



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 16-03092

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel

For Applicant: *Pro se*

10/24/2017

Decision

DAM, Shari, Administrative Judge:

Applicant has numerous unresolved delinquent debts, including student loans. Resulting security concerns were not mitigated. National security eligibility for access to classified information is denied.

Statement of the Case

On October 7, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR), detailing 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 for Determining Eligibility for Access to Classified Information* (AG), effective within the DOD for SORs issued after September 1, 2006.¹

¹ I considered the previous AG, effective September 1, 2006, as well as the new AG, effective June 8, 2017. Although this decision is issued pursuant to the new AG, my decision would be the same under either set of guidelines.

On November 11, 2016, Applicant answered the SOR (Answer), and requested a hearing. On February 13, 2017, the Department of Defense Office of Hearings and Appeals (DOHA) assigned Applicant's case to me. On April 28, 2017, DOHA issued a Notice of Hearing, scheduling the hearing for May 18, 2017. At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 7. Applicant testified and offered Applicant Exhibits (AE) A through C. All exhibits were admitted into evidence.² DOHA received the hearing transcript (Tr.) on May 24, 2017. The record remained open until June 16, 2017, to give Applicant an opportunity to submit additional information. He timely submitted documents, which I marked as AE D and AE E, and admitted into evidence without an objection from Department Counsel.

Findings of Fact

Applicant is 30 years old and unmarried. He earned an associate's degree in 2007. He attended college between 2008 and 2010, and worked on a bachelor's degree. He enlisted in the Navy in 2010 and obtained a secret security clearance. He was medically discharged in 2011. He worked until 2012, when his mother fell ill. He cared for her for several months and then took a job in the security field. He worked in that field from 2013 to 2014, and then at another position until 2015. He was unemployed from 2015 until he obtained his current employment in September 2016. (Tr. 16-22.)

Applicant's net monthly salary is \$1,300. After paying expenses and food costs, he said he does not have any money remaining. He does not have a written budget. (Tr. 24-25.) He took an online credit counseling course the day before this hearing. (AE 16.)

Based on credit bureau reports (CBR) from January 2017, January 2016, and December 2010, the SOR alleged 19 delinquent debts. They consist of 12 student loans that Applicant obtained between 2005 and 2009, and 7 consumer debts that became delinquent between 2013 and 2015. The alleged debts total over \$63,000. (GE 4, GE 5, GE 7.)

The delinquent student loans alleged in SOR ¶¶ 1.a through 1.c total \$23,939 and are unresolved. He contacted the creditors in December 2016 to establish a payment plan, but could not afford an initial payment of \$4,000 to start a plan. He has never made a payment on these student loans. (Tr. 26, 28-30; AE A.) These debts are unresolved.

The delinquent student loans alleged in SOR ¶¶ 1.d through 1.i total \$24,527. They were consolidated in January 2017 and placed in deferment until January 2018. Applicant has never made a payment on the debts. (Tr. 30-32; AE A, AE B.) These debts are in a non-delinquent status at this time.

² Applicant made some minor corrections to his personal interview. (GE 2.) Those changes are referenced in the transcript and on the exhibit. (Tr. 12 through 19.)

The \$5,526 delinquent debt alleged in SOR ¶ 1.m is owed to an apartment complex for a lease Applicant co-signed for his sister in 2013. He learned she defaulted on the lease in 2015. He hired a lawyer in March 2016 to help him resolve it. (Tr. 32-33.) It remains unresolved.

The debts alleged in SOR ¶¶ 1.n through 1.s are unresolved. Applicant said he is disputing them because he does not believe they are his debts. In August 2016, he hired a company to repair his credit. He said the company filed disputes for these debts. He did not provide documentation confirming the basis of the disputes or resolution for any of them. (Tr. 36-37, 42.) These debts are unresolved.

Applicant said he timely filed his 2014 and 2015 Federal tax returns. (Tr. 38.) He submitted copies of them, which noted a date of preparation as February 2016 and indicated that his 2013 return was filed late. (AE D, AE E.) He has not filed his 2016 Federal tax return because he has not “gotten around to it yet.” (Tr. 39.) He believes the Internal Revenue Service requires an individual to file a return every three years and not every year.³ (Tr. 39.)

Policies

When evaluating an applicant's 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 determining 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 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

³ The SOR did not allege that Applicant failed to timely file his 2014 or 2016 Federal income tax returns. That derogatory information will not be considered in analyzing the disqualifying conditions, but may be considered in the analysis of mitigating conditions and the whole-person, and in evaluating his credibility.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. According to Directive ¶ E 3.1.15, “[t]he 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 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 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 information.

Finally, as emphasized in Section 7 of EO 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 *also* EO 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 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.

AG ¶ 19 describes conditions that could raise security concerns. Three of them may be disqualifying 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.

Between 2006 and 2015, Applicant accumulated delinquent student loans and other debts that he has been unable or unwilling to resolve. The evidence raises the above security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from financial problems:

- (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 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;
- (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

Ten of the alleged 19 delinquent debts are ongoing, unresolved, and continue to cast doubt on Applicant's reliability. AG ¶ 20 (a) does not apply. Although Applicant did not specifically assert that his delinquent debts arose as a consequence of periods of unemployment, the evidence indicates that his mother's illness and those periods may have contributed to his inability to pay his debts. Those were circumstances beyond

Applicant's control. However, there is insufficient evidence to establish full mitigation under AG ¶ 20(b) because Applicant did not document actions he took to responsibly manage his obligations.

The evidence does not establish mitigation under AG ¶ 20(c). A day before the hearing, Applicant took an online financial counseling course, the substance of which is unknown. He provided insufficient evidence to indicate that his SOR-alleged debts are under control. In January 2017, Applicant consolidated nine student loans, which were then placed in deferment. Those very recent actions do not demonstrate a good-faith effort to resolve the debts alleged in SOR ¶¶ 1.d through 1.i, which had been delinquent for a long time. AG ¶ 20(d) does not apply.

In August 2016, Applicant hired a firm to dispute the alleged debts in SOR ¶¶ 1.n through 1.s. None of these debts are resolved, nor is there evidence that he has a reasonable basis to dispute the legitimacy of the debts. AG ¶ 20(e) does not apply.

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 guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a 30-year-old man, who is responsible for his financial decisions. To-date, he has not demonstrated a history of managing delinquent debts and student loans, nor a plan to resolve them. He failed to file his 2016 Federal tax return, or express a sense of duty and immediacy to comply with this legal obligation. Overall, the record evidence leaves me with substantial doubt as to Applicant's judgment, reliability, eligibility and suitability for a security clearance. He failed to meet his burden to mitigate the security concerns raised under the guideline for financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:

AGAINST APPLICANT

Subparagraphs 1.a through 1.s:

Against Applicant

Conclusion

In light of all circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance. National security eligibility for access to classified information is denied.

SHARI DAM
Administrative Judge