



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



In the matter of:)	
)	
)	ISCR Case No. 17-02580
)	
Applicant for Security Clearance)	

Appearances

For Government: Benjamin R. Dorsey, Esq., Department Counsel
For Applicant: *Pro se*

08/24/2018

Decision

Curry, Marc E., Administrative Judge:

Applicant’s contention that he had either satisfied or was in the process of satisfying his delinquent debts was insufficient to meet his burden of proof, absent any substantiating evidence. Clearance is denied.

Statement of the Case

On August 10, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, explaining why it was unable to find it clearly consistent with the national interest to grant security clearance eligibility. The DOD CAF took the action 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 Security Executive Agent Directive 4, effective June 8, 2017.

On August 18, 2017, Applicant answered the SOR, admitting all of the allegations except subparagraph 1.b. He requested a hearing, whereupon the case was assigned to me on March 15, 2018. On May 7, 2018, the Defense Office of Hearings and Appeals

issued a notice of hearing, scheduling Applicant's case for June 4, 2018. The hearing was held as scheduled. I received three Government exhibits (GE 1 – GE 3) and two Applicant exhibits (AE A - AE B). At the close of the hearing, I left the record open until July 2, 2018, for Applicant to submit additional documents. He did not submit any additional evidence. The transcript (Tr.) was received on June 4, 2018.

Findings of Fact

Applicant is a 29-year old single man with one child, a toddler, with whom he shares custody with the mother. Applicant is a veteran of the U.S. Marine Corps, enlisting in 2007 and serving through his honorable discharge in 2015. While enlisted, he served in a combat theater from October 2009 through the summer of 2010. He is currently working on an undergraduate degree in business management and cyber security. He has been working in the defense contracting industry since leaving the Marine Corps. (GE 1 at 12) He works in the field of communications. (Tr. 15) He has held a security clearance since 2006. (Tr. 19)

While in the Marines, Applicant financially overextended himself helping family members, particularly his aunt and her mentally handicapped son. (Tr. 33) His financial problems were exacerbated by a ten-month unemployment period after he was discharged from the Marines. (Tr. 19) By the date of the SOR, Applicant had incurred approximately \$12,500 of delinquent debt.

SOR subparagraph 1.a, totaling \$5,285, is a debt owed to a credit union. Applicant contends that he has reduced this delinquency by approximately \$1,580 through \$100 monthly payments, beginning in June 2017. He provided no documentary, substantiating evidence. Similarly, he provided no documentary evidence substantiating that he had satisfied subparagraph 1.c, totaling \$572.

Applicant denies subparagraph 1.b, totaling \$1,056, but provided no evidence setting forth the basis of his denial, or documenting any steps taken to resolve the issue. Applicant contends that he will begin satisfying subparagraph 1.d, totaling approximately \$5,000, once he finishes satisfying subparagraph 1.a.

Applicant maintains a budget. He started a new job less than a month before the hearing. His salary is \$87,000 annually, an amount \$26,000 per year higher than his previous job. He is depositing the increased salary into his 401(k) account each pay period. (Tr. 22)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 list potentially disqualifying conditions and mitigating conditions, which are required to be considered 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 overall 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. Under Directive ¶ E3.1.14, the Government must 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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Section 7 of Executive Order 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).

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(a).¹

¹ The factors under AG ¶ 2(a) are as follows:

- (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.

Analysis

Guideline F: Financial Considerations

The security concerns about financial considerations are set forth in AG ¶ 18:

Failure or inability 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.

Applicant's ongoing financial problems trigger the application of AG ¶ 19(a), "inability to satisfy debt," and AG ¶ 19(c), "a history of not meeting financial obligations."

The following mitigating conditions are potentially applicable:

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 person has received or is receiving 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;

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

AG ¶ 20(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 documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's financial problems did not occur as the result of foolish or irresponsible spending. Instead, his financial problems began when he overextended himself trying to help extended family members, and they were further exacerbated when he was unemployed for ten months after leaving the Marines. The first prong of AG ¶ 20(b), "the conditions that resulted in the financial problem were largely beyond the person's control . . ." is applicable.

Applicant demonstrated staunch commitment to family and country by helping relatives in need, and serving honorably in the Marines. Nevertheless, he still has the burden of proof to produce evidence that he has mitigated the security concern, such as

receipts of satisfied debts or ongoing payments. The evidence that he produced at the hearing did not meet this threshold, and he did not take advantage of the opportunity provided when I extended the record to submit additional evidence. Under these conditions, there is insufficient evidence to conclude that the second prong of AG ¶ 20(b), or any of the remaining mitigating conditions apply.

Whole-Person Concept

I evaluated the whole-person factors in my analysis of the disqualifying and mitigating conditions under the financial considerations guideline. I conclude that Applicant has failed to carry the burden.

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.d:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Marc E. Curry
Administrative Judge