



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



In the matter of:)
)
) ISCR Case: 17-02087
)
Applicant for Security Clearance)

Appearances

For Government: Robert B. Blazewick, Esquire, Department Counsel
For Applicant: *Pro se*

03/23/2018

Decision

WHITE, David M., Administrative Judge:

Applicant owes more than \$59,000 in delinquent student loan debt, and his former home was foreclosed in 2015 after he stopped paying his mortgage loan. He offered insufficient evidence of efforts or means to resolve his debts, or to establish rehabilitation. Resulting security concerns were not mitigated. Based upon a review of the pleadings and exhibits, national security eligibility is denied.

Statement of Case

On April 28, 2016, Applicant submitted an electronic questionnaire for investigations processing (e-QIP). (Item 3.) On June 30, 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). (Item 1.) 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 *National Security*

Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position (AG), as set forth in Appendix A of Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (December 10, 2016), which are effective for all national security eligibility decisions¹ issued on or after June 8, 2017.

Applicant answered the SOR on July 19, 2017, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) On August 16, 2017, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing six Items, was mailed to Applicant on August 16, 2017, and received by him on September 14, 2017. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant timely submitted additional information in response to the FORM, did not file any objection to its contents, and did not request additional time to respond beyond the 30-day period he was afforded.

Applicant's FORM response is marked exhibit (AE) A and is admitted in evidence, without objection by Department Counsel. Items 1 through 5 are also admitted in evidence. Item 6 is an unsworn and unauthenticated summary of Applicant's interview with an investigator from the Office of Personnel Management (OPM), who prepared and submitted it as part of the Report of Investigation (ROI). Applicant was silent with respect to his right to object to its admissibility under Directive ¶ E3.1.20, due to lack of authentication, and was not asked to adopt the summary as his own statement. Accordingly, Item 6 is admitted into evidence for the limited purpose of considering any extenuating or mitigating evidence contained therein. It will not be considered as a source of evidence supporting any disqualifying conditions or whole-person security concerns adverse to Applicant.

Findings of Fact

Applicant is 37 years old and married, with two children ages 9 and 7. He earned a bachelor's degree in May 2003, and a master's degree in December 2009. He took additional graduate coursework at a university from August 2010 to April 2014, but did not complete another degree. He has no military or federal civil service, and this is his first application for a security clearance. (Item 3.)

Applicant admitted all of the allegations in the SOR, with some explanations. The record credit report entries, upon which the SOR allegations are based, indicate that his seven delinquent Federal Department of Education student loan debts total \$59,494; range from \$2,786 to \$18,537; were opened between 2008 and 2010; and were placed for collection in October 2013. On September 12, 2017, Applicant entered into a loan

¹ SEAD 4 ¶ D.7 defines "National Security Eligibility" as, "Eligibility for access to classified information or eligibility to hold a sensitive position, to include access to sensitive compartmented information, restricted data, and controlled or special access program information."

rehabilitation agreement with the collection agency that requires him to make nine monthly payments of \$287 starting on September 20, 2017. The agreement covers all seven delinquent loans, on which the total outstanding balance had then grown to \$75,173. Upon successful completion of these terms, the seven delinquent loans would be transferred to the Department of Education's loan servicer for recapitalization and calculation of a new required monthly payment, and would no longer be considered to be in default. No evidence of any payments under this last-minute agreement was submitted. (Item 2; Item 4; Item 5; AE A.)

In July 2006, Applicant opened about \$119,000 in mortgage loans from his state housing development authority for the home that he purchased and lived in until December 2012. He and his family then moved into the home of his father-in-law and mother, located in a different city, to provide support during his mother's treatment for cancer. In September 2013, Applicant and his family rented a home and moved to another city closer to his new job. Applicant reported full-time employment from May 2004 to May 2013 in the city where he owned the home, and different full-time employment near his current rented home from May 2013² until he submitted his e-QIP in late April 2016. However, in his answer to the SOR, he said that he was unemployed during the nine months in 2013 when he and his family lived with his mother, and that he was on public assistance during that time. No clarification of these contradictory statements concerning his employment status was provided. (Item 2; Item 3; Item 5.)

Applicant unsuccessfully tried several times from 2011 to 2013 to sell the home that he owned. At the time, homes in his neighborhood were selling for around \$70,000 but he still owed more than \$115,000 to his mortgage lender. During 2013 and 2014, he had several tenants who lived in the home but did not pay the rent. According to the record credit reports, Applicant stopped making mortgage payments in July 2014; the lender foreclosed on the property in January 2015; and the home sold for about \$63,000 in May 2015. (Item 2; Item 3; Item 4; Item 5.)

Applicant's supervisor wrote a letter commending Applicant's honesty, hard work, and motivation to deliver his expertise and excellent service to the Navy Reserve members for whom they are contracted to provide support. He said that Applicant is trustworthy with sensitive information, knowledgeable about required procedures, and held in high regard by Navy leadership with whom he interacts. (AE A.)

Applicant offered no evidence of financial counseling or other efforts to improve his financial management abilities. He provided no budget information from which to predict his future solvency, or his ability to make payments toward his delinquent debts. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

² During his OPM interview, Applicant said the March 2013 start date for employment in the new city, which he reported on page 12 of his e-QIP, was a mistake. He said that employment started in May 2013, but otherwise affirmed that these e-QIP employment dates were correct. (Item 6.)

Policies

When evaluating an applicant's national security eligibility, 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 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. Under Directive ¶ E3.1.15, 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 *also* 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:

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. 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 describes three conditions that could raise security concerns and 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 incurred more than \$59,000 in delinquent Federal student loan debts since 2008, and stopped making required mortgage payments to a state housing agency leading to foreclosure on his former home. He documented neither the ability nor actual payments toward satisfying these debts. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's admitted financial difficulties:

- (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.

Applicant's multiple delinquent debts are substantial and ongoing. His failure to address any of these debts in a meaningful way before the record closed creates ongoing concerns about his reliability, trustworthiness, and judgment. He offered no reasonable basis to conclude that such problems will not continue or recur. Mitigation was not established under AG ¶ 20(a).

Applicant neither documented that any of his delinquent debts arose from circumstances beyond his control, nor showed that he acted responsibly under such circumstances, as required for mitigation under AG ¶ 20(b). He offered no evidence of financial counseling or budget information establishing a future ability to repay his delinquencies. He failed to demonstrate that these problems are being resolved, are under control, or that a good-faith effort toward resolution has actually been initiated. The last-minute student loan rehabilitation agreement, with no evidence of making required payments, is insufficient. Accordingly, Applicant failed to establish mitigation of financial security concerns under the provisions of AG ¶¶ 20(c) or 20(d).

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. Applicant is a mature adult, who is accountable for his choices. He voluntarily defaulted on his underwater home mortgage, and continues to owe more than \$75,000 in delinquent Federal student loan debts toward which he made no required payments. He basically ignored this obligation to the Federal Government, from which he seeks national security eligibility, until faced with the imminent denial of that clearance. The potential for pressure, exploitation, or duress remains undiminished, and recurrence of irresponsible behavior was not shown to be unlikely. Overall, the evidence creates significant doubt as to Applicant's trustworthiness, reliability, eligibility, and suitability for a security clearance. He failed to meet his burden to mitigate security concerns 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 Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:

AGAINST APPLICANT

Subparagraphs 1.a through 1.h:

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 a security clearance or permit his employment in sensitive duties. National security eligibility is denied.

DAVID M. WHITE
Administrative Judge