



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



In the matter of:)
)
) ISCR Case No. 17-01829
)
Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

12/27/2017

Decision

RICCIARDELLO, Carol G., 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 June 7, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing 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 (AG) effective within the DOD on September 1, 2006. On June 8, 2017, new AG were implemented and are effective for decisions issued after that date.¹

¹ I considered the previous AG, effective September 1, 2006, as well as the new AG, effective June 8, 2017. My decision would be the same if the case was considered under the previous AG.

Applicant answered the SOR on August 10, 2017, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM). Applicant received it on September 5, 2017. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 6. Applicant did not provide a response to the FORM, object to the Government's evidence, or submit documents. The case was assigned to me on December 20, 2017.

Findings of Fact

Applicant admitted all allegations in the SOR. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 41 years old. He earned an Associate's degree in 2000. He began working for his present employer, a federal contractor, in 2000. He married in 2002. He has an eight-year-old child from the marriage. He divorced in 2013. He pays child support. In July 2016, he remarried. He did not disclose any periods of unemployment. He disclosed that from June 2010 to February 2015, he had a part-time second job and worked about 30 hours a week.²

Applicant's answer to the SOR, response to interrogatories, and credit reports from February 2016 and March 2017, corroborate the debts alleged in the SOR. The SOR alleges 13 debts totaling approximately \$36,464. The debts include a charged-off car loan (SOR ¶ 1.a-\$16,197); a repossessed vehicle (SOR ¶ 1.b-\$7,771); and various charged off and delinquent accounts from three different cable and phone services, utilities, store charge cards, a time-share account, a medical account, and other accounts. The delinquencies began in 2013.³

Applicant was interviewed by a government investigator in August 2016. He disclosed that he traveled to a foreign country island from July 22 to July 28, 2016, where his destination wedding took place.⁴

During Applicant's interview he was confronted with most of the debts alleged in the SOR. He admitted many of them. Some he did not recognize. He stated he was in the process of making payment plans with the creditors for the debts he admitted he owed and would pay them in full. He said he would contact the creditors for the debts he was unfamiliar with and verify them and then make payment plans. He intended to pay them in full. He told the investigator he was unable to pay his debts due to low income.⁵

² Items 2, 3, 4.

³ Item 2, 3, 4, 5, 6.

⁴ Item 4.

⁵ Item 4.

In Applicant's SOR answer he stated, "[M]e and my wife are working toward a snowball [e]ffect for our bills, especially mine considering where I work."⁶ He provided no further explanation on how he intends to implement this plan. In his May 2017 response to government interrogatories, he stated that he did not have the money to pay all of his debts or to start payment arrangements with any of the creditors.⁷ His further stated:

I do not unfortunately have a plausible reason for not paying the debt or making arrangements accept (sic) for the fact that I have only one source of income and I also pay child support monthly to my ex-wife who's seeking more monetary payments from me.⁸

No additional evidence was provided to show what efforts, if any, Applicant has made to address his delinquent bills.

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 states that an "applicant is

⁶ Item 2.

⁷ Item 4.

⁸ Item 4.

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 has been unable or unwilling to pay his debts beginning in about 2013. The delinquent debts alleged are unresolved. 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; and

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

Applicant admitted he owes the debts alleged in the SOR. He began accumulating the delinquent debts in approximately 2013. He has not paid or provided evidence of an attempt to resolve any of them. His financial issues are ongoing. There is insufficient evidence to conclude that his financial instability will not recur. AG ¶ 20(a) does not apply.

Applicant did not offer sufficient evidence to conclude that his financial problems were beyond his control or that he has acted responsibly under the circumstances. There is no evidence he has participated in financial counseling and that his financial problems are being resolved or are under control. He did not provide evidence that he has made any good-faith effort to repay the delinquent debts or otherwise resolve them. AG ¶¶ 20(b), 20(c), and 20(d) do not 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 ¶ 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. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is 41 years old. He has been employed steadily since 2000 and worked a part-time job from 2010 to 2015. He did not offer an explanation for his failure to pay his delinquent debts, other than his income was low, he has one income, and he anticipated an increase in child support payments. Applicant failed to show he is responsibly managing his finances. 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.m:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge