



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



In the matter of:)
)
) ISCR Case No. 17-03327
)
Applicant for Security Clearance)

Appearances

For Government: Julie Mendez, Esq., Deputy Chief Department Counsel
For Applicant: *Pro se*

09/14/2018

Decision

LYNCH, Noreen A., Administrative Judge:

This case invokes security concerns raised under Guideline F (Financial Considerations). Applicant has not mitigated the financial security concerns. Eligibility for access to classified information is denied.

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 May 10, 2018, scheduling the hearing for August 17, 2018. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 3, which were admitted. Applicant testified on his own behalf, presented one witness, and offered Exhibits (AE) A through H. I held the record open until September 7, 2018, for additional documentation.

Applicant presented two packets of documents, which I marked Applicant's Exhibits (AE) I and J, and admitted into the record without objection. DOHA received the transcript of the hearing (Tr.) on August 24, 2018.

Findings of Fact

Applicant, age 30, is single and has no children. He graduated from high school in 2006, and he attended three years of college classes. He served in the United States Marine Corps from 2006 to 2010, receiving an honorable discharge. He has been employed with his current employer for less than two years. (Tr. 22) Applicant completed his most recent security clearance application on May 27, 2015. He has held a security clearance since 2006. (GE 1)

The SOR alleges that Applicant has delinquent debt in the approximate amount of \$31,400, which include two judgments, medical accounts, charged-off accounts, and credit card collection debts. Applicant admitted five allegations and denied the rest as they no longer appeared on his credit report. He provided explanations for each account.

Applicant acknowledged his financial situation. After he left the military, he obtained a government job, and he was financially sound. He was attending college, using his G.I. bill and working to finance his education. However, he had a car accident in late 2011, and his vehicle was "totaled." Applicant explained that without a car he could not go to work or school so he moved to his parents' home. Since he was not attending classes, he did not receive his subsidy from the G.I. bill. (Tr. 23) He remained at his parent's home for about one year.

In mid-2013, Applicant returned to his current geographic area, and bought another car. He obtained various contracting jobs. (Tr. 32) Since the expenses in the area were high, he was living paycheck to paycheck. At the time, he was earning about \$42,000 to \$45,000 a year. (Tr. 24) It was during this time that he used credit cards to pay his bills. He could not maintain his bill payments. His car was repossessed.

Applicant explained that until he obtained his current job in 2016, he was not able to pay his car payment. Interest and late fees accrued. He also incurred some medical bills that he could not pay as he had no health insurance. His answer to the SOR stated that he intended to arrange payment plans for all his delinquent debts. However, he denied the debts that were no longer on his credit report (SOR 1.f-1.n). He worked with two different credit repair agencies to verify certain debts and improve his credit score. (AE E) He received financial counseling in 2015. (Tr. 45)

At the hearing, Applicant provided documentation that he settled the credit account in SOR 1.e. for about \$800. He made his last payment in March 2018. (AE B) He also provided documentation that he has paid two non-SOR debts. (AE F, G)

Applicant submitted excerpts of reports from a credit repair company, which showed that certain accounts had been deleted from his credit report. (AE C) He also submitted a 2017 credit bureau report.

As to SOR 1.a for \$12,824 and SOR 1.b for \$7,527, each amount is for the post-auction deficiency. Applicant does not have the money to make monthly payments on either one. These are currently outstanding. Applicant acknowledged that he is saving these debts for last. His plan is to pay the smaller debts and have them removed from his credit reports so that his credit will not be ruined. (Tr. 31)

As to SOR 1.c for \$2,702, this is for another car wrecked in an accident, which occurred in 2015. Applicant has received a settlement offer for \$566.19. He has not paid the settlement amount. (Tr. 37) He was making car payments, but could not afford to maintain the payments.

Applicant has a payment plan for the account in SOR 1.d. He pays \$30 monthly to the charged-off account which totaled \$1,345. He is current with his monthly payments. The balance is about \$1,225. (AX H)

As to SOR 1.f, which Applicant denied in his answer, he submitted a post-hearing submission that shows the 2013 judgment for a rental is paid and the balance is zero. (AX I)

SOR 1.g is a judgment filed in 2012 in the amount of \$2,189 for a medical account. Applicant stated that he would provide documentation for this judgment, but he could not find any documentation and he is working with the court system to locate documentation.

