



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



In the matter of:

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ISCR Case No. 17-00617

Applicant for Security Clearance

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel

For Applicant: *Pro se*

02/08/2018

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant became seriously delinquent on some accounts because of his divorce and unemployment. He has made enough progress resolving his debts to overcome the financial considerations security concerns. Clearance is granted.

Statement of the Case

On May 1, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, and Guideline B, foreign influence. The SOR explained why the DOD CAF was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DOD CAF took the action 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 on September 1, 2006.

Applicant answered the SOR on May 31, 2017, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On September 12, 2017, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On October 12, 2017, I scheduled a hearing for November 14, 2017. In prehearing guidance, Applicant was informed that the Director of National Intelligence (DNI) had issued Security Executive Agent Directive 4 establishing the National Security Adjudicative Guidelines (AG) effective June 8, 2017, to all adjudications for national security eligibility or eligibility to hold a sensitive position.¹

At the hearing, two Government exhibits (GEs 1 and 3) and six Applicant exhibits (AEs A-F) were admitted in evidence. A summary of personal subject interview, which was offered as GE 2, was excluded on Applicant's objection for lack of authentication under ¶ E3.1.20 of the Directive. Department Counsel withdrew the Guideline B allegations. Applicant and a witness testified, as reflected in a transcript (Tr.) received on December 1, 2017. I held the record open until January 2, 2018, for Applicant to supplement the record. Between December 30, 2017 and January 2, 2018, Applicant submitted AEs G-I, which were admitted into evidence without any objections from the Government. On January 10, 2018, Applicant submitted AE J, which I admitted in evidence without any objection from the Government, notwithstanding its late submission.

Summary of SOR Allegations

The SOR alleges under Guideline F that, as of May 1, 2017, Applicant owed \$8,456 on a charged-off credit card (SOR ¶ 1.a); \$3,372 in credit card collection debt (SOR ¶ 1.b); \$3,337 on a credit card account past due for \$590 (SOR ¶ 1.c); a \$563 medical collection debt (SOR ¶ 1.d); and a \$127 electric utility debt in collection (SOR ¶ 1.e). When he answered the SOR allegations, Applicant admitted the debts in SOR ¶¶ 1.a-1.b and 1.e. He denied the debts in SOR ¶¶ 1.c-1.d without explanation.

Findings of Fact

After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 36-year-old senior electrical engineer who has worked for a defense contractor since June 2016. He has a bachelor's degree in electrical engineering conferred in December 2009 and a master's degree in electrical and computer engineering conferred in August 2011. As of November 2017, he was finishing a master's degree in business administration. (GE 1; AE F; Tr. 33.)

Applicant was married to his first wife from February 2002 to July 2010. In May 2011, he began working for an aerospace company. He did not require DOD security clearance eligibility for his duties. He handled proprietary information and materials subject

¹ Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case.

to export controls without incident. (AE E.) In June 2012, he married his second wife. She did not work outside the home. He filed for divorce at her request, but she then did not want to end their marriage. After they reconciled, she used one of his credit cards (SOR ¶ 1.b) without his consent. In late June 2015, Applicant was laid off from his job and lost his income, which averaged \$82,000 annually. Shortly thereafter, Applicant's second wife left him and filed for divorce. Their divorce was final in July 2016. He was court-ordered to give his ex-wife almost \$9,000 in financial support. As of November 2017, he had paid her \$5,000 in cash. According to Applicant, she has agreed to wait until 2018 for the rest of the money. (GE 1; AE F; Tr. 20-22, 34, 57-59, 61.)

Applicant was unemployed for almost 12 months. For six months of that time, he collected unemployment compensation of about \$900 a month. To support himself and make his car loan payments for a 2008-model year vehicle purchased in March 2015, he withdrew \$8,000 from his 401(k). Some of his credit card accounts became delinquent while he was unemployed. (GE 3; Tr. 21, 33-35, 49.)

Applicant started his current job in June 2016. On July 6, 2016, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86) on July 6, 2016. He disclosed delinquencies on two credit card accounts (SOR ¶¶ 1.a and 1.b) totaling approximately \$5,500. He explained that he had been laid off and had been in divorce proceedings for the last two years. Applicant indicated that he was working with the creditors to settle his debts and make monthly payments now that he was employed full time. (GE1.)

