



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



In the matter of:)
)
) ISCR Case No. 17-00230
)
Applicant for Security Clearance)

Appearances

For Government: Allison Marie, Esquire, Department Counsel
For Applicant: *Pro se*

04/11/2018

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, financial considerations. Applicant's eligibility for access to classified information is granted.

Statement of the Case

On March 7, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F, financial considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; and DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive). On June 8, 2017, new AGs were implemented and are effective for decisions issued after that date.¹

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.

Applicant answered the SOR on April 13, 2017, and requested a hearing before an administrative judge. The case was assigned to me on December 14, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 24, 2018. I convened the hearing as scheduled on March 23, 2018. The Government offered exhibits (GE) 1 through 4, and they were admitted into evidence without objection. Applicant testified and offered Applicant's Exhibit (AE) A, which was admitted without objection. The record was held open until April 6, 2018, to allow Applicant to submit additional documents, which he did. They were marked AE B through G, and admitted without objection, and the record closed.² DOHA received the hearing transcript on March 30, 2018.

Findings of Fact

Applicant admitted all of the allegations in the SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 31 years old. He graduated from high school in 2005. He enlisted and served in the military from 2005 to 2009 when he was honorably discharged. He is not married and has no children. Except for a two-month period after his discharge, he has been steadily employed.³

Applicant attributed his financial problems to unexpected expenses incurred after he was arrested for driving under the influence of alcohol in September 2014, and other unplanned expenses, such as car repairs. He reported the arrest to his security officer and disclosed it on his security clearance application. He pled guilty to the DUI and was sentenced in September 2015. He acknowledged the costs of attorney's fees, fines, and court costs negatively impacted his finances, and he fell behind on other financial obligations. During his September 2016 interview with a government investigator, he stated the incident was out of character for him, and he has not consumed an alcoholic beverage since the incident. He took full responsibility for his conduct.⁴

Applicant's admissions and credit reports from April 2017 and April 2016 substantiate the debts alleged in the SOR. Applicant decided to save money so he could make lump-sum payments to pay his delinquent debts. In January 2018, he contracted with a debt-relief company to help him settle the delinquent debts in SOR. He testified that he settled the debt in SOR ¶ 1.c (\$3,400) for \$1,800 and paid the debt in SOR ¶ 1.d (\$292).⁵

² Hearing Exhibits I and II are Department Counsel's email responses.

³ Tr. 15-18.

⁴ Tr. 18, 20-25; GE 1, 4. Any derogatory information that is not alleged will not be considered for disqualifying purposes, but may be considered when make a credibility determination, in the application of mitigating conditions, and in the whole-person analysis.

⁵ Tr. 19-20, 25-32; GE 2, 3, 4; AE A, C.

Applicant saved about \$6,000 over the past two years and continued to save money so he could resolve the remaining delinquent debts alleged in SOR ¶ 1.a (\$10,765) and ¶ 1.b (\$5,571). He recently reached settlements with the creditors for the two debts, whereby he will pay an initial lump sum and then make monthly payments for the next twelve months. He testified that he waited to settle the debts because he wanted to make certain he had a financial safety net for unexpected expenses.⁶

Applicant's annual income for 2017 was approximately \$25,000. He rents an efficiency apartment to save money and lives frugally. His vehicle needed repairs, which impacted his finances. He intends to pay the remaining delinquent debts.⁷

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating 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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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 access to classified information 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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must 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 applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This

⁶ Tr. 25-40; AE D, E, F.

⁷ Tr. 25-40.

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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that 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 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.⁸

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and the following are potentially applicable:

⁸ See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

- (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 unresolved delinquent debts that began accumulating in 2016. He is unable or unwilling to pay the accounts he admits owing. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (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 counseling for the problem from a legitimate and credible source, such as a non-profit credit counselling 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 reached a settlement agreement for the debts in SOR ¶¶ 1.a and 1.b. Those delinquent debts are still being resolved. AG ¶ 20(a) does not apply.

Applicant was unable to pay his debts due to unexpected legal and other expenses attributed to his arrest for DUI in October 2016. This was within his control. Applicant also attributed his financial problems to unexpected car repairs. That was a condition beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant has been saving his money and living frugally so he could accumulate enough money to settle his delinquent debts. Although impacted by legal fees he had to pay for his DUI arrest, he settled and paid two delinquent debts alleged in the SOR. He contracted with a debt-relief company to help him settle the two remaining debts. He recently reached settlement agreements for the remaining two debts, which will be completed in the next 12 months. I find Applicant

has not ignored his financial obligations to his creditors and is acting responsibly in addressing his delinquent debts. AG ¶ 20(b) applies.

There is no evidence Applicant received financial counseling. There is evidence that Applicant is living within his means, saving his money, has contracted with a debt-relief company, and has a settlement agreement to resolve his remaining delinquent debts. I find there is some evidence that indicates his finances are under control. AG ¶ 20(c) partially applies. There is evidence Applicant paid two delinquent debts and is resolving the remaining two debts through his good-faith efforts. I find AG ¶ 20(d) applies.

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is 31 years old. He served in the military for four years. After experiencing financial difficulties, he saved money so he could resolve debts that became delinquent. He resolved two and has settlement agreements to resolve the remaining two debts. An applicant is not required to have paid all of the debts on the SOR, but must show that he is responsibly addressing them. Applicant provided sufficient evidence to conclude he is not ignoring his financial responsibilities. Based on his testimony, demeanor, and actions to date, I believe he will adhere to his the terms of his settlement agreements.. Overall, the record evidence does not leave me with questions or doubts about Applicant's eligibility and suitability for a security clearance.

For all these reasons, I conclude he mitigated the security concerns arising under the financial considerations guideline.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
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Subparagraphs 1.a-1.d:	For Applicant
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Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security to grant Applicant a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge