due in the summer of 2011, when Applicant left school. (TR at page 18 line 10 to page 26 line 10.)

1.b. and 1.h. These are one and the same student-loan debt to Creditor B totaling about \$15,587. (TR at page 40 line 22 to page 41 line 2.) Applicant is paying \$188.75 each month towards this student loan debt. (*Id.*) This is evidenced by transaction statements covering six months. (AppX A at pages 1 and 6.) I find that Applicant is making a good-faith effort to address this student-loan debt.

1.c.~1.g. These are student-loan debts totaling about \$20,744. (TR at page 41 lines 3~11.) Applicant is paying \$250 each month towards these student loan debts. (*Id.*) This is evidenced by loan statements and by a Statement of Account from the successor creditor to this debt. (AppX A at pages 2~5.) I find that Applicant is making a good-faith effort to address these student-loan debts.

1.i. Applicant has paid the admitted past-due \$942 debt to Creditor I, as evidence by an October 2016 credit report. (TR at page 41 lines 12~18, and Answer at pages 5~6.) This allegation is found for Applicant.

1.j. Applicant has paid the admitted past-due \$475 debt to Creditor J, as evidence by an October 2016 credit report. (TR at page 41 lines 12~18, and Answer at pages 7~8.) This allegation is found for Applicant.

1.k. Applicant has paid the admitted past-due \$2,446 student-loan debt to Creditor K, as evidence by correspondence from Creditor K. (TR at page 41 lines 12~18, and Answer at page 9.) This allegation is found for Applicant.

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. Three are potentially applicable in this case:

- (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 a bankruptcy in 2005, and significant past-due indebtedness. The evidence is sufficient to raise these disqualifying conditions.

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; and

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

Applicant's bankruptcy occurred more than a decade ago, when Applicant was young and immature. He has now addressed all of the alleged past-due debts, the vast majority of which are student loans. Mitigation under AG ¶¶ 20(a) and (d) has 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.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. Applicant has the support of those who know him in the workplace. (TR at page 42 line 24 to page 44 line 14, and AppX A at page 7.) Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all 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

Subparagraphs 1.a.~1.k:

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