



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



In the matter of:)
)
) ISCR Case No. 17-03367
)
Applicant for Security Clearance)

Appearances

For Government: Mary M. Foreman, Esquire, Department Counsel
For Applicant: *Pro se*

01/29/2018

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for access to classified information is denied.

Statement of the Case

On October 16, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F, financial considerations. The action was taken 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 (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on November 6, 2017, and requested a hearing before an administrative judge. The case was assigned to me on December 22, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 27, 2017. I convened the hearing as scheduled on January 16, 2018. The

Government offered exhibits (GE) 1 through 4, and they were admitted into evidence without objection.¹ Applicant testified and did not offer any exhibits. DOHA received the hearing transcript on January 23, 2018.

Findings of Fact

Applicant admitted the allegations in the SOR ¶¶ 1.a and 1.b. He denied the SOR allegations in ¶¶ 1.b and 1.d. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 47 years old. He earned a bachelor's degree in 2006. He served in the military from 1991 to 1994 and was honorably discharged. He married in 2001. He has one child born in 2006. Applicant has been employed by a federal contractor since 2013 and has had no periods of unemployment since being discharged from the Army. His wife worked full time as a teacher at a community college from 2003 to 2006, and part time from approximately 2007 to the present.²

Applicant testified that before their child was born in 2006, he and his wife had debts that were manageable. Shortly before the birth, his work hours were reduced and they had to decide what debts to pay. He worked with several creditors to resolve other debts. The debts alleged in the SOR are owed to creditors with whom he could not reach payment agreements, so he decided he would not pay the debts at that time. He anticipated these debts would be removed from his credit report in August 2018, and it would not be to his financial benefit to pay them.³

Applicant admitted he owed the credit card debts alleged in SOR ¶ 1.a (\$20,614) and ¶ 1.d (\$11,419). He stopped making payments on the debts in 2011 and does not intend to pay these debts. He was using one credit card offering a low introductory interest rate to pay another credit card and then could not afford to make the payments. He is waiting for the delinquent debts to drop off his credit report.⁴

The debts in SOR ¶ 1.b (\$13,847) and ¶ 1.c (\$16,890) are also delinquent credit card debts. Applicant testified that these credit cards belonged to his wife from before they were married. He stated they were remaining debts for college. He indicated she went to an out-of-state college. She put Applicant on the accounts as an authorized user. He testified that he was unaware he was an authorized user until he reviewed his credit report. Credit reports from March 2016 and September 2017 reflect the credit

¹ Tr. 13-15. Applicant requested that I not consider a statement in GE 2 that was incorrect regarding a civil lawsuit. I granted his request and will not consider it. He had no objection to my considering the rest of the document.

² Tr. 16-19, 21-22.

³ Tr. 23-25.

⁴ Tr. 25-27, 35-39, 47; GE 3, 4.

card accounts were opened in June 2008 and the debts were incurred during his marriage. They have not made payments on these debts since 2011.⁵

Applicant and his wife purchased a new home in May 2016. He explained that he was able to sell his old house and used the profit to purchase a new one. He used some of the profit to pay other debts. He felt it was in the best interest of his family not to pay the delinquent creditors in the SOR. He purchased a 2018 vehicle. He stated by purchasing the new vehicle he reduced his previous car payment on his 2015 vehicle, which he sold. Applicant earns approximately \$67,000 and his wife earns approximately \$13,000 annually.⁶

Applicant explained he is focused on taking care of his family and does not intend to incur new delinquent debts. He explained he and his wife accumulated too much debt, and he believes his current plan not to pay some delinquent debts is the best way to handle his finances. He has not contacted the creditors for his delinquent debts in more than five years. He does not intend to have financial problems in the future. He has approximately \$1,000 in the bank and stated he and his family live paycheck to paycheck. He cashed out his retirement accounts to pay debts. He testified he is current on his monthly expenses. He has not had financial counseling. His wife maintains a budget, but he knows very little about it because his wife manages it. However, he said that he is aware of where money is spent. He takes his job and security very seriously, and he is a patriot.⁷

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 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 ¶ 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.

⁵ Tr. 20-21, 23-25, 33-34, 47; GE 3, 4.

⁶ Tr. 28-33.

⁷ Tr. 42-47, 51-61.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of 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 not drawn 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 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 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).

Analysis

Guideline F: Financial Considerations

The security concern for 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 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. Affluence that cannot be explained by known sources of income is also a

security concern insofar as it may result from criminal activity, including espionage.

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.⁸

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and the following are potentially applicable:

- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has unresolved delinquent debts that began accumulating in 2011. He is unwilling to pay the accounts he admits he owes. The above disqualifying conditions apply.

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 (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;
- (c) the individual has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit counselling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

⁸ See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

(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 has not paid the two delinquent credit card debts he admits that he owes (SOR ¶¶ 1.a and 1.d). Although he acknowledges these are his legitimate debts, he testified he does not intend to pay them. Applicant's refusal to pay his legal debts casts doubt on his current reliability, trustworthiness, and good judgment AG ¶ 20(a) does not apply.

Applicant attributed his delinquent debts to a period in 2006 when his child was born; his pay was reduced; and his wife went from a full-time position to a part-time position. These are conditions that were beyond Applicant's control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant began incurring these debts in 2006 and stopped making payments in 2011, despite having stable employment. He failed to provide evidence that he has acted responsibly in paying his debts. Instead, he chose not to make payments since 2011 and has no plan to pay them in the future. I cannot find Applicant has acted responsibly in addressing his delinquent debts. AG ¶ 20(b) does not apply.

There is insufficient evidence Applicant received financial counseling and that there are clear indications his finances are under control. AG ¶ 20(c) does not apply. There is no evidence Applicant initiated a good-faith effort to repay the delinquent debts alleged or that he intends to do so. I find AG ¶ 20(d) does not apply.

Applicant disputes that he is responsible for the debts alleged in SOR ¶¶ 1.b and 1.c because his wife owns the account, and he is only an authorized user. Although the credit card debts were incurred after Applicant and his wife married, as an authorized user he is not responsible for the debts. The credit reports document that he is not the owner. AG ¶ 20(e) applies.

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 relevant circumstances. The 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.

Under AG ¶ 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 ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is 47 years old. He has been employed with his present employer since 2013 and did not disclose periods of unemployment. He testified that after his child was born in 2006, his income was reduced and his wife began part-time employment. As an authorized user, Applicant is not responsible for his wife's credit card debt. He is responsible for his delinquent credit card debts which total approximately \$32,033. He admits he owes that money, but does not intend to pay it. He has not made payments since 2011 and is waiting for the debts to be removed from his credit report after seven years of delinquency. He believes it is in his family's best interest not to pay the debts. He testified he lives paycheck to paycheck. Applicant's actions raise questions about his reliability, trustworthiness, and good judgment. Overall, the record evidence leaves me with serious questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude he failed to mitigate 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:

AGAINST APPLICANT

Subparagraph 1.a:

Against Applicant

Subparagraph 1.b:

For Applicant

Subparagraph 1.c:

For Applicant

Subparagraph 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 national security to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge