



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-03816

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel

For Applicant: *Pro se*

07/02/2018

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On November 13, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline 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 December 12, 2017, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM), and Applicant received it on February 2, 2018. He was afforded an opportunity to file objections and submit material in refutation,

extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 7. Applicant submitted a timely response and his exhibits are marked as Applicant's Exhibits (AE) A through C. There were no objections by Applicant or Department Counsel, and all Items and Exhibits are admitted into evidence. The case was assigned to me on May 10, 2018.

Findings of Fact

Applicant admitted all of the SOR allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 39 years old. He is a high school graduate. He married in 2000 and separated from his wife in 2015. He has custody of his two children, ages 17 and 15 years old. Applicant did not disclose any periods of unemployment. He has been employed by the same federal contractor since 2008.

In October 2013, Applicant completed a security clearance application (SCA). In it he disclosed he had delinquent debts. He attributed the debts to being a single income family. He indicated he intended to make payment arrangements to resolve the debts. He stated that he had paid off a loan and would pay the outstanding debts. These debts included credit cards, medical accounts and a cable bill. He stated his student loans were under control and in good standing. He was working on contacting the other creditors to address the debts.¹

In April 2017, Applicant was interviewed by a government investigator. He was confronted with his delinquent debts. He explained that his wife never had stable employment, which resulted in his family living beyond their means. She eventually became a stay-at-home mother, which caused a bigger financial strain on the family. They had to rely only on Applicant's income. He began accruing credit card debts to get by financially. In 2015, he and his wife separated. He is a single father raising his two children. He intends to file for divorce. He explained that all of his delinquent debts accumulated because he could not afford to pay them on his salary. He admitted he was irresponsible financially which led to the delinquent debts. He was focused on a smooth separation from his wife to make sure the children adjusted. He told the investigator that he was financially responsible and living within his means. He stated that he had consolidated his student loans and was making monthly payments. He planned on contacting all of the creditors with delinquent accounts within two months to begin payment plans.²

¹ I have not considered debts that Applicant disclosed on his security clearance application that were not alleged in the SOR for disqualifying purposes. I may consider his prior financial history for purposes of making a credibility determination, in the application of mitigating conditions and in my whole-person analysis.

² Item 7.

In Applicant's December 2017 answer to the SOR, he again stated that he fell behind on his debts because he is a single father. He said his son has medical issues, but did not elaborate on how they impacted his finances, only that it took time and attention. He reiterated that he told the investigator he intended to pay his delinquent debts. He said his student loans were not in default, but were sold to a different company and are under control. He said he was making monthly payments. He said: "I do what I can with what I'm provided and take my job serious, while trying to raise my sons that live with me."³ He intended to take out a loan to pay all of his delinquent debts. He said he attributed his financial problems to the "lack of income that was los[t] in my separation from spouse." He said he would pay the debts in January 2018.

In Applicant's February 2018 response to the FORM, he said his student loans were current and not in default. He did not provide supporting documents to show the loans were consolidated and that he was making monthly payments. He said that he obtained a loan from his 401(k) account to pay off all of his delinquent debts. He was not eligible to take another loan from his 401(k) until February 23, 2018. He anticipated he would receive the money in March 2018 and then would pay the delinquent debts.⁴

The document Applicant provided, which shows information about his 401(k) account, indicated that he paid off a previous loan from the account on February 13, 2018, and there is a ten-day waiting period after a loan is paid off before he is eligible to take out a new loan. Applicant did not provide information about how the proceeds of the previous loan were used. Applicant did not provide evidence that he contacted creditors and made payment arrangement to settle the debts. There is no evidence Applicant has paid any of the alleged debts.⁵

The debts alleged in the SOR are documented by Applicant admissions and credit reports from October 2017, August 2016, and October 2016.⁶

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). 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

³ Item 2.

⁴ AE A, B.

⁵ AE A, B.

⁶ Items 3, 4.

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." 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 avoided drawing 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. Directive ¶ E3.1.15 states 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 as to obtaining 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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 relating to the guideline 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.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

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

Applicant has numerous unresolved delinquent debts and student loans. There is sufficient evidence to support the application of the above disqualifying conditions.

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 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;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (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 a history of not meeting his financial obligations. He disclosed delinquent debts when he completed his SCA in 2013. He was confronted with the delinquent debts during his 2017 background interview. He promised to address the delinquent debts that were brought to his attention by the investigator. He stated his student loans were current, but failed to provide supporting documentation. Applicant intended to take a loan from his 401(k) to pay his debts. There is insufficient evidence to conclude that his behavior is unlikely to recur. It continues to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to being separated from his spouse and being a single father. During his background interview, he admitted that he lived beyond his means and did not act responsibly. This was within his control. He said his wife worked sporadically and then became a stay-at-home mother before their separation. He later attributed his financial problems to the loss of her income, which may have been beyond his control. He mentioned his son had medical problems, but did not provide sufficient information to show how it impacted his finances. For the full application of AG ¶ 20(b), Applicant must have acted responsibly. Applicant has a significant history of not paying bills. He failed to provide documented evidence that he has addressed his student loans and is making monthly payments. He promised to pay his delinquent debts when he obtained a new loan from his 401(k), but had to comply with a waiting period because he had recently repaid a previous loan from the account. None of his debts have been paid. The evidence is insufficient to support he has acted responsibly. AG ¶ 20(b) does not apply.

There is no evidence Applicant has received financial counseling. There is insufficient evidence to conclude there are clear indications that his financial problems are being resolved or under control. No documented evidence was provided to show Applicant has made a good-faith effort to repay his overdue creditors. Applicant has promised to pay his creditors when he receives a loan, but that has not occurred. He did not provide evidence that he has negotiated payment plans or made other arrangements with creditors. AG ¶¶ 20(c) and 20(d) do not apply.

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 the 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 39 years old. He has been struggling financially. He is a single father caring for his two sons. He failed to provide sufficient evidence to show he has been making payments for his student loans. He has not made payments to resolve his other delinquent debts, but promises to do so after he obtains a loan. At this juncture, Applicant has not met his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant 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
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Subparagraphs 1.a-1.o:	Against Applicant
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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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge