



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-01960

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

12/03/2018

Decision

LYNCH, Noreen A., Administrative Judge:

This case alleges security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). Eligibility for access to classified information is granted.

Statement of the Case

On August 4, 2017, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guidelines F and E. The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant answered the SOR, and requested a hearing before an administrative judge. (Answer) The case was assigned to me on April 13, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 29, 2018, scheduling the hearing for October 4, 2018. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 8, which were admitted. Applicant testified on his own behalf and presented two witnesses. He submitted exhibits which were marked as Applicant Exhibit (AE) A-R and were accepted into the record without

objection. At Applicant's request, I held the record open for additional documents until October 19, 2018. Applicant timely submitted a packet of documents which was marked as (AE S). The packet was admitted into the record without objection. DOHA received the transcript of the hearing (Tr.) on October 16, 2018.

Findings of Fact

Applicant, age 34, is married and has two daughters. He completed his undergraduate degree in 2006, but stated on this SCA that it was awarded in 2008. From 2008 until 2010, he attended graduate school, but did not obtain his degree. He obtained his undergraduate degree in 2008 in mechanical engineering. Applicant completed his security clearance application on May 21, 2015. He has held a security clearance since 2011. Applicant reported that in 2014 it was revoked. (GE 7) (GE 1) His former employer is sponsoring him for a security clearance. Applicant has been unemployed from September 2017 to March 2018. He is now being sponsored and working in a new job. (Tr. 20)

The SOR alleges that Applicant has delinquent student loan debts in the approximate amount of \$205,000. The debts include 12 student loans, medical accounts, collections accounts, a 2015 judgment from a hospital, garnishment on a student loan, and delinquent state taxes for tax year 2012, in the amount of \$6,754. (GE 5,6) Applicant admitted the allegations relating to the student loans, but denied the collection accounts, and any state tax liability. He denied the allegation in the SOR ¶ 2.a. under personal conduct concerns. He provided explanations for each allegation.

Applicant acknowledged his financial hardship. He takes responsibility and is attempting to correct the issues. He does not want to make excuses, but wanted to clarify the situation. Applicant was unemployed from January 2008 to May 2008, while attending graduate school. He reported that he was also unemployed from August 2008 until May 2009, and from August 2009 to May 2010, while attending graduate school. Applicant told the OPM investigator that his means of support was in the form of educational fellowships. (GE 7) He explained that his financial problems began in 2010 when he was unemployed. (Tr. 54) Applicant found employment at a low rate of pay in 2011. In August 2017, Applicant was offered a high paying job (AE M), but the contract did not go forth. (AE M)

Applicant's wife worked and helped pay all bills until she became pregnant in 2011. She was on complete bed rest and could not work. In addition, she was hospitalized and in the hospital for about three months. She had a tumor. (AE Q and R) After she delivered her baby, she had seizures and again could not work. (Tr. 56) Applicant had his student loans and a sole income. In 2014, he attempted to rehabilitate some of the student loans. In 2015, he started to get advice and work with a credit repair company, but they did not help him. (Tr.)

Applicant reported that some of his student loans were garnished in 2010 and again in 2017. The garnishments were released in November 2017. (AE D and E) In

2017, Applicant's wife had a second child, but was so ill with various health issues that she could not work after the delivery. (Tr. 61)

Applicant's wife testified that he is a true family man. She confirmed the health issues surrounding her pregnancies. She explained they moved at one point to save money. (Tr. 86) The babies are healthy, but Applicant's wife has heart issues along with seizures. She has not been able to work for several years. (Tr. 89) She has been in and out of the hospital several times over the past years and as a result, Applicant incurred many medical and hospital bills. She stated that Applicant was not trying to shirk his responsibility for student loans, but made a priority of maintaining his family.

Another witness testified at the hearing. She knows Applicant and his wife from their church. She has known them since 2011 and knows the details of the financial issues. She stated that Applicant has juggled things as best as he could. (Tr. 103)

During his OPM investigative interview, Applicant spoke about his twelve student loans from different agencies. He was paying \$500 a month on one student loan before his wife was hospitalized. (GE 8) He believes he made payments from 2013 to 2015. His pay was garnished for one student loan account. He paid a total of \$28,472 through garnishment. (AE D) Applicant stated that some student loan accounts were closed and sold to the government. He stated that although there are 12 student loans, he only has three student loan creditors. Applicant noted that some loans were not in collection, but 120 days past due, but he had not obtained his credit report.

As to SOR ¶¶ 1.a, 1.b, 1.c, 1.e, 1.f. and 1.k, Applicant consolidated those student loans with the help of another debt solution company. In October 2018, he obtained a reduced interest rate program. Applicant made the first payment of \$149.50. (AE A-B) The plan calls for 300 monthly payments. He was credible when he stated that he had been making payments in 2013. (AE F) Applicant stopped payments due to unemployment and his wife's severe health issues.

