



Applicant for Security Clearance

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel

For Applicant: Kian R. Magana, Esq., Applicant's Counsel

August 29, 2018

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of the Case

On April 10, 2017, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline F.¹ The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant answered the SOR on May 8, 2017, and requested a hearing before an administrative judge. (Answer.) The case was originally assigned to another Administrative Judge in June of 2017, but later reassigned to me on December 4, 2017. The Defense Office of Hearings and Appeals (DOHA) had previously issued a notice of hearing on October 6, 2017, scheduling the hearing for December 5, 2017. The hearing

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, effective September 1, 2006.

was convened as scheduled. The Government offered Exhibits (GXs) 1 through 6, which were admitted into evidence. Applicant testified on his own behalf. Applicant presented 12 documents, which I marked Applicant's Exhibits (AppXs) A through L, and admitted into evidence. The record was left open until January 5, 2018, for receipt of additional documentation. The Government offered GX 6, and the Applicant offered AppXs M through Q, all of which were admitted into evidence. DOHA received the transcript of the hearing (TR) on December 12, 2017.

Findings of Fact

Applicant admitted all the allegations in SOR, except for ¶¶ 1.l., and 1.n., averring credibly that they were duplicates of ¶¶ 1.k., and 1.a., respectively. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 37-year-old employee of a defense contractor. (GX 1 at page 5.) He has been employed by the defense contractor since May of 2016. (GX 1 at page 10.) He is married, and has one child. Applicant was previously married, had one child; and had an additional child out of wedlock. (TR at page 57 line 8 to page 62 line 13.)

Guideline F – Financial Considerations

Applicant attributes the vast majority of his financial difficulties to the care of his first legitimate child, and to the unknown medical bills incurred by Applicant's former girlfriend, the mother of his illegitimate second child. (*Id.*, and TR at page 37 line 10 to page 38 line 17.) Through the auspices of a Consumer Counseling Service (CCS), Applicant is making a good-faith effort to address his admitted past-due indebtedness, except for the "child support" allegations of ¶¶ 1.a., and 1.n., which shall be addressed separately.

1.a. and 1.n. Applicant's mother took care of his first legitimate child. She did so with aid from the state in which she lived, which is separate from Applicant's state of residence. (TR at page 37 line 10 to page 38 line 17, at page 50 line 10 to page 51 line 6, at page 52 line 13 to page 54 line 10, and at page 62 line 14 to page 67 line 23.) It is alleged that Applicant owes \$14,772 in back child support to his mother's state of residence. Applicant has been making payments of \$200 every two weeks towards this admitted debt; and as such, the balance due has been reduced to \$4,880, as evidenced by documentation from that state. (AppXs A, K, and L.) I find that Applicant is making a good-faith effort to address his back child support.

1.b.~1.f., 1.h.~1.l., and 1.p~1.z. For the most part, unbeknownst to Applicant, his former unmarried partner incurred about \$12,361 in unpaid medical bills in Applicant's name. (TR at page 30 line 13 to page 31 line 21.) Through the auspices of his CCS, Applicant is making monthly payments of \$200 towards these medical debts, as evidenced by documentation from the CCS. (TR at page 34 line 14 to page 35 line 18, at page 36 lines 12~18, at page 39 line 4~24, at page 48 line 17 to page 49 line 24, at page 50 line 10 to page 51 line 6, at page 87 line 3 to page 89 line 24; and AppXs A, K,

L, I, J, O and P.) I find that Applicant is making a good-faith effort to address the medical bills of the mother of his second child.

1.g. Applicant admits that he owes Creditor G about \$465 for a past-due debt. This debt is also being addressed through Applicant's CCS. (TR at page 35 to page 36 line 11, and at page 81 line 24 to page 82 line 16.)

1.m. Applicant admits that he was indebted to his former state of residence as the result of a traffic ticket for about \$808. He was unaware of this ticket when he moved to the present state of his residence. (TR at page 31 line 22 to page 32 line 21.) Once he was made aware of this delinquency, he "paid in full" the traffic ticket, as evidenced by documentation from his prior state of residence. (AppX E.)

1.o. Applicant admits that he was indebted to Creditor O for a past-due water bill in the amount of about \$55. He paid this bill soon after the receipt of the SOR, as evidenced by documentation from this creditor. (TR at page 46 lines 9~21, and AppX F.)

1.aa. Applicant was unaware of a past-due debt to Creditor AA in the amount of about \$318; but it is being investigated by his CCS, and if it is his, it will be addressed. (TR at page 55 line 10 to page 56 line 23, and at page 82 line 17 to page 83 line 10.) I find this to be a good-faith effort to address this alleged past-due debt.

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines 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, administrative judges apply the guidelines 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. 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 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. Directive ¶ E3.1.15 states the “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 who applies 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 access to classified information. 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.

Section 7 of Executive Order (EO) 10865 provides that adverse 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 relating to the guideline 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Three are potentially applicable 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 significant past-due medical bills, and admitted back child support. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 20 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 20 including:

- (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.

Applicant's financial difficulties are being addressed through monthly, back child support payments that have reduced this debt from about \$14,000 to \$4,000. His other debts are being handled through the auspices of his CCS. He has thus demonstrated that future financial problems are unlikely. Mitigation under AG ¶ 20 has been 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.

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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. I also considered that Applicant is well respected in the workplace. (AppXs M and N.)

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the Financial Considerations security concerns.

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: FOR APPLICANT

Subparagraphs 1.a.-1.aa.: 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 for a security clearance. Eligibility for access to classified information is granted.

Richard A. Cefola
Administrative Judge