As of September 2016, Applicant's credit report showed that a credit card was charged off in November 2015 for \$8,456 in November 2015 because of inactivity since June 2015 (SOR ¶ 1.a). A credit-card account opened in November 2014 was in collection with a balance of \$3,372 and no activity since November 2015 (SOR ¶ 1.b). A credit-card account with a balance of \$3,136 was \$590 past due (SOR ¶ 1.c). Applicant was \$394 past due on his automobile loan obtained in March 2015 for \$13,701 (not alleged in SOR). A \$563 medical debt and a \$127 electric utility debt had been placed for collection in November 2015 (SOR ¶¶ 1.d and 1.e). In August 2015, Applicant was delinquent more than 90 days on consolidated student loan debt of \$70,025. As of August 2016, his student loans were in deferment with a balance of \$98,011. (GE 3; Tr. 53.)

In-mid May 2017, Applicant paid \$204 toward the \$563 medical debt in collection (AE B), which Applicant testified settled the debt. (Tr. 24, 44.) In June 2017, Applicant paid \$125 toward the credit card debt in SOR ¶ 1.c. Applicant made \$278 monthly payments from July 2017 through October 2017. As of early November 2017, the past due balance had been reduced to \$67 on a total balance of \$2,255. (AE A; Tr. 23.) Applicant denied the debt when he answered the SOR because the balance was less than alleged. (Tr. 23, 42-43.) In mid-November 2017, Applicant paid \$129 to fully resolve the utility debt in collection (SOR ¶ 1.e). (AEs C, H; Tr. 25, 46-47.) Applicant was behind on his \$340 monthly car payment as of August 2017. Over the next few months, he paid extra each month and brought his car loan current in November 2017. (AE D; Tr. 50-52.)

Applicant had approximately \$5,000 in cash and savings as of mid-November 2017. (Tr. 63-64.) As of late November 2017, the creditor for the \$3,372 credit card delinquency (SOR ¶ 1.b) had agreed to settle the debt for \$2,700 payable in two equal installments of \$1,350 due December 1, 2017, and December 15, 2017. Applicant asserts that he had arranged for \$1,350 to be deducted from his bank account on those debts, but the bank failed to debit his account. He paid the first installment on December 22, 2017 (AE G) and the second payment on December 29, 2017. (AE I.)

As of early January 2018, Applicant had arranged a settlement for the credit card debt in SOR ¶ 1.a. He is required to make monthly payments of \$939 from January 2018 through September 2018. (AE J.) Applicant was informed by the company holding his student loan debt that he will be expected to make payments of approximately \$500 per month starting in January 2018. (Tr. 54.)

Applicant recently received a promotion at work, which increased his annual salary to approximately \$95,000. (Tr. 22, 32.) Since October 2017, his take-home pay has been \$1,400 per week. (Tr. 48, 50.) It had been \$1,050 per week. (Tr. 53.)

Applicant began a cohabitant relationship in early October 2017. He and his girlfriend split the rent, Internet, and electricity costs. Their rent is \$1,360 per month. Electricity bills are approximately \$140 to \$200 per month. (Tr. 50-52, 69.) The Internet service costs \$100 a month. (Tr. 53, 69.) They alternate paying for groceries, and they spend approximately \$100 every two weeks. Applicant's girlfriend is an assistant manager at a restaurant, and she sometimes brings home dinner. (Tr. 70-71.) Applicant testified that his girlfriend has helped him understand the importance of saving money and giving priority to improving his credit score. (Tr. 59-60.) She testified that Applicant helped her plan for the future by informing her about health savings accounts and 401(k) accounts. (Tr. 72.)

Applicant's mother has had at least two surgeries since 2015. He has sent her about \$9,000 since June 2016 to help pay for her medical care. (Tr. 53, 56-57, 62.)

Work References

Applicant continues to have close friendships with his former supervisor and some co-workers at his employment that ended in June 2015. They consider Applicant to be a highly skilled and dedicated engineer with a passion for his work. Applicant exhibited a high degree of discretion about his work assignments and as a result, he was selected to work on advanced technology research projects. Applicant was very reliable and trustworthy. (AE E.)

Applicant's current supervisor regards Applicant as a trusted team member on a particularly challenging program that is entering a critical phase requiring an elevated security environment. Applicant has complied with company policies and procedures for the protection of proprietary information, including import and export controls for technical data. He believes Applicant can be counted on to uphold the standards of a security clearance. Applicant's co-workers likewise recommend Applicant for security clearance

eligibility. As a subject matter expert in aerospace electrical systems, Applicant will be required to perform test activities at remote facilities. Applicant has shown himself to be hardworking and trustworthy. (AE E.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 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. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant 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 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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 concerns about financial considerations are articulated 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.

An applicant is not required to be debt free, but is required to manage his finances in a way as to exhibit sound judgment and responsibility. The concern under Guideline F 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.

