



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



In the matter of:

ISCR Case No. 16-02766

Applicant for Security Clearance

Appearances

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

03/01/2018

Decision

DAM, Shari, Administrative Judge:

Applicant mitigated the financial considerations security concerns. National security eligibility for access to classified information is granted.

History of Case

On January 18, 2017, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F (Financial Considerations) The action was taken 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 (AG) effective within the DoD after September 1, 2006. On June 8, 2017, new AG were implemented and are effective for decisions issued after that date.¹

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

Applicant submitted an answer to the SOR in writing on February 20, 2017 (Answer).² (Item 3) He elected to have his case decided on the written record in lieu of a hearing. On March 23, 2017, Department Counsel submitted the Government's File of Relevant Material (FORM), containing six Items. Applicant received the FORM on May 5, 2017. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant submitted a Reply to the FORM, which contained additional exhibits. All Government's Items and Applicant's Reply are admitted into the record without objections. The case was assigned to me on October 1, 2017.

Findings of Fact

Applicant is 36 years old. He earned a bachelor's degree in 2007. He began a position with a defense contractor in April 2013. Prior to this job, he worked for a public library. In his January 2016 SCA, he disclosed that he had delinquent debts, which accumulated after he encountered unanticipated expenses. (Item 4) During a February 2016 interview with a government investigator, Applicant acknowledged the delinquent debts listed on his credit report. He stated that at the end of 2013 he changed jobs, took a decrease in his salary, and had to pay more for medical insurance. He also was in an automobile accident, which required him to purchase a new car and added to his monthly expenses. (Item 5)

Based on a consolidated credit bureau report (CBR) from February 2016, the SOR alleged eight delinquent debts, which totaled \$23,245 and became delinquent in 2015. All of the alleged debts are paid and resolved:

In November 2016, Applicant paid the \$8,905 credit card debt alleged in SOR ¶ 1.a. (Reply)

In February 2017, Applicant completed payments on the \$4,284 delinquent debt alleged in SOR ¶ 1.b. (Reply)

In January 2017, Applicant paid the \$3,350 credit card debt alleged in SOR ¶ 1.c: (Reply)

In November 2016, Applicant completed payments on the \$1,457 credit card debt alleged in SOR ¶ 1.d. (Reply)

In November 2016, Applicant completed payments on the \$931 credit card debt alleged in SOR ¶ 1.e. (Reply)

In February 2017, Applicant paid the \$315 department store debt alleged in SOR ¶ 1.f. (Reply)

² Applicant received the SOR on February 2, 2017.

In January 2017, Applicant paid the \$3,589 balance of the delinquent credit card alleged in SOR ¶ 1.g. (Reply)

In February 2017, Applicant paid the \$414 balance of the delinquent credit card alleged in SOR ¶ 1.h. (Reply)

In December 2016, Applicant started a new position in another state at a higher salary, which helped him pay the above debts. He also borrowed money from his 401(k). His new employment has improved his financial status. He has not acquired any additional debt or opened new credit cards. He said within a year, his automobile and student loans will be fully paid and resolved. He is repaying his 401(k) loan. (Reply)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG 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, these guidelines are applied 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. The entire process is a conscientious scrutiny of applicable guidelines in the context 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 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states that an "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 applying for national security eligibility 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 national security eligibility. 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 or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *a/so* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline F: Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

AG ¶ 19 describes conditions that could raise security concerns. Two may be disqualifying in this case:

- (a) inability to satisfy debts; and
- (b) unwillingness to satisfy debts regardless of the ability to do so.

The eight SOR-alleged debts became delinquent in 2015, at which time Applicant was unable or unwilling to resolve them. These facts establish *prima facie* support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant’s alleged financial difficulties. The following may potentially apply:

(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, or a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), 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 a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

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

The delinquent debts arose during 2015 because Applicant had previously incurred unanticipated expenses, for which he did not have sufficient income to pay. The evidence establishes mitigation under AG ¶ 20(a), as those circumstances are unlikely to recur, as he is fully employed at a higher salary, and they do not cast doubt on his current trustworthiness and reliability. Those circumstances were beyond his control. Applicant did not provide information that he attempted to responsibly manage the debts while they were becoming delinquent, which is required to establish full mitigation under AG ¶ 20(b).

Applicant did not submit evidence that he participated in financial or credit counseling; however, there are clear indications that all alleged debts are resolved and under control. AG ¶ 20(c) partially applies. Applicant initiated an effort to resolve some of his debts prior to the issuance and receipt of the SOR; others were resolved immediately after its issuance. He sufficiently demonstrated a good-faith effort to resolve his debts through full payments or by payment plans. AG ¶ 20(d) applies.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in this whole-person analysis. Applicant's financial problems arose during 2015 and were resolved by early 2017. He appears to appreciate the significance that similar financial issues could have on his employment, as noted by full resolution of the debts. Over-all, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. He 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 through 1.h: 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 access to classified information. National security eligibility is granted.

SHARI DAM
Administrative Judge