



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



In the matter of:)
)
) ISCR Case No. 17-03613
)
Applicant for Security Clearance)

Appearances

For Government: Michelle P. Tilford, Esq., Department Counsel
For Applicant: *Pro se*

05/23/2018

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant refuted the personal conduct security concerns, but he did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On October 31, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E (personal conduct) and F (financial considerations). Applicant responded to the SOR on November 7, 2017, and requested a hearing before an administrative judge.

The case was assigned to me on April 10, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 11, 2018, scheduling the hearing for April 19, 2018. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 3 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A and B, which were admitted without objection. The record was held open for Applicant to submit additional information. He

submitted documents that I have marked AE C through H and admitted without objection. DOHA received the hearing transcript (Tr.) on May 1, 2018.

Findings of Fact

Applicant is a 26-year-old employee of a defense contractor. He has worked for his current employer since February 2017. He attended community college for a period without earning a degree. He is unmarried with one child.¹

Applicant did not have a stable work history before he obtained his current job. He was unemployed from March 2011 to June 2012 and from September 2014 to June 2015. He did not have medical insurance while he was unemployed. He was unable to pay all his bills, and a number of debts became delinquent.²

The SOR alleges 18 delinquent debts, but the \$961 medical debts alleged in SOR ¶¶ 1.e and 1.n are duplicate accounts. The 17 non-duplicate debts total about \$13,300. The debts include \$3,467 in child support arrearages; \$1,938 for the amount due on an auto loan after the car was wrecked; unpaid medical debts totaling about \$3,650; and 7 miscellaneous debts totaling about \$4,500. Applicant admitted owing all the debts, with the exception of the debts alleged in SOR ¶¶ 1.o-1.r, which he paid. All of the debts are listed on at least one credit report.³

Applicant did not realize he was accruing child support arrearages because he was paying the child's mother directly. A garnishment order from the court went into effect in August 2017. He is ordered to pay \$922 per month in child support, plus \$75 per month in arrearages. That amount has been garnished from his pay since the order went into effect. Applicant had another hearing scheduled for April 27, 2018, during which he hoped to have the arrearages reduced.⁴

Applicant started repaying his debts after he was hired. He stated that he has been "paying them off slowly but surely so not to overextend [him]self too much." He established the following payments toward his delinquent debts: He paid three medical debts totaling \$60 (SOR ¶¶ 1.p-1.r) in 2016. On November 13, 2017, he paid \$124 to the collection company for the \$552 debt alleged in SOR ¶ 1.g. The balance is \$427. He paid a \$100 medical debt (SOR ¶ 1.k) and a \$69 medical debt (SOR ¶ 1.o) in November 2017. He made additional payments totaling \$435 toward his other medical debts in November 2017.⁵

¹ Tr. at 14, 21-23; GE 1.

² Tr. at 14, 23-24; Applicant's response to SOR.

³ Tr. at 30; Applicant's response to SOR; GE 2, 3; AE A.

⁴ Tr. at 15-19, 25-26, 29-30; Applicant's response to SOR; GE 2, 3; AE A-D, G.

⁵ Tr. at 15, 20, 31-32, 37, 41-43; Applicant's response to SOR; GE 2, 3; AE A, E, F, H.

Applicant stated that he intends to pay his debts. He has health insurance so he should not accrue additional medical bills. He earns a good salary. He is aware that he needs to pay his debts in order to obtain and keep a security clearance. He owes the IRS about \$1,500 for the 2017 tax year. He stated that he set up a payment plan. The April 2017 credit report lists him as \$1,154 past due on his \$344 per month car loan. The October 2017 credit report lists him as \$972 past due on the car loan. Applicant stated that he fell behind on the car loan when the transmission needed to be repaired, but he caught up with the payments and is now current.⁶

Applicant submitted a Questionnaire for National Security Positions (SF 86) in March 2017. He reported a delinquent credit card debt with an estimated balance of \$800, but he did not report any other delinquent debts. He denied intentionally falsifying the financial questions on the SF 86. He stated that he did not look at a credit report, and he was unaware of the extent of his financial problems.⁷

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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.

⁶ Tr. at 27, 37, 40, 47-49, 53; Applicant's response to SOR; AE A. The SOR did not allege the tax debt or the past-due auto loan. Any matter that was not alleged in the SOR will not be used for disqualification purposes. It may be considered when assessing Applicant's overall financial situation, in the application of mitigating conditions, and during the whole-person analysis.

⁷ Tr. at 43-44; Applicant's response to SOR; GE 1.

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 E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant reported a delinquent credit card debt with an estimated balance of \$800 on his SF 86, but he did not report any other delinquent debts. He denied intentionally falsifying the financial questions on the SF 86. He stated that he did not look at a credit report, and he was unaware of the extent of his financial problems. There is insufficient evidence for a determination that Applicant intentionally falsified the SF 86. AG ¶ 16(a) has not been established. SOR ¶ 2.a is concluded for Applicant.

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 has a history of financial problems. 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's financial problems are attributable to his employment issues and medical bills when he did not have health insurance. Those events were beyond his control. He started repaying his debts after he was hired. His child support and arrearages (SOR ¶ 1.a) are being garnished from his pay. He paid the medical debts alleged in SOR ¶¶ 1.k and 1.o through 1.r. He made additional payments totaling \$435 toward his other medical debts, and he paid \$124 to the collection company for the \$552 debt alleged in SOR ¶ 1.g. The debts that are paid or being paid, which includes the medical debts, are mitigated.

Applicant stated that he has been paying his debts off "slowly but surely so not to overextend [him]self too much." He has paid about \$750 toward his child support arrearages and about \$800 toward his other debts. However, he owes the IRS about \$1,500 for his 2017 taxes, and he fell several months behind on a car loan. The total amount owed in past-due debts has not appreciably changed in spite of his payments.

I am unable to find that Applicant acted responsibly under the circumstances or that he made a good-faith effort to pay all his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. Applicant may reach a point where his finances are sufficiently in order to warrant a security clearance, but he is not there at this time. AG ¶¶ 20(a) and 20(c) are not applicable. AG ¶ 20(b) is partially applicable. AG ¶ 20(d) is only applicable to the debts addressed above. I find that financial considerations concerns remain despite the presence of some mitigation.

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 Guidelines E and F in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant refuted the personal conduct security concerns, but he did not mitigate 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:	Against Applicant
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h-1.j:	Against Applicant
Subparagraphs 1.k-1.l:	For Applicant
Subparagraph 1.m:	Against Applicant
Subparagraphs 1.n-1.r:	For Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraph 2.a:	For Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge