



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: *Pro se*

07/30/2018

Decision

Gregg A. Cervi, Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on February 10, 2016, requesting a Department of Defense (DOD) security clearance. On October 20, 2017, the DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant responded to the SOR on November 17, 2017, and requested a hearing before an administrative judge.¹

The case was assigned to me on February 6, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 22, 2018, scheduling the hearing for March 15, 2018. The hearing was convened as scheduled.

¹ The DOD CAF acted under Executive Order (Exec. Or.) 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 revised adjudicative guidelines (AG) effective on June 8, 2017.

Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified, and Applicant's Exhibits (AE) A through E were admitted into evidence without objection. In a post-hearing submission, Applicant submitted several documents marked as AE F that were admitted without objection.

Findings of Fact

Applicant is a 42-year-old general maintenance worker, employed by a government contractor since 2015. He previously operated a lawn-care business from 2000 to 2011, and worked for another employer from 2010 to 2015. He graduated from high school in 1993. He married in 1999 and separated in 2017. He has four children ages 8 to 19, that live with him. He does not currently hold a security clearance.

The SOR alleges 15 delinquent debts totaling nearly \$43,478. Applicant admitted all of the debts, and provided explanations with his answers and a statement. Applicant fell into debt in about 2000 while operating a lawn-care business that did not generate sufficient income to sustain his family's financial obligations. In addition, his spouse did not have steady work income and they purchased a home at auction that required Applicant to take additional loans to finance unexpected repairs. Applicant's spouse was unemployed from 2010 to 2015, and part of 2016-2017. He is now separated from his spouse, and she does not contribute money to pay family expenses.

The status of the SOR debts are as follows:

SOR ¶ 1.a was a business loan that Applicant was unable to pay due to insufficient income. He spoke with the lender while he was underemployed, but was unable to make the requested payments. Applicant again met with the executive vice president, and discussed a payment plan in accordance with his debt resolution program. The lender agreed and Applicant began good-faith payments on this loan in April 2018. The payment amount will increase as other debts have been satisfied. Applicant intends to continue payments until the entire debt is resolved.

SOR ¶ 1.b was paid through a payment plan with the final payment made in March 2018. The debt is resolved.

SOR ¶ 1.c is a medical debt listed in a credit report, but Applicant has been unable to locate the creditor.

SOR ¶ 1.d is a medical collection. Applicant arranged a monthly payment schedule, and has paid the first installment. The debt is being satisfied.

SOR ¶ 1.e is a medical debt listed in a credit report, but Applicant has been unable to locate the creditor.

SOR ¶ 1.f is a collection by an insurance provider that was settled and paid in full in March 2018. This debt is resolved.

SOR ¶ 1.g is a medical collection. Applicant arranged a payment plan in November 2017, began payments, and has four payments remaining. This debt is being satisfied.

SOR ¶ 1.h is a medical collection that was paid in full in two installment payments in 2017 and has been resolved.

SOR ¶ 1.i is a television service provider collection account that was paid in March 2018 and resolved.

SOR ¶ 1.j is a credit card collection that was paid and resolved in March 2018.

SOR ¶ 1.k – o are small medical collection accounts that were paid in 2017. All of the debts have been resolved.

Applicant has been utilizing a debt-resolution program since 2014, offered by a nationally recognized author and debt-resolution advisor. Applicant is using the “debt snowball” method of repayment of past-due debts, which provides for resolution of smaller debts before tackling larger obligations. Applicant has a budget and savings of about \$2,900. He has a monthly net remainder of \$300-\$500 after paying expenses. Applicant contemplated filing bankruptcy, but since he acknowledged the debts as his own and feels responsible to repay them, he declined to file. He has instead negotiated repayments directly with creditors whenever possible. He has sufficient resources to repay his debts while also maintaining his family’s expenses without help from his spouse.

Law and 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 to be 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, administrative judges apply the guidelines 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.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.”

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 the applicant or proven by Department Counsel.” The applicant 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 adverse 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. . . .

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant incurred delinquent debts following the loss of steady paying employment, purchasing a home that required unexpected repairs, and the loss of family income from his spouse. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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 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
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant attributed his financial problems to his inconsistent pay from a lawn-care business, unexpected expenses for home repairs, and the loss of spousal contributions to household income. Once he was hired in a better paying position with a government contractor in 2015, he was able to gain control of his finances and make substantial progress toward satisfying his debts. He provided evidence of actions taken with regard to the SOR debts and his financial status is now good. I believe Applicant's financial management has significantly improved and his finances are now under control. Although he continues to carry some delinquent debt, he has begun the process of resolving his remaining debts through payment plans that he is able to maintain. The likelihood of a recurrence of financial difficulty is low. Applicant's past financial issues no longer cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) - (d) are applicable.

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(a):

- (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. I considered Applicant's testimony and documents provided during and after the hearing. Applicant has shown current financial responsibility and appears to have control of his finances. He is able to meet family financial obligations while eliminating the remaining debts. He has shown the qualities of financial responsibility that is expected of clearance holders, and I am convinced that he has shown good-faith efforts to resolve his debts, and that he will complete all repayment plans per his agreement.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant has mitigated the financial considerations 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.o:

For Applicant

Conclusion

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

Gregg A. Cervi
Administrative Judge