As to SOR 1.d, for another student loan, he started the process of consolidation. However, he produced evidence that he had been making payments of \$339.50 monthly from 2014 to 2017. (GE 8)

As to SOR 1.g-1.j, these student loan accounts are currently undergoing a nine month rehabilitation. Applicant has made two monthly payments. He presented evidence of the payment plan. (AE F)

As to SOR 1.i, a cell phone collection account in the amount of \$540, the account was settled in April 2017. (AE G)

As to SOR 1.m, Applicant states that this medical account in the amount of \$134 was paid in March 2017. (AE H)

As to SOR 1.n, a hospital judgment in the amount of \$771, this account has been going through an insurance process for several years. This was the result of his wife's

first pregnancy. The hospital was given proof that Applicant's child was on his insurance, but they had not submitted it to the correct healthcare provider. Applicant submitted information from his healthcare provider stating that he does not owe \$771. (AE S)

As to SOR 1.o, a credit card in collection in the amount of \$1,208, Applicant presented payment receipts from 2017 to 2018 and the current balance is \$385. (AE I and S)

As to SOR 1.p, a garnishment in the amount of \$47,989 from one student loan agency, this was paid and was released on November 20, 2017. (AE E)

As to SOR 1.q, Applicant submitted information that he did not have delinquent state taxes in the amount of \$6,754 from tax year 2012. His wages were never garnished for any tax. His evidence from the comptroller of the state reflects the matter was resolved and no action was required on Applicant's part. (AE S)

Applicant's current salary in 2017 was about \$95,000. His prior salary was about \$50,000. He has a budget and some savings. His wife is now working. His net monthly income, including his wife's income is about \$8,103. After monthly expenses and debt repayment, he has a net remainder of about \$300. Since the garnishment has been lifted, he will have more discretionary money to pay bills. (GE 8; AE O, P)

When Applicant completed his 2015 SCA, he answered "No" to Section 26 concerning any failure to file or pay any Federal, state or local taxes as required by law.

Applicant denied that he intentionally falsified his 2015 SCA. In his answer, and in his testimony at the hearing, he reported that he paid the correct state tax to the correct state. He produced documentation that he never owed any tax to the state alleged in the SOR. Thus, he answered "No" to the question. He did not falsify his SCA.

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 for each guideline, the adjudicative guidelines (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, “Any 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. Under Directive ¶ E3.1.15, “The 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 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 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 EO 10865, “Any 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 *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline F (Financial Considerations)

The concern under this guideline 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

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified

information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions, corroborated by his credit reports, establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"), and AG ¶ 19(c) ("a history of not meeting financial obligations").

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's student debts are long-standing and he acknowledges that he stopped paying on some of them due to unemployment and the medical emergencies that his wife encountered during two pregnancies. These were conditions beyond his control. He used the student loans to complete his education to better his job skills. He obtained a graduate degree. He started making payments but had to stop as he could not afford them. He had loans from several sources and some accounts were sold to another agency. He put his priority on his family. However, he did obtain some help with a credit repair company but it did not work out. Applicant now has consolidated his student loans. He is in repayment plans. A garnishment for one of the loans has been lifted. He now has the opportunity for a steady full time job. He has made good faith efforts over the years and again sought financial counseling in 2017. He has paid the other medical and credit collection accounts. He does not have any delinquent taxes. He was sincere and credible in his desire to explain his circumstances and take responsibility for the financial issues. He did not avoid any creditor. He pursued the creditors to arrange payment plans. He appears to have good judgment and is being responsible with all his student loans, despite the large amount involved. His salary will increase and his wife is now working. I find that all the mitigating conditions apply in this case.

Applicant has presented sufficient information to meet his burden in this case. He was credible and has a good reference. For these reasons, I find SOR ¶¶ 1.a through 1.r. for Applicant.

Guideline E, Personal Conduct

The concern under this guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

- (a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and
- (b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

Based on Applicant's alleged deliberate falsification of his SCA, the following disqualifying condition could apply:

AG ¶ 16 (a): deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant denied that he falsified his 2015 SCA, in his answer, and in his remarks at the hearing, he was adamant that he was not trying to defraud the Government. He produced evidence that he did not answer incorrectly. He has no delinquent tax owed to a particular state.

There is no evidence to substantiate the SOR allegation of falsification. Therefore, AG ¶ 16(a) is not established.

Applicant spoke openly to the investigator during his interview. He provided sufficient information in this record to demonstrate that he has met his burden of proof for his personal conduct.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall commonsense judgment based upon careful consideration of the applicable guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guidelines F and E in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, including Applicant's credibility and openness at the hearing, I conclude that he did not deliberately falsify his SCA, and due to his good faith efforts and perseverance he has mitigated the security concerns raised by his financial indebtedness. Accordingly, Applicant has carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a – 1.r:

For Applicant

Paragraph 2, Guideline E (Personal Conduct): FOR APPLICANT

Subparagraph 2.a:

For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest to continue Applicant's eligibility for access to classified information. Clearance is granted.

Noreen A. Lynch
Administrative Judge