As to SOR 1.h through 1.k. Applicant believes that they are medical accounts. He stated that he did not pay them, but the credit repair company verified that he did not owe them or the collection agents did not send any documentation when they were disputed. (Tr. 28)

As to SOR 1.l and 1.m, Applicant disputed them and they were successfully removed from his credit bureau report. (Tr. 29; 48)

Applicant submitted character references that attest to his trustworthiness. A security specialist wrote that Applicant is highly professional and has worked with sensitive information without incident. He is an upstanding citizen and active member of the community. (AX A)

Applicant's fiancé testified at the hearing and wrote a letter of recommendation. She has known him for four years, and currently lives with him. She stated that he is considerate and reliable. She stated that they have sufficient income to pay their household expenses each month. She has a car note for which she is responsible. Applicant and his fiancée work from a budget.

Applicant purchased a home recently for \$315,000. His monthly mortgage is \$1,700. The home is in Applicant's name and he alone pays the mortgage. His fiancée pays for cable, gas, and water. Her income is about \$40,000 a year. Applicant earns about

\$74,000 a year. He has a savings account of about \$600. (Tr. 52) He has a car payment of \$500 a month.

Applicant testified that he is paying attention to what delinquent debts are on his credit reports. He prioritized the debts listed on the SOR by amount. He also wanted to buy a house and was advised that he could use the repair companies to help him decide which debts to pay or dispute or remain delinquent until a later time. He was concerned that the ones in the past that were delinquent were not hurting his credit score. (Tr. 48) Applicant was clear that he is not an expert on credit scores, but he knows that he will do what it takes to raise his credit score. (Tr. 68)

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 a major car accident totaling his car, unemployment for not quite two years, and underemployment after the loss of a vehicle and returning to his home state to live with his parents. He returned to work and obtained some contracting jobs but the income was not sufficient due to expensive living costs. In 2016, he obtained a job that paid well. To date he is making genuine strides in addressing some debts. He has paid two non-SOR debts and has paid one account in full. He is in a payment plan for another debt. He also paid one judgment for \$629. However, as for a medical judgment, there is no evidence that the court has removed the judgment due to satisfaction of payment. There are two substantial accounts remaining and a settlement offer that he has not paid. Applicant's concern to raise his credit score to buy a house recently undercuts some of his efforts to dispute and pay bills and not to pay or start paying on the larger ones. He used credit repair companies and paid them to dispute debts. He received counseling. He is on the right track, but the accounts that are not on his credit report are still his responsibility not necessarily no longer his obligation. He has not presented sufficient evidence to establish that he has been responsible under the circumstances. AG ¶ 20(a) is not fully established. Applicant chose to purchase a home with a mortgage payment. He incurred new expenses rather than continue to address the remaining delinquent debts. This established doubt about his current judgment and reliability.

AG ¶ 20(b) is not fully established. While Applicant's unemployment, underemployment, and auto accidents were conditions beyond his control, several large debts remain he has not presented sufficient mitigation to show that his delinquent debts are under control.

AG ¶ 20(c) and 20(d) are partially established. Applicant received financial counseling from the credit repair company. However, his reliance on the accounts that have been removed from his credit report do not provide sufficient mitigation to show that his delinquent debts are under control. Several large debts are still unresolved. Additionally, he has recently purchased a home and has a mortgage for which he is responsible. Not all debts need to be resolved, but any doubts must be resolved in favor of the Government.

Applicant has not met his burden to mitigate the financial concerns set out in the SOR. Clearance is denied.

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 years of service in the military and the smaller debts that Applicant has paid or had in a payment plan, I conclude that Applicant has not mitigated the security concerns raised by his financial indebtedness. Accordingly, Applicant has not 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	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	Against Applicant
Subparagraphs 1.d-1.f:	For Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for access to classified information. Clearance is denied.

Noreen A. Lynch
Administrative Judge

