



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



In the matter of:)
)
) ISCR Case No. 17-03846
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

08/03/2018

Decision

MURPHY, Braden M., Administrative Judge:

Applicant provided sufficient evidence to mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on April 24, 2015. On November 13, 2017, following a background investigation, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken 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 *National Security Adjudicative Guidelines* (AG), which became effective on June 8, 2017.

Applicant answered the SOR on December 4, 2017, and requested a hearing. The case was assigned to me on February 16, 2018. On March 23, 2018, the Defense Office of Hearings and Appeals issued a notice of hearing scheduling the hearing for April 23, 2018. The hearing convened as scheduled.

Department Counsel submitted Government's Exhibits (GE) 1 through 6, all of which were admitted without objection. Applicant testified but did not submit any exhibits. I held the record open after the hearing to allow Applicant the opportunity to submit additional documentation. He timely submitted Applicant Exhibits (AE) A through D, which were admitted without objection.¹ The record closed on May 7, 2018. DOHA received the transcript (Tr.) on May 3, 2018.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a-1.j, 1.l, and 1.m. He denied SOR ¶¶ 1.k, 1.n, and 1.o. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 42 years old. He and his wife have been married for nine years. They live with their two children, an 11-year-old son and a 13-year-old daughter. Applicant also has a 19-year-old stepson and a 22-year-old stepdaughter, his wife's children from a prior marriage. His stepson lives on his own, and his stepdaughter lives with her grandfather. (Tr. 35, 48-49; GE 1)

Applicant graduated from high school in 1993. He later attended technical school (2004-2005) and took some courses at a community college (2008-2010), but did not earn a degree. (Tr. 91-92; GE 1)

Applicant works for a defense contractor at a naval shipyard. He has had the same employer since May 2006, and has had no periods of unemployment. He was also employed in his field, with other employers, between May 2004 and May 2006. Applicant has never held a security clearance. A prior clearance application in about 2011 was not adjudicated because he failed to respond to interrogatories. (Tr. 10, 80-81; GE 1 at 30-31)

Applicant listed numerous delinquencies on his April 2015 SCA, and discussed them in his May 2016 background interview. (GE 1; GE 2) The SOR debts total \$31,728.

SOR ¶¶ 1.a (\$2,426); 1.b (\$2,090); 1.c (\$1,523); 1.d (\$903); and 1.e (\$449) are all past-due accounts placed for collection by cell phone companies. Although he admitted it, Applicant testified that he did not recognize SOR ¶ 1.f, a \$426 debt in

¹ AE A and AE B both relate to satisfaction of a judgment (SOR ¶ 1.n) in December 2017. AE C concerns satisfaction of a debt to a furniture company. AE D is a recommendation letter.

collection.² SOR ¶ 1.g is a \$397 power bill placed for collection. SOR ¶¶ 1.h (\$350), 1.i (\$137), and 1.l (\$732) are all past-due medical debts. SOR ¶ 1.j is a \$713 past-due debt to a gym. SOR ¶ 1.m is a \$487 past-due debt to a television company. (GE 4, 5, 6) Applicant has not taken action to pay these debts, and has not had recent contact with the creditors. He testified that he planned to pay them within the month. (Tr. 44, 70-71, 73-80)

Applicant denied SOR ¶ 1.n, a \$2,999 judgment entered against him in 2015, in favor of a landlord. The debt was satisfied in December 2017. (Tr. 41-42, 67-69; AE A; AE B).

SOR ¶ 1.o, which Applicant also denied, is a \$4,597 judgment, initially owed to a furniture company. Applicant testified that the debt had been paid through garnishment of his wages. He paid \$185 a month on the debt from March 2014 to March 2018, and that the debt is now paid in full. (Tr. 42-44; AE C)

SOR ¶ 1.k is a \$16,199 debt placed in collection by a bank. In about 2003 or 2004, Applicant co-signed a car loan for a friend. (Tr. 38) For a time, he was responsible for the monthly payments. At some point, his friend's brother needed a car, so Applicant turned the car over to his friend for her brother to use. The car was later repossessed. Applicant denied the debt because he believed the account had been resolved by his friend or her brother. (Tr. 36-41, 64-68) The debt is listed on his 2011 credit report (GE 3 at 11) as a "joint contractual liability." It is listed on later credit reports under a successor creditor. The account has been closed, with a zero balance. (GE 4 at 3; GE 5 at 2; GE 6 at 3) SOR debt ¶ 1.k is therefore resolved, since it is not a current debt.

Applicant testified that he began experiencing financial difficulties after his wife quit her job at the shipyard to pursue a nursing degree. She was in school full time from 2011 to 2015. She did not work during this period, leaving Applicant as the sole breadwinner in the household. They paid for nursing school largely through financial aid programs. (Tr. 28-32, 49-50, 54)

In addition, Applicant's parents became ill during this period, and he provided them financial assistance by paying some of their everyday expenses, such as power and rent. Applicant had a plan in place to pay his debts, but it "kind of fell apart" when his parents needed help financially. (Tr. 31) They are now more financially stable, though they are both retired and on a fixed income. (Tr. 28, 31, 50-52) Applicant's stepson also had disciplinary and behavioral issues in his teenage years, which caused friction and conflict in the household. He is now 19, and out of the house. (Tr. 50-51)

For a while, Applicant was just "playing catch up" with his debts. (Tr. 44-45) He also acknowledged some overspending, particularly with the numerous cell phone bills alleged. (Tr. 73-75) Applicant consulted a lawyer, who advised putting together a "game plan" of paying down his debts, and cutting down on expenses. Applicant did not

² Tr. 75-76. SOR ¶ 1.f is listed on GE 5 & GE 6.

indicate that he received any more specific advice. (Tr. 46-47) From about November 2016 to November 2017, Applicant and his family moved in with his wife's father as a way to cut down on expenses. (Tr. 45)

Applicant's wife earned her nursing degree in 2015. She now works full time as a nurse. She earns about \$1,800 to \$2,000 every two weeks. (Tr. 33) Applicant's salary has increased, from about \$60,000 in 2011 to about \$82,000 today. (Tr. 32, 56) As a result, Applicant's finances have improved in recent years. Applicant has a \$428 monthly car payment on a 2006 vehicle. He pays \$1,000 a month in rent. He has no credit cards. (Tr. 45, 63-64) Applicant characterized his current finances as stable. He is able to pay regular household expenses, but is not yet able to address his debts, though he intends to do so soon. "We are just getting to the point where . . . we are financially stable and able to take care of these things." (Tr. 61) Applicant planned to use an expected significant tax refund to pay some of his debts. (Tr. 56-59)

A lifelong friend of Applicant's provided a recommendation letter. He attested to Applicant's strong family values and work ethic, and noted that Applicant has overcome many obstacles. Applicant is trustworthy and dependable, and has excellent character. (AE D)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court noted in *Department of the Navy v. Egan*, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials."³

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(a), 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

³ *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).

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 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.

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. . . .

The financial considerations guideline sets forth several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable:

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

Applicant incurred numerous unresolved delinquent debts over the last several years. This is due to a variety of circumstances, including his wife’s decision to stop working while pursuing a nursing degree. Applicant also provided financial assistance to his parents in time of need. This impacted his own finances. Applicant also acknowledged some overspending. AG ¶¶ 19(a) and 19(c) apply.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

(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; and

(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 resolved or is under control.

SOR ¶ 1.k, a \$16,000 auto debt, accounts for about half of the total SOR debt alleged. The account is closed, with no balance due. SOR ¶¶ 1.n and 1.o, two debts totaling almost \$7,600, have also been paid, though both are judgments, and one was paid by garnishment. This leaves less than \$8,000 in unresolved delinquent debt. Three-quarters of the debt alleged in the SOR is therefore paid or otherwise resolved.

Applicant's wife decided to stop work while pursuing her nursing degree. This impacted the family's finances significantly, since Applicant was the sole breadwinner for the four years she was in school. While this was not entirely a condition beyond their control, it was also a reasonable decision under the circumstances. The fact that some financial issues resulted is not surprising, because other unexpected things happened in that timeframe. For instance, Applicant's parents needed financial help.

Applicant pursued financial counseling from an attorney, and he received general advice that he could improve his finances by paying down his debts and limiting his expenses. He and his wife moved in with her father for a year. She earned her nursing degree, and now works full time in her new profession. This has increased their income and put them in a position where they are better able to pay their debts. Applicant testified that it has taken some time to stabilize his finances. He testified that he intended to resolve his remaining debts within a month after the hearing by using his expected tax refund. While it will likely take more time than that, his delinquencies are now significantly less than what was alleged. Multiple large SOR debts are resolved. While several others remain, an applicant is not expected to resolve all of his SOR debts, or to pay them off in any particular way, as long as he has a reasonable path forward. Particularly given the fact that Applicant's wife is once again fully employed, the debts are being resolved and are under control. AG ¶¶ 20(b) and 20(c) 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 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. I also observed Applicant's demeanor at his hearing. He was polite, well-dressed, and respectful. He took the proceedings seriously. He testified credibly that he intends to continue resolving his debts, and he set forth a reasonable plan for doing so. Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility for access to classified information.

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 interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is granted.

Braden M. Murphy
Administrative Judge