



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-02472

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

05/25/2018

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 July 8, 2016. On August 14, 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 June 8, 2017.

Applicant answered the SOR on October 6, 2017, admitting all of the SOR allegations. He provided explanations including that he was in a federal loan rehabilitation program for his student loans, and in 2015 his family lost \$30,000 in income because his wife suffered from an acute medical condition and was unable to work for several years. Also, Applicant retained an attorney and filed for Chapter 7

bankruptcy protection in November 2017. Attached to his Answer was a September 21, 2017 letter from Default Resolution Group, stating that his 14 student loans were now rehabilitated. Applicant also requested a hearing before an administrative judge. The case was assigned to me on March 12, 2018. On March 22, 2018, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for April 12, 2018. I convened the hearing as scheduled.

The Government's Exhibits (GE) were not available for the hearing.¹ I left the record open until April 26, 2018, for Department Counsel to provide the GEs to Applicant. He did not object and GEs 1 through 4 were later admitted into evidence without objection. At the hearing, Applicant testified and submitted Applicant's Exhibits (AE) A through P, which were admitted without objection. Applicant also submitted additional documents post-hearing (AE Q – AE T) that were admitted without objection.

Findings of Fact²

Applicant is 30 years old. He obtained a bachelor's degree in 2013. Applicant served on active duty in the U.S. Air Force from June 2006 to June 2010 and obtained an honorable discharge. (AEs Q and R) Applicant was unemployed for one year while he was completing his college studies in 2013. He has been married for nine years and has five children, ages seven and under. (Tr. 27-28) Applicant has been employed by a federal contractor aboard a military installation since 2016. Applicant's wife has been a stay-at-home mother for over four years.

The SOR alleged 22 delinquent debts totaling approximately \$65,000, including 14 allegations of delinquent student loans in the approximate amount of \$58,000 (SOR ¶¶ 1.f-1.s). Applicant admitted all of the allegations in his Answer to the SOR. Applicant testified credibly that these student loans are now rehabilitated. (Tr. 40-41) He attached a September 21, 2017 letter from the student-loan servicing agency to his Answer, which listed all of the student loan accounts and confirmed that they are in rehabilitated status. (AE B) These student loans were also included in his Chapter 7 bankruptcy petition filed in November 2017. (GE 4, AE B) Applicant testified that his Chapter 7 bankruptcy includes \$111,000 in dischargeable debts and should be completed in May 2018. (Tr. 59) However, approximately \$60,000 in student loan debt will remain. Applicant testified credibly that he will set up an income-based repayment plan with Department of Education (DOE) once the bankruptcy is closed. (Tr. 58)

¹ Department Counsel's briefcase was sidetracked en route to the hearing. I left the record open for him to submit the GEs, which had already been provided in discovery, to Applicant. I also allowed time for Applicant to object. He did not raise an objection.

² Unless stated otherwise, the source of the information in this section is Applicant's July 8, 2016 security clearance application (SCA).

Applicant's wife had a debilitating illness, which incapacitated her for the entire period of all five of her pregnancies. He submitted a packet of medical documents confirming her condition. (AE H) Applicant incurred significant medical debts including co-payments and medications costs and she was out of the work force. (Tr. 30) Applicant had a voluntary sterilization procedure to prevent further pregnancies and medical issues for his wife. (AE L) SOR ¶¶ 1.d, 1.e, 1.u, and 1.v are all delinquent medical debts that are included in the bankruptcy. (GE 4, Tr. 40) SOR ¶ 1.t was for a credit card that Applicant used in college, and is also included in the bankruptcy plan. (GE 4, Tr. 43) SOR ¶ 1.a is also contained in the bankruptcy petition and SOR ¶ 1.b was paid in full on October 11, 2017. (Answer)

Applicant testified that he fell behind on the student loan payments, credit-card payments, and medical debts alleged in the SOR because he was unemployed and his wife was seriously ill. He could not keep up with payments. (Tr. 52) In addition to online credit counseling as a pre-condition of filing bankruptcy, Applicant had financial counseling from a private agency. (Tr. 35, AE K)

Applicant provided 14-character reference letters, all attesting to his integrity, work ethic, trustworthiness and reliability. (AE I) He often worked 70 – 80 hours per week, at two jobs, to try to provide for his large family. Applicant also had two witnesses testify on his behalf at the hearing. (Tr. 15-21) They testified that Applicant is a patriot, and family man, and they have no reservations about him holding a security clearance.

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, 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 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 are potentially applicable here:

- (a) inability to satisfy debts; and

(c) a history of not meeting financial obligations.

Applicant's delinquent debts alleged in the SOR are confirmed by his credit reports, answer to the SOR, and documents submitted at the hearing. The Government produced substantial evidence to support the disqualifying conditions in AG ¶¶ 19(a) and 19(c), thereby shifting the burden to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts.³

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; and

(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;

Applicant endured a series of setbacks including unemployment for one year, and his wife's persistent and debilitating illness. He has done everything possible to aid her recovery and care for his children. These conditions were beyond his control. He has now produced relevant and responsive documentation, demonstrating that he acted responsibly under the circumstances. Applicant appropriately engaged an attorney and filed for bankruptcy protection to address his financial problems. He also had independent financial counseling. Most of the delinquent debts have been resolved through Chapter 7 bankruptcy. Others have been paid in full. He has met his burden to show that his financial problems are under control, and that his debts were incurred under circumstances making them unlikely to recur. He produced documentation to confirm that most of the delinquencies alleged in his SOR have been included in his Chapter 7 bankruptcy plan. He intends to enter an income-based plan to pay off his student loans. The mitigating conditions enumerated above in AG ¶ 20 apply.

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).

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 is caring for his recovering wife, and raising five children. He has an honorable discharge from the military and has been gainfully employed for most of his adult life. He has struggled to overcome his financial travails and pay off his student loans. He is now completing a bankruptcy plan to resolve his financial problems. Applicant testified credibly and persuasively that his finances are now under control. Applicant has addressed the specific allegations in the SOR and taken affirmative measures to resolve them.

Applicant's finances no longer are a security concern. 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.v:	For Applicant