



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



In the matter of:)
)
) ISCR Case No. 17-03306
)
Applicant for Security Clearance)

Appearances

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

10/12/2018

Decision

LYNCH, Noreen A., Administrative Judge:

This case invokes security concerns raised under Guideline F (Financial Considerations). Applicant mitigated the financial security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On October 5, 2017, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline F. The SOR further informed Applicant that, based on information available to the Government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant timely answered the SOR, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on April 13, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 27, 2018, scheduling the hearing for September 13, 2018. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 5, which were admitted. Applicant testified on his own behalf, and offered Exhibits (AE) A and B. I held the record open until September 27, 2018, for additional documentation. Applicant presented a

packet of documents (receipts), which I marked AE C, and admitted into the record without objection. DOHA received the transcript of the hearing (Tr.) on September 24, 2018.

Findings of Fact

Applicant, age 42, is married and has no children. He graduated from high school, and has obtained certificates related to his job as a security technician. He has been employed with his current employer for less than three years. (Tr. 14) Applicant completed his security clearance application on September 18, 2016. He has never held a security clearance. (GE 1)

The SOR alleges that Applicant has delinquent debt in the approximate amount of \$3,112, for a collection account. (SOR 1.a) The SOR also alleges a past-due amount on a mortgage account in the approximate amount of \$12,699, with a total loan balance of \$61,751. (SOR 1.b) Applicant denied the first allegation and admitted the second allegation. He provided explanations for each account.

Applicant acknowledged his financial situation. He was unemployed after his company reduced his hours in 2014 for about four months. He did not receive unemployment benefits and used his savings to pay bills. When he began his new employment, he received a lower hourly rate of pay. In addition, he also experienced medical issues which resulted in many bills. (Answer to SOR)

Applicant devoted the full measure of his financial resources to one debt at a time. He presented documentation and explained during his OPM interview that he paid other non-SOR debts. He did not wish to file for bankruptcy. His plan was to eliminate one debt at a time. He explained that he paid the debt alleged in SOR 1.a and provided documentation to show that he began the payment plan in late 2016. He made monthly payments of \$600. The last payment of \$725 was made on September 25, 2017. The balance is zero. (AX B) The debt is resolved.

Applicant explained that he suffered a pulmonary embolism in June 2018. He presented documentation that he paid many medical bills amounting to about \$2,000. (AX) C. He has health insurance, but he has to pay the remainder. He will probably have more medical tests in the future. At the same time, he remained current on his first home mortgage loan and paid his homeowner association bill in the amount of \$1,500. He disclosed on his SF-86 that he also paid other credit cards bills. His earlier credit bureau report confirms his many accounts that are pays as agreed. When he had a reduction in salary and no work, he volunteered to the investigator that he did not file his 2013 or 2014 Federal income tax return. He filed both years returns in March 2016. He believes he asked for an extension. At the hearing, he answered that he is current with all federal and state tax returns. He does not owe the IRS any money. (GE 2, 4)

As to SOR 1.b, the past-due amount on his second home mortgage loan, Applicant explained that he has made several payments of \$1,000 to the lender after he became delinquent due to unemployment. (AX A) He was credible when he explained

that this is his last delinquent account. He is in the process of refinancing or attempting to roll both loans into one. He has an interest rate of 8.75. He has never been late on the first home mortgage loan. He stopped paying his monthly amount due to unemployment. (Tr. 40) He believes he has made sporadic payments. He admits that he needs some financial help to make the correct choice about paying the second mortgage. He was following his plan of paying debts one at a time, when suddenly in 2018 he had the medical issues.

Applicant currently earns about \$32 an hour. He works 40 hours a week and sometimes he has overtime. The overtime might earn him an hourly rate of \$48. (Tr. 17) He believes his net monthly income is \$950. He explained that until he obtained his current job, he was making about \$25 an hour. (Tr.20) Applicant's wife also works. Her earnings are about \$2,000 a month. He was saving money, and since 2017, he has a retirement account. His car loan is paid. He is current on his daily expenses and has no other delinquent debts, aside from the second mortgage on his home. That monthly payment is \$432. (Tr. 24) Again, Applicant was credible when he explained that he would have moved much quicker on this last delinquent account, but he suffered a pulmonary embolism, which set him back.

Applicant explained that he has, due to circumstances beyond his control, been dealing with financial delinquencies. He believes he has adhered to a plan to pay his debts. He volunteered information about his earlier unfiled tax returns, which are now resolved. He was honest on his SF-86 about his homeowner association bill, which he has paid. He also explained that they had seized his bank account for a period of time and he has taken care of that debt. He also paid several non SOR debts. Pointing to his credit reports, he explained that there is a track record of paying his debts. His priority was the Federal tax debt, credit cards, medical bills and current first mortgage. He has accomplished that in spite of having a serious medical issue appear in 2018. He tried to refinance the second mortgage note, but it was rejected for lack of information. He contacted the bank but did not receive any real assistance. His plan is to continue to remain current on all other bills, medical included, and find a company to refinance both home loans so that he will not be spending more on his mortgage than necessary. He knows he signed a mortgage and is in the process of completing his plan to pay the last delinquent debt. (Tr. 48)

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 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, “Any 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, “The 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 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 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 EO 10865, “Any 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 EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline F (Financial Considerations)

The concern under this guideline 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 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

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions, corroborated by his credit reports, establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"), and AG ¶ 19(c) ("a history of not meeting financial obligations.")

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

AG ¶ 20(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;

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 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

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

Applicant's debts are the result of unemployment and underemployment. He also incurred major medical bills. He paid many debts since returning to employment and a good-paying job in 2016. He paid many non SOR debts. He was left with one credit collection account, which was satisfied in 2017. He had a plan and the only delinquent account remaining is his second home mortgage loan. He is in the process of resolving the situation. His earlier credit reports show that he has many accounts that reflect pay as agreed. He is saving now and presented documentation that the medical bills are paid. He has not yet obtained financial counseling, but is aware of his need to do so. To date he is making genuine progress and acting responsibly under the circumstances. He volunteered information on his SF-86 and to the investigator about his 2013-2014 federal tax issues which has been resolved. He established a track record of financial

responsibility. He was credible in his explanations. He presented sufficient evidence to establish that he has been responsible under the circumstances. AG ¶ 20(a) is partially established. AG ¶ 20(b) is fully established.

AG ¶ 20(c) is not established. AG 20(d) is partially established. Applicant resolved all delinquent debts and is now working on his last delinquent account. Not all debts need to be resolved for mitigation. I have no doubts about his trustworthiness. Applicant met his burden to mitigate the financial concerns set out in the SOR. Clearance is granted.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the applicable guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, including his honesty in disclosing all his prior financial issues, which had been resolved before the issuance of the SOR, and the debts that Applicant has paid given his unemployment and medical condition, I conclude that Applicant has mitigated the security concerns raised by his financial indebtedness. Accordingly, Applicant carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F FOR APPLICANT

Subparagraphs 1.a-1.b: For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest to continue Applicant's eligibility for access to classified information. Clearance is granted.

Noreen A. Lynch
Administrative Judge