



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-00942

Appearances

For Government: Caroline Heintzelman, Esq., Department Counsel
For Applicant: *Pro Se*

11/20/2017

Decision

KILMARTIN, Robert J., 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

Applicant submitted a security clearance application (SCA) on September 22, 2014. On April 21, 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. The DOD CAF acted 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 (AGs) implemented by DOD on September 1, 2006.

On December 10, 2016, the Director of National Intelligence signed Security Executive Agent Directive 4 (SEAD 4), implementing new AGs effective within the DOD on June 8, 2017. Accordingly, I have applied the June 8, 2017 AGs in this decision.¹

Applicant answered the SOR on March 7, 2017, admitting all of the SOR allegations except for the allegations in SOR ¶¶ 1.c, 1.e, and 1.f, which he denied. He stated he was unaware of these delinquent debts because either it was a duplicate (1.c) or the debts were incurred by his estranged wife while he was stationed in Korea. Applicant also requested a hearing before an administrative judge. Department Counsel was ready to proceed on July 6, 2017. The case was assigned to me on July 17, 2017. On August 22, 2017, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for September 27, 2017. I convened the hearing as scheduled.

Government Exhibits (GE) 1 through 6 were admitted into evidence without objection. At the hearing, Applicant testified and submitted Applicant's Exhibits (AE) A and B, which were admitted without objection. DOHA received the transcript (Tr.) on October 6, 2017.

Findings of Fact²

Applicant is 42 years old. He graduated from high school in 1994, and took some college courses. Applicant is pending employment by a federal contractor working for the Army Corps of Engineers, depending on his ability to obtain a security clearance. He has been unemployed for most of 2017 until he recently obtained a job, six weeks before the hearing. Applicant served honorably in the U.S. Army from 1994 to 2015. He retired in November 2015 as a Staff Sergeant. He was deployed to Afghanistan three times, Bosnia once, and he served in Korea from March 2010 to 2013. He received numerous awards and decorations including the Meritorious Service Medal, Joint Forces Commendation Medal, seven Army Commendation Medals and 3 Army Achievement Medals. He was married in 2008, but reports no children. He lived with his wife for two years when he returned from Korea, until she disappeared in 2016. So, he has been separated from his estranged wife since July 2016, and they are pending divorce if he could find her to serve her with process.

The SOR alleged nine delinquent debts totaling approximately \$60,000 plus an allegation of misuse of a government issued travel card while Applicant was on active duty. The SOR alleged in ¶ 1.a that Applicant is indebted to a creditor for a charged-off account in the approximate amount of \$23,259. Applicant admitted this allegation in his

¹ Although I have decided this case under the adjudicative guidelines (AG) effective June 8, 2017, I also considered the case under the former AG effective on September 1, 2006, and my decision would be the same under either AG.

² Unless stated otherwise, the source of the information in this section is Applicant's September 22, 2014 security clearance application (SCA) and the summary of his security clearance interview on November 4, 2017.

Answer to the SOR and stated “I am making regular payments on this account.” At the hearing, Applicant testified credibly that this was for an automobile, which he never possessed, and was being repossessed by a collection agent. His estranged wife absconded with this automobile and her whereabouts are unknown. Applicant did not file a police report, because the creditor indicated it was repossessing the vehicle. He did notify the department of motor vehicles and cancelled insurance on the vehicle. It was titled solely in Applicant’s name. Applicant has cooperated with the creditor in locating the vehicle. It is not clear how much of this auto-loan debt will remain once the creditor recovers the collateral.

SOR ¶¶ 1.b and 1.c are two charged-off accounts in the exact same amount (\$6,544) by a predatory lender selling furniture and electronics that Applicant’s estranged wife purchased. She took the furniture with her when she disappeared. I find that SOR ¶ 1.c is a duplicate of SOR ¶ 1.b. Applicant last made a payment on this account in November 2015. The cost of the items has been paid-off, but the remaining balance is for exorbitant interest and fees.³

SOR ¶ 1.d is for a charged-off debt in the amount of \$1,794 that Applicant paid-off when he retired in 2015. I agreed to keep the record open until October 9, 2017.⁴ Applicant submitted post-hearing “rebuttal documents” including a September 6, 2017 receipt documenting Applicant’s dispute and asking that this delinquency be removed from his credit bureau reports. Similarly, Applicant produced a dispute letter dated July 12, 2017, sent to the creditor in SOR ¶ 1.e concerning the application fee for an apartment that his estranged wife rented while Applicant was in Korea.

The SOR alleges in SOR ¶ 1.f that Applicant is indebted to a creditor on a delinquent account placed for collection in the amount of \$458. Applicant denied this allegation in his Answer to the SOR since it was, once again, a debt that his wife incurred without his knowledge, while Applicant was stationed in Korea from 2010 to 2013. He gave her a general power of attorney (GPOA) to conduct business while he was out of the country. At the hearing, Applicant testified that he has recently hired a national credit-repair service to dispute this debt and others, and remove them from his credit reports.