Guideline F security concerns are established by the three delinquent credit card accounts (SOR ¶¶ 1.a-1.c), the medical debt in collection (SOR ¶ 1.d), and the electric utility debt in collection (SOR ¶ 1.e). Two disqualifying conditions under AG ¶ 19 apply: (a), "inability to satisfy debts," and (c), "a history of not meeting financial obligations."

A record of financial delinquencies may be mitigated under one or more of the following conditions under AG ¶ 20:

(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 person has received or is receiving 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.

Applicant defaulted on the debts in the SOR in 2015, which makes it difficult to conclude that the debts were incurred so long ago to no longer cast doubt on Applicant's judgment, reliability, and trustworthiness. AG ¶ 20(a) does not apply.

Applicant's job layoff in June 2015 with almost 12 months of unemployment and the dissolution of his second marriage establish AG ¶ 20(b). The evidence shows that Applicant stopped paying on the credit card accounts in 2015, after he lost his job. The medical and electric utility debts were placed for collection in November 2015, when he was unemployed. AG ¶ 20(b) also requires that an individual act responsibly under the circumstances. In that regard, Applicant began working for his current employer in June 2016, and yet he made no payments toward his delinquent debts until May 2017. At the same time, he had other obligations that understandably took priority, most notably the financial assistance provided his mother for her medical care.

AG ¶¶ 20(c) and 20(d) also apply because Applicant settled the medical debt (SOR ¶ 1.d) in May 2017. Since June 2017, he has made monthly payments to reduce the balance of the credit card debt with the creditor in SOR ¶ 1.c to \$2,255, and bring the delinquency from \$590 to \$67. In November 2017, he fully satisfied the \$127 collection debt for electric utility services (SOR ¶ 1.e). In December 2017, he made two payments of \$1,350 in settlement of the \$3,372 credit card delinquency (SOR ¶ 1.b). Applicant has agreed to make \$939 monthly payments from January 2018 through September 2018 to settle the \$8,456 charged-off credit card debt (SOR ¶ 1.a). He had yet to make his first payment, although it was not due until after the close of the evidentiary record. The Appeal Board has consistently held that a promise to pay a debt in the future is not a substitute for a track record of paying debts in a timely manner. See e.g., ISCR Case No. 09-05390 at 2 (App. Bd. Oct. 22, 2010). Even so, an applicant is not required, as a matter of law, to establish that he has paid off every debt in the SOR. He is required to demonstrate that he has established a plan to resolve his financial problems and taken significant actions to implement the plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted). Applicant's payments to resolve his other debts inspire confidence that he will make the payments required to settle his largest delinquency.

AG ¶ 20(e) has not been shown to apply. While Applicant disputed the debts in SOR ¶¶ 1.c and 1.d when he answered the SOR allegations, he settled the medical debt and

disputed the balance of the credit card debt because he was making payments. He acknowledged that those two accounts had been delinquent.

Whole-Person Concept

In the whole-person evaluation, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d).² Some of the factors in AG ¶ 2(d) were addressed under Guideline F, but some warrant additional comment.

The security clearance adjudication is not aimed at collecting an applicant's personal debts. Rather, it involves an evaluation of an applicant's judgment, reliability, and trustworthiness in light of the security guidelines in the Directive. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). Applicant's payments to satisfy or settle his delinquencies are viewed favorably, despite their recency. His student loan debt of approximately \$98,000 was scheduled to come out of deferment in January 2018. Yet, with his household expenses being shared with his cohabitant girlfriend and his recent increase in salary on his promotion, Applicant has sufficient income to make both his monthly \$500 student loan and \$939 credit card payments. In the whole-person evaluation, Applicant demonstrated his commitment to his job with the defense contractor. He enjoys a favorable reputation among his former and current co-workers.

Applicant's financial issues were largely caused by a lack of income rather than by a disregard of his legitimate obligations. There is no evidence of any overreliance on consumer credit, frivolous spending, or other financially irresponsible behavior that could compromise his financial situation in the future. Provided he has the income to make payments, I am persuaded that Applicant will continue to address his delinquencies. He is not seen as likely to jeopardize classified information to obtain funds to pay debts. After considering all the facts and circumstances, I conclude that it is clearly consistent with the national interest to grant or continue security clearance eligibility for Applicant.

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: FOR APPLICANT

² The factors under AG ¶ 2(d) are as follows:

(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.

Subparagraphs 1.a-1.e: For Applicant

Paragraph 2, Guideline B: WITHDRAWN

Conclusion

In light of all of the circumstances, it is clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Elizabeth M. Matchinski
Administrative Judge