



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-01470

Appearances

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

11/29/2017

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 March 22, 2016. On June 7, 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 July 31, 2017. He denied all of the SOR allegations as “paid” except for the allegations in SOR ¶ 1.g, which he conceded was for back child support. Applicant also requested a hearing before an administrative judge. Department Counsel was ready to proceed on August 24, 2017. The case was assigned to me on August 28, 2017. On September 12, 2017, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for September 26, 2017. I convened the hearing as scheduled.

Government Exhibits (GE) 1 through 5 were admitted into evidence without objection. At the hearing, Applicant testified and submitted Applicant’s Exhibit (AE) A, which is a credit bureau report dated September 25, 2017. It was admitted without objection. DOHA received the transcript (Tr.) on October 4, 2017.

Findings of Fact²

Applicant is 42 years old. He took some college courses, but did not obtain a degree. Applicant is pending employment by a federal contractor depending on his ability to obtain a security clearance. He has been unemployed for four short periods from 2012 to 2014. Applicant served honorably in the U.S. Army from 2000 to 2005, and in the National Guard from 2005 to 2012. He earned the rank of Sergeant. He was deployed to Afghanistan in 2008 – 2009 in support of Operation Enduring Freedom and he received numerous awards and decorations including two Army Commendation Medals and two Army Achievement Medals. He was married in 2000 and divorced in 2002. Applicant has four sons, ages 8, 9, 13, and 19. He fell behind on his child support payments because he was unemployed intermittently. Applicant typically paid \$550 each month in child support for the three boys that were not living with him.

The SOR alleges seven delinquent debts totaling approximately \$40,000, including the child-support arrearage in the amount of \$9,071 alleged at SOR ¶1.g. The SOR alleged in ¶ 1.a that Applicant is indebted to a creditor for an account placed for collection in the approximate amount of \$29,833. In his Answer to the SOR, Applicant stated that this was paid. I left the record open until October 2, 2017 for Applicant to produce evidence that this and his five delinquent medical debts were paid. At the hearing, Applicant testified credibly that the debt in SOR ¶ 1.a resulted from delays by the Department of Veterans Affairs (VA) reimbursing him for tuition costs under the GI

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 March 22, 2016 security clearance application (SCA) and the summary of his security clearance interview on January 11, 2017.

Bill. (Tr. 24-25) Applicant took college courses online for approximately 18 months in 2012 - 2013. Somehow, the paperwork submitted to the VA fell through the cracks. Eventually, the VA paid him. (Tr. 29) In his post-hearing submissions, Applicant included a bank statement showing that this debt has now been settled for the reduced amount of \$8,200.

SOR ¶¶ 1.b through 1.f are for delinquent medical debts that Applicant incurred in 2015 – 2016 when he had two knee surgeries for injuries sustained in Afghanistan. (Tr. 32) However, he could not get into the VA hospital. He is a 70% disabled veteran, and contends that these should have been covered by the VA. In his post-hearing submissions, Applicant included a bank statement showing that the delinquent medical debts alleged in SOR ¶¶ 1.b to 1.e have all been paid in full. Further, he produced evidence that he has entered into a payment plan of \$100 per month in SOR 1.f, and he is making continuous payments on the plan. These debts are not reflected on his latest credit report. (AE A)

SOR ¶ 1.g is for the alleged child-support arrearage in the amount of \$9,071. Applicant testified that his normal child support payments each month were in the amount of \$500. (Tr. 36) He pays a little extra each month now. So, it is up to \$550 a month. (Tr. 44) Applicant has an allotment set up that it is taken directly from his pay check, and he is up to date on child support payments. (Tr. 37) Applicant submitted post-hearing documents including a bank statement showing the debit each month for child support payments.

Applicant's take-home pay is presently about \$1,000 per week, from his new job where he earns \$24.50 per hour, for a 40-hour week, plus another \$1,400 a month for his disability. He has not received financial counseling or debt consolidation services. He expects to have any remaining delinquent debts settled soon.

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 "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.³ 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

³ 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 suffered through periods of unemployment and 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 six of the seven delinquencies alleged in his SOR have been resolved, and he is making payments on the other one at SOR ¶ 1.f. 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 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.g: 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