



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



In the matter of:

ISCR Case No. 17-00713

Applicant for Security Clearance

Appearances

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

For Applicant: *Pro se*

January 22, 2018

Decision

GOLDSTEIN, Jennifer, Administrative Judge:

Applicant incurred more than \$52,431 in delinquent debt that largely has been unaddressed since 2015. Resulting security concerns were not mitigated. Based upon a review of the pleadings, testimony, and exhibits, national security eligibility is denied.

History of Case

On October 22, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On April 27, 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 (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 effective within the DoD after September 1, 2006.

Applicant answered the SOR in writing on May 15, 2017 (Answer), and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on July 10, 2017. DOHA issued a Notice of Hearing on July 11, 2017, setting the hearing for September 20, 2017. On that date, Department Counsel offered Government Exhibits (GE) 1 through 4 into evidence. Applicant testified and offered Exhibits (AE) A through C into evidence. All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on October 10, 2017. The record was left open until October 30, 2017, for Applicant to submit additional documentation. Applicant requested, and received, an extension until December 1, 2017, to submit his post-hearing documentation. He did not submit anything further.

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*, implemented new adjudicative guidelines that came into effect on June 8, 2017. All national security eligibility determinations 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 promulgated in Appendix A of SEAD 4. I considered the previous adjudicative guidelines, as well as the new AG, in adjudicating Applicant's national security eligibility. This decision is issued pursuant to, and cites, the new AG; but my decision would be the same under either set of guidelines.

Findings of Fact

Applicant is 38 years old. He is single and has no children. He is employed as a flight simulator technician, and is applying for a security clearance in connection with that work. He has worked for his employer since November 2015. (GE 1; Tr. 31, 35-36.) He admitted the delinquent debts alleged in SOR ¶¶ 1.b through 1.e, 1.g, and 1.h. He denied the allegations in SOR ¶¶ 1.a, 1.f, 1.i, 1.j, and 1.k. (Answer; Tr. 8.) Applicant's admissions are incorporated in the findings below.

Applicant attributed his financial delinquencies to motor vehicle accidents and a boating accident, which have left him in "debilitating chronic pain." (Tr. 26-27.) He is on partial-permanent disability. Additionally, he was unemployed from January 2009 to October 2010. (GE 1; Tr. 26-27.)

SOR ¶ 1.a alleged Applicant was indebted on a credit card debt placed for collections in the amount of \$13,619. This debt was reported delinquent in November 2015. Applicant testified that he closed this account nine years ago. He claimed, "I had been told by [creditor] that that account had been through a combination of lump-sum repayment and debt forgiveness, had been removed from my credit history . . ." (Tr. 21.) Appellant promised to submit copies of payments in his post hearing documentation. He failed to do so. This debt is unresolved. (GE 2; Tr. 21, 33-34, 47-48.)

SOR ¶¶ 1.b, 1.c, 1.d, 1.e, 1.f, and 1.h alleged Applicant was indebted on delinquent student loans in the amounts of \$9,596; \$7,854; \$5,994; \$5,934; \$5,863; and \$1,899, respectively. These debts were reported delinquent in August 2015. Applicant stopped taking classes in 2015 due to “the massive flare-up of some of [his] medical issues,” and these loans subsequently became due. (Tr. 40.) Applicant made a rehabilitation agreement with this creditor on September 20, 2017, the day of the hearing, agreeing to pay \$5 toward the rehabilitation of his student loans. Previously, his wages were being involuntarily garnished toward the repayment of his student loans in the amount of \$165.97 per pay period. His total Federal student loan debt was listed as \$42,215.04 on the rehabilitation agreement. He failed to produce documentation showing he made successive payments under this agreement. (GE 23; AE A; AE C; Tr. 21-26, 39-45.)

SOR ¶ 1.g alleged Applicant was indebted on a past-due account in the amount of \$713. This debt was potentially for a private student loan or educational debt, although Applicant initially testified it was for a parking ticket. At the time of the hearing, he had not contacted this creditor. This debt is unresolved. (GE 3; Tr. 48-52.)

SOR ¶ 1.i alleged Applicant was indebted on a past-due account in the amount of \$344. This debt was reported delinquent in September 2016. This debt was also owed to an educational institution. At the time of the hearing, he had not contacted this creditor. This debt is unresolved. (GE 3; Tr. 34, 48-52.)

SOR ¶ 1.j alleged Applicant was indebted on a past-due account in the amount of \$346. This debt was reported delinquent in August 2015. This debt was another account owed to an educational institution. At the time of the hearing, he had not contacted this creditor. This debt is unresolved. (GE 3; Tr. 48-52.)

SOR ¶ 1.k alleged Applicant was indebted on a collection account in the amount of \$269. This debt was reported delinquent in 2014. Applicant testified this debt was potentially related to identity theft. He submitted nothing further in that regard. (GE 3; Tr. 53-54.)

Applicant’s monthly income was listed as \$4,116.67 on his student loan rehabilitation agreement. He listed monthly expenses of \$4,053.67 including a \$715 monthly payment on student loans in that agreement. (AE A.)

Policies

When evaluating an applicant’s 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. Directive ¶ E3.1.15 says 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 E O 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* E O 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 and 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 accumulated at least \$52,431 in delinquent debt from 2015 to the present. He has taken little action to resolve those debts despite full employment since November 2015. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes five 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, 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;

(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 accepted responsibility for his delinquent student loans and educational debts. While he experienced significant medical problems and was unemployed from 2009 to 2010, he failed to establish that he has acted responsibly with respect to his debts. There are no clear indications that Applicant's financial problems are under control. While some of his student loans have been subject to involuntary garnishment, and he recently negotiated a rehabilitation agreement for those student loans, he demonstrated no track record of payment and his outstanding balance is greater than is alleged in the SOR. Further, his credit card debt and other educational debts remain unresolved. Applicant produced neither evidence to establish he has a reasonable basis to dispute the legitimacy of any of his past-due debts, nor documented proof to substantiate any basis of dispute. None of the above mitigating conditions have been fully established by the record evidence.

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. Applicant is a mature adult, who is accountable for his choices to incur substantial educational debt and not repay it. There is insufficient evidence of rehabilitation and the potential for pressure, exploitation, or duress remains undiminished. Overall, the evidence creates significant doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. He failed to meet 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: AGAINST APPLICANT

Subparagraphs 1.a through 1.k: 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 eligibility for a security clearance. National security eligibility for access to classified information is denied.

Jennifer Goldstein
Administrative Judge