



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



In the matter of:)
)
) ISCR Case No. 18-00317
)
Applicant for Security Clearance)

Appearances

For Government: Carroll Connelley, Esq., Department Counsel
For Applicant: *Pro Se*

09/24/2018

Decision

KILMARTIN, Robert J., Administrative Judge:

Applicant mitigated 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 May 5, 2017. On February 15, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD CAF acted 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 (AGs) implemented by DOD on June 8, 2017.

Applicant answered the SOR on February 23, 2018, admitting all of the SOR allegations and explaining that he included these delinquent debts in his planned bankruptcy petition. Applicant also requested a hearing before an administrative judge. The case was assigned to me on April 19, 2018. On July 20, 2018, the Defense Office

of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for August 8, 2018. I convened the hearing as scheduled.

The Government's Exhibits (GE) 1 – 5 were admitted without objection. At the hearing, Applicant testified and submitted Applicant's Exhibits (AE) A and B, which were admitted without objection.

Findings of Fact¹

Applicant is 35 years old. He graduated from high school in 2001. Applicant was married in 2011 and reports two daughters, ages 6, and 16, and a son, age 2. (Tr. 10-11) Applicant has been employed as a warehouse specialist by a federal contractor since October 2010. Applicant's wife was also a warehouse specialist for the same federal contractor until she elected to be a stay-at-home mother after a period of maternity leave in 2016.

The SOR alleged eight delinquent debts totaling approximately \$22,000, including credit card and consumer debts. Applicant admitted all of the allegations in his Answer to the SOR. Applicant testified that he was working with a national debt relief-consolidation service and in a repayment plan, when his employer reclassified their jobs and the union went on strike in 2016. (Tr. 13, 33) Applicant and his wife were unemployed and could not keep up with payments on their debt consolidation plan, which was discontinued. (Tr. 14) Applicant was out of work for six months and his wife was out for almost one year before she was called back at a lower rate of pay. She worked approximately five months before taking maternity leave to have their second child. (AE A)²

Applicant testified credibly that he and his wife felt they had no choice but to file for Chapter 7 bankruptcy protection after the issuance of the SOR. (Tr.15) They spoke to a bankruptcy attorney in June 2017 (Tr. 40) and saved money for a year before they could afford the \$1,500 attorney's fee. Their bankruptcy petition was filed on June 28, 2018, and it is was supposed to be discharged by the end of August 2018. (Tr. 15, AE B) They also surrendered their home, purchased in 2009, coincidentally with the bankruptcy filing. (Tr. 30) Upon advice of their bankruptcy counsel, they stopped paying credit card debts and other consumer debts that were later listed as unsecured debts in the bankruptcy filing. (Tr. 32, AE B) It was their first time filing for bankruptcy protection, and Applicant completed the prerequisite financial counseling. (Tr. 32) All of the delinquent debts alleged in the SOR are included in their Chapter 7 petition at schedule F, list of unsecured debts. (Tr. 39, AE B) Applicant disclosed assets of \$87,000 and liabilities of \$146,000 in the bankruptcy petition.

¹ Unless stated otherwise, the source of the information in this section is Applicant's May 5, 2017 security clearance application (SCA).

² Applicant's handwritten opening statement was adopted as substantive evidence, and admitted as AE A, without objection.

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, 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, Appendix A, ¶ 2(a), the adjudicative process is an examination of a sufficient period and a careful weighing of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG, Appendix A, ¶ 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. 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 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 risk of compromise of classified information.

Analysis

Guideline F, Financial Considerations

The security concern relating to 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 abuse, 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.

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.

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

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

Applicant's delinquent debts alleged in the SOR are confirmed by his credit reports, answer to the SOR, and documents submitted at the hearing. The Government produced substantial evidence to support the disqualifying conditions in AG ¶¶ 19(a) and 19(c), thereby shifting the burden to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts.³

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

³ Directive ¶ E3.1.15. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep 22, 2005) (An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government).

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 . . . , 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 non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control.

Applicant endured a setback when his union went on strike and he and his wife had financial stress, including her unemployment for one year, and his lost wages for six months. These conditions were beyond his control. He demonstrated that he tried to resolve his delinquencies in good faith by entering into a repayment plan with a national debt relief-consolidation firm. However, he fell off the repayment plan when his union went on strike and he could not keep up with the payments. Applicant sought professional advice from a bankruptcy attorney, and ultimately felt compelled to file for Chapter 7 bankruptcy relief. He has now produced relevant and responsive documentation, demonstrating that he acted responsibly under the circumstances. Applicant appropriately engaged an attorney and filed for bankruptcy protection to address his financial problems. He also had independent financial counseling. All of the delinquent debts alleged in the SOR are being resolved through Chapter 7 bankruptcy. He has met his burden to show that his financial problems are under control, and that his debts were incurred under circumstances making them unlikely to recur. The mitigating conditions enumerated above in AG ¶ 20 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, Appendix A, ¶ 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, Appendix A, ¶ 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, Appendix A, ¶ 2(d) were addressed under that guideline. Applicant is a devoted husband, and raising three children. He has worked continuously for over 12 years for federal contractors, without issues. He has struggled to overcome his financial travails and pay off his debts. He is now completing a bankruptcy plan to resolve his financial problems. Applicant testified credibly and persuasively that his finances are now under control. Applicant has addressed the specific allegations in the SOR and taken affirmative measures to resolve them.

Applicant's finances no longer are a security concern. The record evidence leaves me with no questions or doubts as to Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated 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: FOR APPLICANT

Subparagraphs 1.a through 1.h: 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 a security clearance. Eligibility for access to classified information is granted.

Robert J. Kilmartin
Administrative Judge