



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



In the matter of:

ISCR Case No. 17-01325

Applicant for Security Clearance

Appearances

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

04/16/2018

Decision

DAM, Shari, Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns arising from delinquent debts. National security eligibility for access to classified information is denied.

History of Case

On May 23, 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). Applicant answered the SOR in writing on June 17, 2017, and requested a hearing before an administrative judge.

The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on August 16, 2017. It issued a Notice of Hearing on December 12, 2017, setting the hearing for January 10, 2018. Department Counsel offered Government Exhibits (GE) 1 through 5 into evidence. Applicant testified, and offered Exhibits (AE) A and B into evidence. All exhibits were admitted. DOHA received the hearing transcript (Tr.) on January 19, 2018. The record remained open until February 13, 2018, to permit submission of additional

evidence. Applicant timely submitted AE C and AE D, which are admitted without objection.

Findings of Fact

Applicant is 34 years old and married for a year. He and his wife have two children. He graduated from high school in 2002 and then enlisted in the Navy. He deployed to the Middle East for six months. While serving, he was nominated for a Sailor of the Year award and received a Navy commendation and an achievement medal. He received an honorable discharge in 2007, as an E-4. He obtained a certification in technology. He has worked at various positions since leaving the Navy. He experienced periods of unemployment from March 2008 to August 2008, June 2009 to June 2010, November 2010 to January 2012, and September 2013 to March 2014. He obtained his current position with a defense contractor in November 2014. (Tr. 16-21; GE 1)

Some of Applicant's financial difficulties began in 2009, when he lost a contract with a defense company. He then started experiencing long periods of unemployment. In one instance, he was hired for a well-paying position with the Federal government, but he could not accept the job because he could not afford a move to another state. His financial instability continued for several years. (Tr. 23-24)

After submitting a December 2014 security clearance application (SCA), Applicant was interviewed by a government investigator in June 2016. During that interview, he discussed information in the SCA, including delinquent debts. He indicated that he would investigate and resolve them. (GE 4)

Based on credit bureau reports (CBR) from December 2014, March 2017, and January 2018, the SOR alleged five delinquent debts and two unpaid tax liens. They totaled \$51,495, and became delinquent between 2011 and 2014. (GE 2, GE 3, GE 5) The status of each allegation is as follows:

The two automobile repossessions alleged in SOR ¶ 1.a for \$34,762 and SOR ¶ 1.b for \$12,640 were reported in 2014 and are unresolved. Applicant purchased one car for \$24,000 in 2009 and one for \$12,600 in 2008. He made payments on them but stopped when he became unemployed and could not afford them. He said one loan was almost paid at the time it became delinquent. He said he offered a small monthly payment on the debt, but the creditor rejected his offer. He tried to contact the creditors after receiving the SOR, but has been unsuccessful. He left messages on their websites but has not received a call. He does not know how to reach them. He asked his lawyer friend to help resolve these two debts, but she said she was unable because they no longer appear on his most current CBR. (Tr. 34-36, 43, 48; GE 2)

The \$326 debt alleged in SOR ¶ 1.c is an internet bill that was reported delinquent in 2014. Applicant said the internet equipment was never properly installed and he never had service from the carrier. He has continued to dispute it. (Tr. 36-38)

The delinquent state tax lien for \$141 alleged in SOR ¶ 1.d was filed in January 2014 and paid that same month. (GE 2) The debt is resolved.

The delinquent state tax lien for \$976 alleged in SOR ¶ 1.e was filed in April 2011, and paid in January 2014. (GE 2) The debt is resolved.

The judgment alleged in SOR ¶ 1.f for \$275 was paid in October 2016. It is resolved. (AE C)

Applicant said that he was certain that the medical account alleged in SOR ¶ 1.g for \$2,375 was paid by the Veteran's Administration (VA). He called the current creditor who told him to contact the VA. He subsequently visited the VA and they were unable to help him. He said he will pay the bill, if he can locate the account and creditor. (Tr. 41, 45-46; GE 4)

Applicant's salary last year was \$86,000. The prior year he earned \$70,000. His wife is a homemaker. He submitted a copy of his budget. He has a few hundred dollars remaining at the end of the month after paying expenses. He has not participated in credit or budget counseling, but has discussed his delinquent accounts with a lawyer friend who practices in the area. His ongoing expenses and obligations are current. (Tr. 29-31; AE A)

Policies

The action was taken under Executive Order 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 (AG) effective within the DOD after June 8, 2017.

When evaluating an applicant's suitability for national security eligibility, 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 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 states 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 Executive Order 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 *a/so* Executive Order 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. Three 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 has a history of delinquent debts, which began in 2011 and continue to the present. He has been unable or unwilling to address his debts. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate the resulting security concerns.

The guideline includes conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged financial difficulties. The following may potentially apply:

- (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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Three of Applicant's old debts remain unresolved and are ongoing. AG ¶ 20(a) does not apply. Applicant presented evidence to establish some mitigation under AG ¶ 20(b). His financial delinquencies arose as the result of experiencing significant periods of unemployment from 2008 into 2014. Those were circumstances beyond his control. However, in order to establish full mitigation under this condition, Applicant is required to provide proof that he acted financially responsibly under the circumstances. There is insufficient evidence from which to conclude that Applicant responsibly managed those debts while they were accumulating.

Applicant did not provide evidence that he participated in credit or financial counseling, although he stated that he spoke to a lawyer friend about his delinquent debts. At this time, the two largest debts totaling over \$47,000 are not resolved or being resolved. The evidence does not establish mitigation under AG ¶ 20(c) because there are not clear

indications that the debts are under control. He established mitigation under AG ¶ 20(d), as to the debts alleged in SOR ¶¶ 1.d, 1.e, and 1.f, which he paid. He also presented sufficient evidence that he attempted to resolve the large medical debt in SOR ¶ 1.g, although unsuccessfully.

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, including those mentioned in the analysis of the financial considerations guideline.

Applicant is a mature individual, who honorably served in the Navy for five years. Subsequent to leaving service, he began accumulating debts which remain unresolved. In June 2016, he discussed them with an investigator and indicated his willingness to resolve them, including the two largest debts that comprise the majority of his delinquent debt. At this time, he has not presented evidence of efforts he has taken to resolve them or a plan for doing that. Overall, he has not met 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 the Directive, are:

Paragraph 1, Guideline F:

AGAINST APPLICANT

Subparagraphs 1.a through 1.c:

Against Applicant

Subparagraphs 1.d through 1.g:

For 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 access to classified information. National security eligibility is denied.

SHARI DAM
Administrative Judge