



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-02689

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

11/28/2018

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 January 19, 2015. On October 13, 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 November 14, 2017, admitting four of the SOR allegations and denying ten of the delinquent debts alleged in the SOR. Applicant also requested a hearing before an administrative judge. The case was assigned to me on August 20, 2018. On September 4, 2018, the Defense Office of Hearings and Appeals

(DOHA) notified Applicant that the hearing was scheduled for September 25, 2018. I convened the hearing as scheduled.

The Government's Exhibits (GE) 1 – 5 were admitted without objection. At the hearing, Applicant requested that the record remain open until October 9, 2018, for supplemental documentation. (Tr. 26) At his request, I extended the period to November 14, 2018. He submitted post-hearing documents consisting of seven pages that were marked as Applicant's Exhibit (AE) A, which was admitted without objection.

Findings of Fact¹

Applicant is 34 years old. He graduated from high school in 2001 and obtained a bachelor's degree in 2011. Applicant never married but he reports a daughter, age 12. (Tr. 21) Applicant reports no military service and he has been employed as a security professional at a federal agency since March 2016. Applicant had several periods of unemployment over the last 10 years. Applicant disclosed his child-support arrearage in section 26 of his SCA, stating that he could not keep up with payments due to an automobile accident in 2011 and periods of unemployment. The IRS is withholding his income tax refunds and his wages are being garnished to pay child support. He provided post-hearing documentation from a state child support services division reflecting a current balance of \$13,430, down from \$15,349. (AE A)

The SOR alleged 14 delinquent debts totaling approximately \$20,404, including the child support arrearage and two judgments. Applicant answered interrogatories on July 5, 2017, stating that his federal income tax refund was being applied to his \$15,349 child support arrearage. (GE 3) He testified that he pays \$442 each month by garnishment of his wages toward the child support debt. (Tr. 22) He fell behind when he was living in state A and his mother became gravely ill and lost her job. He moved in with his mother and became her caretaker while supporting her financially for two to three years before he moved to state B in 2016. (Tr. 30-33)

Applicant testified that he worked as a special police officer and an armored car driver in a large city (Tr. 37-39) before moving south. He was on a detail in late 2012 when his partner was shot in the face during an armed robbery. His employer offered no support, such as psychological counseling, therapy, or time off, following this traumatic event. (Tr. 39) The employer expected him back at work the next day. So, Applicant was fired from this job in February 2013 and endured a period of unemployment for approximately one year. (GE 1) He was also unemployed from 2008 to 2011, while attending college. He received a basketball scholarship for his freshman year of college, but when his coach was fired, Applicant lost the scholarship. (Tr. 45) His mother co-signed for his student loans after that. The student loans are now in a deferred status. (Tr. 44-45) Applicant also incurred child support responsibilities while he was in college. (Tr. 47)

¹ Unless stated otherwise, the source of the information in this section is Applicant's May 5, 2017 security clearance application (SCA).

Applicant testified that he was in an automobile accident in 2011 and he sustained injuries including fractures and incurred medical bills that were supposed to be covered by insurance. (Tr. 48) He has reached out to the creditors in SOR ¶¶ 1.b, and 1.i – 1.k, to dispute these medical debts. Applicant testified that the delinquent debt placed for collection by Time-Warner in the amount of \$236, has been paid in full. (Tr. 50) Also, the utility bill placed for collection by the public works department in the amount of \$328, and the \$100 parking ticket at SOR ¶ 1.m, have been paid in full. Applicant provided post-hearing documents corroborating that these delinquencies have been satisfied. (AE A) He testified that he returned the book to St. Joseph's University accounting for the \$164 debt placed for collection at SOR ¶ 1.n. (Tr. 52) He provided a document from the University stating that this has been paid in full. (AE A)

Applicant submitted a post-hearing document from a bank indicating that the debt in the amount of \$400 that was charged off at SOR ¶1.f, was paid off on March 21, 2015. The last payment of \$320 was received on that date and the creditor reported it as paid in full. (AE A) Similarly, the judgment entered against him as the result of breaching a lease, was satisfied on April 30, 2015, when Applicant paid \$437.93 to settle it. (AE A) The delinquent debt in the amount of \$196 that was placed for collections in SOR ¶ 1.l was paid in full in June 2013 and Applicant testified that he still has an active account with this telecommunications provider. (Tr. 53) He testified credibly that the debt at SOR ¶ 1.e placed for collection in the amount of \$874 by an apartment complex has been paid in full when he paid \$656 on May 15, 2015. (Tr. 52, AE A)

Applicant provided budget information including his \$23.60 per hour pay rate, and his monthly rent in the amount of \$1,396. He also makes his monthly child support payments and has utility and transportation costs. He did not receive formal financial counseling but he has his finances under control now that he has steady employment. (Tr. 59-60) He hopes to obtain a loan by the end of this calendar year to completely eliminate his child support arrearage. (Tr. 54-55)

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 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.²

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

Applicant endured financial problems when his mother became severely ill, he was involved in an automobile accident, and he had prolonged periods of unemployment. These conditions were beyond his control. He demonstrated that he tried to resolve his delinquencies in good faith by entering into a repayment plan with the state division of child services and by making additional monthly payments, on this child support debt. He has now produced relevant and responsive documentation,

² 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).

demonstrating that he acted responsibly under the circumstances. Applicant appropriately disputed his medical debts, which were co-payments that should have been covered by insurance. He has worked hard to address his delinquencies, and paid most of the delinquent debts alleged in the SOR. The others were disputed. 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. The mitigating conditions enumerated above in AG ¶ 20 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, 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 a devoted son and father. He has worked for several years as a special policeman and security specialist, without issues. He survived a series of personal setbacks and trauma including an armed robbery that resulted in a fatality. He has struggled to overcome his financial travails and pay off his debts. He has made substantial progress in repaying his child-support arrearage and 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. Many of the delinquent debts in the SOR were paid several years ago. Others were successfully disputed. 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.n: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is granted.

Robert J. Kilmartin
Administrative Judge