



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



In the matter of:)
)
) ISCR Case: 16-04105
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne Driskill, Esquire, Department Counsel

For Applicant: *Pro se*

January 19, 2018

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant was alleged to have eight delinquent debts totaling \$27,886. He resolved seven of his delinquencies to the satisfaction of the creditors and has rehabilitated his remaining debt. Based upon a review of the pleadings and exhibits, national security eligibility is granted.

Statement of Case

On May 21, 2015, Applicant submitted a security clearance application (SF-86). On February 10, 2017, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. (Item 1.) The action was taken under Executive Order 10865 (EO), *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*.

Applicant answered the SOR on March 31, 2017. The case was assigned to another administrative judge on April 27, 2017, and reassigned to me on July 17, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on August 8, 2017. I convened the hearing as scheduled on September 27, 2017. The Government offered Government Exhibits 1 through 5, which were admitted without objection. Applicant testified on his own behalf, and presented Applicant Exhibits (AE) A through O. DOHA received the transcript of the hearing (Tr.) on October 12, 2017. The record was left open for the receipt of additional evidence. On November 17, 2017, AE P through AE R were submitted, and received without objection. The record closed as scheduled on December 1, 2017.

The SOR in this case was issued under the adjudicative guidelines that came into effect within the DoD on September 1, 2006. Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines*, implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions issued on or after June 8, 2017, are to be decided using the new *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), as implemented by SEAD 4. I considered the previous adjudicative guidelines, as well as the new AG, in adjudicating Applicant's national security eligibility. My decision would be the same under either set of guidelines, although this decision is issued pursuant to the new AG.

Findings of Fact

Applicant admitted to the allegations in SOR ¶¶ 1.a, 1.b, and 1.f. He denied SOR allegations ¶¶ 1.c, 1.d, 1.e, 1.g, and 1.h. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 29 years old. He is divorced, with one minor child. He served in the Navy from 2007 to 2012. He has worked for his employer since April 2015. (GE 1; Tr. 31, 42.)

Applicant began incurring delinquent debt at the age of 23. (Tr. 19.) He attributes his debts to the death of his father in May 2012, and his 2013 divorce. Prior to these events, he was current on all of his debts. (AE E; AE F; Tr. 21-23, 35-41.)

Applicant was alleged to be past due in the amount of \$718 on delinquent student loans totaling \$10,161, as stated in SOR ¶ 1.a. In March 2017, Applicant entered into a rehabilitation agreement with this creditor to bring this account current through nine monthly payments of \$157. He documented that he successfully made those nine payments, and plans to continue making payments on this debt until it is fully resolved. This debt is being resolved. (AE A; AE G; AE P; AE R; Tr. 24, 52-53, 62-63.)

Applicant was alleged to be delinquent on a charged-off account in the amount of \$7,737, as stated in SOR ¶ 1.b. This debt was for a loan. Applicant presented a letter

from this creditor that shows this debt was settled for \$2,995 in September 2017. This debt is resolved. (AE H; Tr. 24-25, 45.)

Applicant was alleged to be delinquent on a charged-off credit card account in the amount of \$2,558, as stated in SOR ¶ 1.c. Applicant presented a letter from this creditor that shows this debt was settled for \$920.45 in September 2017. This debt is resolved. (AE H; Tr. 25, 46.)

Applicant was alleged to be delinquent on a medical collection account in the amount of \$1,344, as stated in SOR ¶ 1.d. Applicant paid this debt in full in March 2017, as documented in a letter from this creditor. It is resolved. (AE I; Tr. 25.)

Applicant was alleged to be delinquent on gas bill in the amount of \$95, as stated in SOR ¶ 1.e. Applicant resolved this debt, as documented in a March 2017 letter from this creditor. (AE J; Tr. 25, 47.)

Applicant was alleged to be delinquent on a collection account in the amount of \$4,671, as stated in SOR ¶ 1.f. This debt was owed to his divorce attorney. At the time of the hearing, Applicant testified he was saving up money to resolve this debt. In his post-hearing documentation, he presented a November 2017 letter from this creditor reflecting the debt “was satisfied by settlement in full.” It is resolved. (AE G; Tr. 25-27, 44.)

Applicant was alleged to be delinquent on a collection account in the amount of \$720, as stated in SOR ¶ 1.g. A second debt to the same creditor in the amount of \$600 was alleged in SOR ¶ 1.h. Both debts were for traffic citations and were resolved in 2015. Applicant provided a statement from the creditor, dated March 15, 2017, showing these accounts were resolved. (AE K; Tr. 27, 48-49, 51.)

Applicant has attempted to improve his financial situation by downsizing and living within his means. Additionally, he has been promoted by his employer and now has more funds available to maintain current payments toward his debts. He is also saving for his future. (Tr. 29-30, 58.)

Applicant was awarded the Navy Good Conduct Medal; an Army Achievement Medal; and the Army Meritorious Unit Commendation. He served two tours in Afghanistan and received Bronze Stars. He also has received a performance based award from his employer. (AE A; AE B; AE C; Tr. 19-21.)

Policies

When evaluating an applicant’s suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (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. Under Directive ¶ E3.1.15, 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 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 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant was delinquent on eight debts totaling \$27,886. These debts became delinquent beginning in 2013. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes three conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged financial difficulties:

- (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; and

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

Applicant made good-faith efforts to address and repay his debts that became delinquent after the death of his father and his divorce. Since then, he has acted responsibly by resolving all of his delinquent debt except for his student loan debt, which he has brought current. He has changed his financial practices and downsized. He is saving for retirement. Future financial delinquencies are unlikely. All of the above mitigating conditions were 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.

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. Applicant is a mature adult, who took effective action to resolve the financial issues created by the death of his father and his divorce. He has earned awards for his professional excellence, been promoted, and demonstrated that future financial issues are unlikely to arise. The potential for pressure, coercion, exploitation, or duress has been eliminated. Overall, the record evidence leaves me without doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. He 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 Enclosure 3 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 national interest to grant Applicant national security eligibility and a security clearance. National security eligibility is granted.

Jennifer I. Goldstein
Administrative Judge