



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



In the matter of:)
)
) ISCR Case No. 16-04001
)
)
Applicant for Security Clearance)

Appearances

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

02/27/2018

Decision

DAM, Shari, Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns arising from delinquent debts. National security eligibility for access to classified information is denied.

History of Case

On February 24, 2016, Applicant submitted a security clearance application (SCA). On June 28, 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 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 effective within the DoD after June 8, 2017.

Applicant answered the SOR in writing on July 17, 2017 (Answer), and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on August 24, 2017, and issued a Notice of Hearing

that day, setting the hearing for September 21, 2017. Department Counsel offered Government Exhibits (GE) 1 through 5 into evidence. Applicant testified, and offered Exhibits (AE) A through C into evidence. All exhibits were admitted. DOHA received the hearing transcript (Tr.) on September 29, 2017. The record remained open until October 25, 2017, to permit submission of additional evidence. No additional evidence was provided.

Findings of Fact

Applicant is 50 years old and divorced since 2001. He has two children from a prior relationship, ages 20 and 21. His 20-year old daughter resides with him. He earned a master's degree in 1996. He began working for his employer, a defense contractor, in 2016. Prior to that he worked for a public library for three years. He was unemployed from February 2008 to August 2008, and from April 2009 to March 2011, during which period he suffered a heart attack. He was a single parent and received public assistance and unemployment benefits during those years. He has been fully employed for about five years. In addition to working at his current position, he is starting a mobile food business. (Tr.16-24, 29; GE 1; AE A)

Applicant's annual salary is \$52,000. His daughter contributes about \$300 a month to household expenses. He does not have a written budget and does not know what his net remainder is at the end of the month after paying expenses. His rent and ongoing expenses are current. He has two open credit cards, and two personal loans that total about \$1,800. He took out those loans to start his food business. He has filed Federal and state tax returns for years 2010 through 2015, but has not filed returns for 2016.¹ He may owe unpaid taxes for 2016. His student loans, which total about \$165,000, are deferred. He had been making monthly payments of \$244 on those loans for a year-and-a-half up to June or July of 2017. He then stopped because the payment increased to \$1,000, which he could not afford. He has not taken credit or budget counseling. (Tr. 25-31, 42-44; GE 2)

After submitting a February 2016 SCA, Applicant was interviewed by a government investigator in March 2016. Applicant discussed some delinquent debts, including a large medical bill related to his heart attack. The investigator confronted him about debts listed on his credit report, some of which subsequently were alleged in the SOR. (GE 2) Applicant attributed his financial problems to periods of unemployment, underemployment, and not having medical insurance when he had a heart attack in 2010. (Tr. 22)

Based on credit bureau reports (CBR) from January 2017, March 2016, and September 2017, the SOR alleged six delinquent debts that totaled \$34,769. The debts

¹ The SOR did not allege Applicant's failure to file income tax returns for 2016. Hence, that derogatory information will not be considered in analyzing disqualifying conditions. It may be considered in the analysis of mitigating conditions and the whole-person concept, and in evaluating Applicant's credibility.

accumulated between 2010 and 2016. (GE 3, GE 4, GE 5) The status of each allegation is as follows:

On September 6, 2017, Applicant established a payment plan for the \$1,965 utility bill alleged in SOR ¶ 1.a. He intends to make automatic monthly payments of \$100. He said he made his first payment on September 16, 2017, but did not provide proof. (Tr. 32-33) It is unresolved.

Applicant stated that in July 2017 he paid the \$245 utility bill listed in SOR ¶ 1.b. (Tr. 33-34) It is resolved.

Applicant stated that in August 2017 he made an arrangement to begin making payments of \$50 on the \$439 cable bill listed in SOR ¶ 1.c. As of the hearing date, he had not yet made a payment. (Tr. 34-35) It is unresolved.

Applicant stated that he recently negotiated a settlement for the \$29,594 medical debt alleged in SOR ¶ 1.d, related to his heart attack. He agreed to resolve it for \$9,000, but he does not have the money at this time. (Tr. 35-36) It is unresolved.

The medical debt listed in SOR ¶ 1.e for \$714 is unresolved. (Tr. 36; GE 5)

The dental bill listed in SOR ¶ 1.f for \$1,812 is unresolved. (Tr. 36-37; GE 4) It is resolved.

Applicant said he intends to pay and resolve his debts, as indicated by his recent establishment of payment plans for some of them. He hopes to become better organized financially. (Tr. 42)

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. Three 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.

Applicant has a history of financial difficulties, which began in 2012 and continue to the present. He had been unable or unwilling to address his debts until after receiving the SOR. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate the resulting security 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:

- (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.

Applicant presented evidence to establish some mitigation under AG ¶ 20(b). His financial delinquencies arose as the result of experiencing periods of underemployment and unemployment, and suffering a serious heart attack in 2010 for which he did not have medical insurance. These were circumstances within his control. However, in order to establish full mitigation under this condition, he is required to provide proof that he acted financially responsible under the circumstances. There is no evidence that Applicant started to seriously address his debts until after receiving the SOR.

Applicant did not provide evidence that he participated in credit or financial counseling and that his financial delinquencies are under control, as required under AG ¶ 20(c). He established mitigation under AG ¶ 20(d), as to the \$245 utility bill he paid and resolved. He has not demonstrated that he is adhering to payment plans for any of the other debts.

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 pertinent facts and circumstances surrounding this case, including those mentioned in the analysis of the financial considerations guideline.

Applicant is a mature and educated individual, who has successfully worked for his employer since 2016. He was forthright while testifying about his delinquent debts. He accepts responsibility for resolving them, and recently began taking steps to address them. He credibly asserted his intention to pay them. However, at this time, he has not established a solid budget to resolve them or a record of responsibly paying them and managing his finances. Overall, he has not met his burden to mitigate the security concerns arising 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 the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c through 1.f	Against Applicant

Conclusion

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

SHARI DAM
Administrative Judge