



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



In the matter of:

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ISCR Case No. 17-02749

Applicant for Security Clearance

Appearances

For Government: Alison O'Connell, Esq., Department Counsel

For Applicant: *Pro se*

09/10/2018

Decision

Curry, Marc E., Administrative Judge:

Applicant has satisfied his delinquencies or is satisfying them through payment plans. He has mitigated the financial considerations security concerns. Clearance is granted.

Statement of the Case

On August 28, 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 National Adjudicative Guidelines (AG) effective for any adjudication made on or after June 8, 2017. On September 22, 2017, Applicant answered the SOR, admitting all of the allegations except subparagraphs 1.e through 1.g, and requested a hearing. The case was assigned to me on April 13, 2018. On June 5, 2018, the Defense Office of Hearings and Appeals issued a notice of hearing, scheduling

Applicant's case for July 18, 2018. The hearing was held as scheduled. I received six Government exhibits (GE 1 – GE 6) and 4 Applicant's exhibits (AE A - AE E), and I received the testimony of Applicant and a character witness. Also, I took administrative notice of a copy of the discovery letter that Department Counsel mailed to Applicant. Hearing Exhibit I). At the close of the hearing, I left the record open for Applicant to submit exhibits. Within the time allotted, he submitted three exhibits which I incorporated into the record as AE F through AE H. The transcript (Tr.) was received on July 26, 2018.

Findings of Fact

Applicant is a 52-year-old man. He was married previously from 1993 to 1995. (Tr. 25) The marriage ended in divorce. Applicant earned a bachelor's of science in 1990, a master's degree in 1992, and a doctorate in 2006. All of these degrees were in the field of electrical engineering. (GE 1 at 8-9) Since 2015, Applicant has worked for a defense contractor. His duties include refurbishing antennas. This is his first application for a security clearance.

Applicant is highly respected on the job. According to his program manager, his technical knowledge, dedication, and integrity are "unparalleled." (AE E at 1) Moreover, his expertise has resulted in "drastically improved process and procedures." (AE E at 1) According to a co-worker, Applicant is a hard worker, staunchly committed to making his life better without "looking for a quick fix or an easy way out." (AE E at 2)

Over the past 15 years, Applicant has incurred approximately \$80,000 of delinquent debt. The majority of the debt consists of a state income tax delinquency, totaling \$7,500, as alleged in subparagraph 1.a, and student loan debt totaling \$70,000, as alleged in subparagraphs 1.b through 1.d. (Answer at 1; AE C at 3) Applicant's financial problems were caused, in part, by employment instability. Specifically, he worked in several positions at the university where he earned his doctorate, and many of these positions were funded through grants. When grants were not renewed, Applicant would lose employment. Between 2011 and 2016 Applicant experienced three periods of unemployment, ranging from four to 12 months. (GE 1 at 11, 13)

Applicant's state tax lien stems from unpaid income taxes from 2011. (Tr. 41) In May 2017, he entered into an agreement with the revenue authority to satisfy the debt in 36 monthly increments of \$269. (AE A at 2) He has been making the payments, as agreed, since then. (AE A at 3-4)

Applicant's student loan accounts became delinquent while he was working towards his doctorate. Because he was not then working full time, he attempted to obtain forbearance status. The university, however, did not have a mechanism in place to differentiate full-time enrollment from part-time enrollment for doctoral candidates, leading Applicant's student loan creditors to conclude that he was no longer attending school. (Tr. 30) Consequently, the student loan company rejected Applicant's forbearance request, and his accounts became delinquent in 2006. (Tr. 44)

Applicant attempted to rehabilitate his student loans several times over the years, but repeatedly was sidetracked by employment instability. (Tr. 44) Most recently, he has consolidated the loans, and has been making payments to two student loan creditors. Specifically, he has been paying one of the creditors payments ranging from \$537 to \$582 monthly since July 2017, and he has been paying the other creditor \$79 monthly since December 2017. (AE C at 2-3)

Subparagraph 1.e is a debt allegedly charged off. The SOR does not allege the amount of the delinquency. Applicant contacted the creditor in July 2016 to negotiate a settlement. The balance at that time was \$10,289. Applicant settled the debt for \$3,600. (Answer at 14) He provided evidence of monthly payments totaling approximately \$3,100 made between August 2016 and April 2017. (Answer at 15) He contends that it is now satisfied.

Subparagraph 1.f totals \$956. Applicant settled this debt for \$478 and paid it in September 2017. (Answer at 17) Subparagraph 1.g totals \$799. Applicant satisfied this debt in September 2016. (Answer at 19)

Subparagraph 1.g totals \$120. The creditor alleged in the SOR is a collection agent. Applicant has been unsuccessful at identifying the original creditor. The debt remains outstanding. (Answer at 1)

Applicant acknowledges that his financial problems were not entirely caused by circumstances beyond his control. Dependence on relatives and procrastination also contributed to his financial problems. (Tr. 12) He now dedicates himself to living within his means. (Tr. 12) Applicant earns approximately \$95,000 annually. (Tr. 39) He has approximately \$1,500 deposited in a savings account.

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(a), 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 ¶ 1(d) 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.

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(d).¹

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 An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant’s history of financial problems generates security concerns under AG ¶ 19(a), “inability to satisfy debts,” AG ¶ 19(c), “a history of not meeting financial obligations,” and AG ¶ 19(f) “. . . failure to pay annual Federal, state, or local income tax as required.”

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

¹ The factors under AG ¶ 2(d) 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.

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;

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(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's financial problems stemmed from employment instability that he experienced shortly after earning his doctorate. In 2017, he arranged payment plans to satisfy his tax delinquency and his student loan accounts. He has been making payments towards his tax delinquency for the past 15 months and payment towards the student loans for the past 13 months. As for the remainder of the SOR debts, he has resolved all but one, a nominal debt that he was unable to identify.

Applicant certainly could have begun to pay his debts earlier. He acknowledges that some of his financial problems stem from procrastination and irresponsibility. The length of time that elapsed between the time he incurred the tax delinquency and the time he began paying it was particularly significant. Conversely, given the steps he has taken to satisfy the debts, the progress thus far, and his current financial well being, I am confident that he will continue to satisfy the remaining debts. I conclude that all of the mitigating conditions apply.

Whole-Person Concept

Upon considering the cause of Applicant's financial problems, and the presence of rehabilitation, I conclude that the likelihood of continuation or recurrence of the problem is minimal. Applicant has mitigated the security concerns.

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 – 1.h:

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 eligibility for a security clearance. Eligibility for access to classified information is granted.

Marc E. Curry
Administrative Judge