



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



In the matter of:)
)
) ISCR Case No: 18-01122
)
Applicant for Security Clearance)

Appearances

For Government: Allison Marie, Esquire, Department Counsel
For Applicant: *Pro se*

11/29/2018

Decision

DAM, Shari, Administrative Judge:

Applicant has unresolved delinquent debts. He failed to mitigate the resulting financial considerations security concerns. Based upon a review of the pleadings and exhibits, national security eligibility is denied.

Statement of Case

On May 9, 2018, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. Applicant answered the SOR June 14, 2018, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 3.)

On July 31, 2018, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing eight Items, was mailed to Applicant on August 1, 2018, and received by him on August 7, 2018. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant timely submitted documents in response to the FORM (Response), and did not

object to its contents. I marked his documents, containing six pages, as Applicant Exhibit (AE) A. Neither party objected to any exhibit. Items 1 through 8 are admitted into evidence; AE A is admitted into evidence. The Defense Office of Hearings and Appeals (DOHA) assigned this case to me on October 16, 2018.

Findings of Fact

Applicant is 37 years old and has an associate's degree. He was married for about 12 years and divorced since 2016. He and his former wife have two children. He was unemployed for four months during 2016, after which he was self-employed for about eight months. He began his current position with a defense contractor in May 2017. His divorce and period of unemployment contributed to his financial problems. (Item 3)

Based on credit bureau reports (CBR) from July 2018, March 2018, and November 2017, the SOR alleged five debts totaling \$53,145, which became delinquent between 2015 and 2018. Applicant admitted owing four of the five debts, but denied owing money on a delinquent mortgage. (Items 3, 6, 7, 8) The status of each debt is as follows.

1. Applicant denied owing the charged-off mortgage account for \$9,690 alleged in SOR ¶ 1.a. He stated he was unaware of this debt or the creditor to whom it was owed. During an interview in January 2018, an investigator inquired about a \$9,690 debt listed on Applicant's credit report. Applicant acknowledged that he and his former wife owned a piece of property that was sold by a bank (FBT) in 2015 or 2016. He said he intended to investigate the \$9,690 debt.¹ (Item 5) This debt, which originated with FBT and was subsequently sold to the current creditor, remains unresolved. (Items 6, 7, 8)
2. In his September 2018 Response, Applicant stated that he "just started paying \$100-\$150 a month" on the \$16,992 debt alleged in SOR ¶ 1.b. (AE A) The July 2018 CBR listed an outstanding balance of \$17,232 on this debt. (Item 8) No documents were provided to corroborate payments are being made. It remains unresolved.
3. Applicant negotiated a settlement for the \$14,622 credit card debt alleged in SOR ¶ 1.c. He paid it in full in August 2018. (AE A at 2) This debt is resolved.
4. Applicant negotiated a settlement for the \$10,952 credit card debt alleged in SOR ¶ 1.d. He agreed to settle the debt for \$1,674 and is making payments on the debt. (Item 3; AE A at 4) It is being resolved.
5. Applicant did not provide proof that he paid or is resolving the \$889 satellite bill alleged in SOR ¶ 1.e, as stated in his Response. (AE A) It is unresolved.

¹ The July 2018 CBR reported that FBT transferred or sold the mortgage debt to another creditor in 2018. (Item 8)

Applicant resolved two of the five alleged debts. He did not submit evidence of financial or credit counseling, or that he sought other assistance to resolve his delinquent debts. He did not provide budget information from which to predict future solvency or a plan to address the delinquent debts.

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the pertinent AG. In addition to brief introductory explanations of the security concern, the guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person applying for national security eligibility seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *a/so* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline F: Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

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

Applicant has a history of being unable to meet financial obligations, which began in 2015 and continues to date. The evidence raises security concerns under the above disqualifying conditions, and shifts the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes four conditions in AG ¶ 20 that could potentially mitigate the security concerns arising from Applicant’s financial difficulties:

- (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, or 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.

Three SOR-alleged debts are ongoing, unresolved, and total over \$27,000. Applicant offered insufficient evidence from which to conclude that similar problems will not recur. Mitigation was not established under AG ¶ 20(a). He provided some evidence that the delinquencies were caused by a divorce and period of unemployment. Those were circumstances beyond his control; however, he did not provide evidence that he acted responsibly under those circumstances. AG ¶ 20(b) partially applies. He presented no evidence of financial counseling or a budget. There are not clear indications that the three remaining delinquent debts, including a mortgage, are under control. Nor is there sufficient evidence that he made a good-faith effort to resolve them. AG ¶¶ 20(c) and (d) do not apply to SOR ¶¶ 1.a, 1.b and 1.e. He presented evidence that two debts were resolved or being resolved in good faith. AG ¶ 20(d) applies to SOR ¶¶ 1.c and 1.d.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. I have incorporated my comments under Guideline F and the whole-person analysis, and considered that Applicant is making some progress on resolving his debts. However, Applicant has unresolved financial problems and has not presented a financial plan for resolving them. Overall, the evidence creates doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. He failed to meet his burden to mitigate the security concerns arising under the guideline for financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant access to classified information. National security eligibility is denied.

SHARI DAM
Administrative Judge