



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



In the matter of:)
)
) ISCR Case No. 17-01112
)
Applicant for Security Clearance)

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

12/19/2017

Decision

BENSON, Pamela C., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

On October 7, 2015, Applicant submitted a security clearance application (SCA). On May 5, 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. (Items 1 and 2) The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by DoD on September 1, 2006.

Applicant answered the SOR on June 2, 2017, and elected to have his case decided on the written record in lieu of a hearing. On June 28, 2017, Department Counsel submitted the Government's file of relevant material (FORM), including

documents identified as Items 1 through 6. Applicant received the FORM on July 11, 2017. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days. Applicant did not respond to the FORM. The SOR and answer (combined as Item 1) are the pleadings in the case. Items 2 through 6 are admitted into evidence without objection. The case was assigned to me on November 13, 2017.

On December 10, 2016, the Director of National Intelligence issued new National Security Adjudicative Guidelines (AG). The new AGs are effective June 8, 2017, for all the decisions on or after that date, and they supersede the AGs that Applicant received with the SOR.¹ Any changes resulting from the implementation of the new AGs did not affect my decision in this case.

Findings of Fact

Having thoroughly considered the evidence in the record, including Applicant's admissions, I make the following findings of fact: Applicant is 59 years old. He earned a bachelor's degree in 1983. He was married for over 30 years until his wife passed away in September 2013. He has a 31-year-old daughter, and a 27-year-old son. He has been employed by a Federal government contractor since May 2004. He has applied for a security clearance in connection with his employment. (Items 2 and 3)

As recently as March 2017, Applicant had ten delinquent accounts, including student loans, consumer debt accounts, and a medical bill, totaling \$51,043. (Items 1 and 6) Under the Financial Section of his SCA, he did not list any delinquent debts, though he discussed them at length in his February 2016 background interview. (Items 2 and 3) He claimed that his deceased spouse had several credit card accounts for which he was a co-signer, and acknowledged that some of these accounts may not have been paid. He also stated that his son may have outstanding student loans that he had also co-signed, but he was not certain since he had not checked his credit lately. He did not report these delinquent accounts on his SCA because he was not the account holder, but merely a co-signer on the accounts. During his interview, Applicant was provided information about his delinquent debts from his October 2015 credit report. (Items 3 and 4) Applicant stated that he was not aware of these debts, he would check with his son about the student loans, and that he would contact the listed creditors in an effort to resolve the delinquent accounts. (Item 3)

Applicant nonetheless admitted all of the SOR debts in his answer. He acknowledged that he had not satisfied any of the SOR debts. He stated that his house had been struck by lightning (no date provided), resulting in a small fire. He listed that he had been in the process of completing the insurance claim, but provided no further details about how this situation impacted his finances or his ability to pay his debts. He stated that he planned to pay his debts with the proceeds from the future sale of his

¹ The new AGs are available on the DOHA website at <http://ogc.osd.mil/doha/DIRECTIVE%202017.pdf>.

home, but gave no indication of when this might occur, or what steps were being taken in this regard. (Item 1)

Applicant did not respond to the FORM. He did not provide any updated information or documents about his more recent efforts to pay or otherwise resolve his debts. Nor did he provide any documentation about his current financial situation or his current budget. There is no documentation showing that he is or has made payment arrangements with the creditors. There is no evidence of financial counseling. Applicant also did not provide any documentation about his work performance or other character evidence.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG 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 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. 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.

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 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.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (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 admitted each debt alleged in the SOR, and the debts are also proven by the record evidence. There is sufficient evidence to support the application of the above disqualifying conditions.

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 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 has numerous debts that remain unresolved. He has not provided proof that he has paid or resolved even the smallest debt in the SOR. His financial issues are ongoing. AG ¶ 20(a) does not apply.

Applicant has experienced recent hardships, to include the loss of his spouse in 2013, as well as a house fire following a lightning strike. These were circumstances beyond his control that likely impacted his finances. AG ¶ 20(b) partially applies. For full credit, however, Applicant must establish that he acted responsibly under the circumstances. Applicant provided insufficient evidence to establish full application of AG ¶ 20(b).

There is no evidence that Applicant has undertaken financial counseling. He did not provide sufficient information as to why he has been unable to make payments on the debts. Applicant has been with his employer since 2004. He was made aware of the debts during his background interview in February 2016. As of June 2017, the delinquent debts alleged are all unresolved. He did not provide sufficient evidence to show he disputed the legitimacy of any of the delinquent debts alleged or provided documented proof to substantiate the basis of a dispute or evidence of actions to

resolve the issues. Insufficient evidence was provided to apply AG ¶¶ 20(c), 20(d), and 20(e).

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 ¶ 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. Applicant did not provide sufficient documentation that his debts are being resolved in a good-faith, responsible manner. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate 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: **AGAINST APPLICANT**

Subparagraphs 1.a-1.j: 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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Pamela C. Benson
Administrative Judge