SOR ¶ 1.g is a delinquent debt for a medical account in the approximate amount of \$104. In his Answer to the SOR, Applicant stated that this was for a visit that he made to urgent care in 2016, but his primary provider would not provide Tricare with an authorization for this visit. Applicant disputed this and he produced post-hearing documents demonstrating that Tricare has now resolved it and his co-pay should have been only \$12. That amount has been paid. SOR ¶ 1.h was an account placed for collection in the amount of \$321 by a telecommunications company. Applicant testified

³ Answer to SOR.

⁴ Tr. at 26.

credibly that he long ago terminated this account and turned-in the equipment.⁵ It has been resolved.

SOR ¶ 1.i alleges a charged-off account in the amount of \$18,921 owed to a bank-creditor. Applicant admitted this debt in his Answer to the SOR, and stated that he has not yet set up a payment plan with this creditor. He testified credibly at the hearing that he intends to set up a payment plan with this creditor with the help of the national credit-repair service that he recently hired.⁶ Applicant's credit scores of 575 (Equifax) and 584 (TransUnion) are reflected in AE's A and B. There, it is noted that Applicant's credit "needs work."

SOR ¶ 1.j alleges that Applicant made an unauthorized purchase using a government travel card in November 2014, while he was on active duty. He was administered a company grade Article 15 [UCMJ non-judicial punishment] and given extra duties for 15 days. Applicant admitted this allegation in his Answer to the SOR. The JPAS entries (GE 6) reflect that the Article 15 was on May 29, 2015. Applicant testified that he withdrew \$150 dollars for food and gas, using the travel card, and he paid it back the next day. He made a mistake and served his punishment. This is resolved.

Applicant needs a security clearance for his anticipated job with a federal contractor. Applicant's monthly take-home pay is presently \$2,500 a month from retirement pay, plus another \$2,000 to \$2,400 a month, from his new job. He expects to have any remaining delinquent debts settled soon, now that he is working. He is making payments on a plan proposed by his credit-repair company. He had financial counseling while he was on active duty in the Army.

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, 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, Appendix A, ¶ 2(a), the adjudicative process is an examination of a sufficient period and a careful weighing of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is known as the

⁵ Tr. at 47.

⁶ Tr. at 48-49.

“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, Appendix A, ¶ 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. Likewise, I have avoided drawing 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 as to obtaining 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 an applicant may deliberately or inadvertently fail to 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.

Analysis

Guideline F, Financial Considerations

The security concern relating to 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 abuse, 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...

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.

AG ¶ 19 provides conditions that could raise security concerns. The following apply here:

- (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's delinquent debts alleged in the SOR are confirmed by his credit reports, clearance interview and answer to the SOR. The Government produced substantial evidence to support the disqualifying conditions in AG ¶¶ 19(a), 19(b), and 19(c), thereby shifting the burden to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts.⁷ Applicant has met that burden. Most of the delinquent debts have been resolved.

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 . . . , 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 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

⁷ Directive ¶ E3.1.15. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep 22, 2005) (An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government).

documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's estranged wife left him in 2016, with an automobile, furniture and no way for Applicant to contact her. Since then, he has been underemployed awaiting his security clearance. Arguably, these conditions were beyond his control. He has now produced relevant and responsive documentation, demonstrating that he acted responsibly under the circumstances. Applicant has met his burden to provide sufficient evidence to show that his financial problems are under control, and that his debts were incurred under circumstances making them unlikely to recur. He has either paid off, disputed, or made consistent payments pursuant to a plan, on most of his delinquent debts. He produced letters and bank statements to confirm that eight out of the nine delinquencies alleged in his SOR have been resolved. The other one (SOR ¶ 1.i), \$18,921 owed to a bank, is expected to be resolved by consistent monthly payments pursuant to a plan formulated by Applicant's credit-repair service. The mitigating conditions enumerated above apply.

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 the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG, Appendix A, ¶ 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, Appendix A, ¶ 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, Appendix A, ¶ 2(d) were addressed under that guideline. Applicant's estranged wife ran up several delinquent debts, using a GPOA that he provided to her while he was in Korea. She then absconded with his automobile and furniture. Applicant served honorably for more than 20 years in the Army, including four deployments to war zones. He has struggled to overcome his wife's betrayal and stay employed consistently. Applicant testified credibly and persuasively that his finances are now under control. Most importantly,

Applicant has addressed the specific allegations in the SOR and taken affirmative measures to resolve them. He has met his burden of production.

Applicant's finances no longer remain a security concern. There is sufficient evidence to conclude that Applicant's financial problems are under control. He is gainfully employed and managing his financial affairs. The record evidence leaves me with no questions or doubts as to Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising under Guideline F, financial considerations.

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

Subparagraphs 1.a through 1.j: For Applicant

Conclusion

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

Robert J. Kilmartin
Administrative Judge