



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-04123

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

09/10/2018

Decision

BENSON, Pamela C., Administrative Judge:

Applicant mitigated Guideline J, (Criminal Conduct), security concerns. He failed to mitigate the security concerns under Guideline F, (Financial Considerations). Applicant's eligibility for a security clearance is denied.

Statement of the Case

On September 15, 2016, Applicant submitted a security clearance application (SCA). On December 28, 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, and Guideline J, criminal conduct. 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 January 16, 2018. He admitted the nine SOR allegations alleged under Guideline F, and he admitted the single allegation alleged under Guideline J. He did not provide any additional documentation. Applicant requested that his case be decided by an administrative judge on the written record in

lieu of a hearing. (Item 2) On February 26, 2018, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing five Items, was mailed to Applicant on April 17, 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 did submit additional explanations for SOR ¶¶ 1.g, 1.h, and 2.a, but he did not provide any supporting documentation. I labeled his explanation as Applicant Exhibit (AE) A. Applicant did not object to Items 1 through 5, and Department Counsel did not object to AE A. I admitted all of the exhibits into the record. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on June 7, 2018.

Findings of Fact

Having thoroughly considered the evidence in the record, including Applicant's admissions, I make the following findings of fact: Applicant is 51 years old and employed by a DOD contractor as a systems engineer since August 2016. He was unemployed from June 2016 to August 2016. He earned his bachelor's degree in 1991, and his master's degree in 1993. He was married in 1996, and his divorce was finalized in 2017. Applicant listed a son, age 9, and two daughters, ages 20 and 16, on the 2016 SCA. He is requesting national security eligibility. (Item 2)

Under Guideline F, the SOR alleges that Applicant owes over \$50,000 on his delinquent debts, to include a repossessed vehicle, delinquent student loans, and a significant Federal tax lien. The SCA showed only one period of unemployment, from June 2016 to August 2016, otherwise his work history showed consistent employment. He did not provide an explanation as to why he started having financial problems. He did note that he had obtained credit cards while he was briefly unemployed, and he made reference to his divorce that was finalized in 2017. Both the 2016 and 2017 credit reports support the debts alleged in the SOR. (Items 2, 3, 4, 5.)

SOR ¶ 1.a alleges that Applicant owes \$16,189 for a car that was returned to the bank. This account was charged-off as a bad debt. He listed in his answer to the SOR that this account was over seven years old and will be expunged from his credit report soon. There was no documentation provided by Applicant to show his efforts, if any, in resolving this debt, other than to let it fall off of his credit report due to time.

Applicant admitted responsibility for the cellular account alleged in the SOR for \$791. (SOR ¶ 1.b) He said this account included phone lines for family and friends. He was unable to reconcile all of the payments for the various accounts. There is no evidence to show that Applicant made any effort to resolve this delinquent account.

SOR ¶¶ 1.c, 1.d, and 1.e, are delinquent credit card accounts totaling \$1,866. Applicant admitted that he obtained the credit cards while he was unemployed. There is no indication that he arranged a payment plan with the creditors, or that he resolved any of these delinquent credit card accounts.

Applicant admitted responsibility for the jeweler account (SOR ¶ 1.f) that was charged-off as a bad debt for an unknown amount. The credit bureau report showed the balance of the account as \$3,931 in October 2016. Applicant listed that this debt represented a 20-year anniversary gift that was given to his now ex-wife. The divorce proceedings began less than a year after he presented her with the gift. He has not paid this debt. (Item 5)

SOR ¶ 1.g alleges a U.S. Department of Education loan that is currently past due. Applicant claimed in his response to the FORM that his student loans were still in forbearance. (AE A) He did not provide any supporting documentation with his response.

The SOR alleges that Applicant has a Federal tax lien that was entered against him in the amount of \$32,722. (SOR ¶ 1.h) He listed in his response to the FORM that after conferring with his ex-spouse, he believed the tax lien was paid in full. He also noted in his SOR response that he had been placed on a payment plan with the Internal Revenue Service. He claimed the Federal tax lien had been attached to his residence, which was later sold. He did not provide any supporting documentation, to include his history of tax payments or a release of the Federal tax lien. Both credit bureau reports showed the Federal tax lien had not been released. (AE A; Items 4, 5)

SOR ¶ 1.i alleges that Applicant owes \$1,024 for a utility account that was referred for collection. He admitted this cellular family plan account that was in effect during his previous marriage. There is no evidence to show that Applicant made any effort to resolve this delinquent account.

Guideline J of the SOR alleges that Applicant was arrested in 2015 for Driving Under the Influence. (SOR ¶ 2.a) He admitted this was a first offense, and he deeply regretted his actions. Applicant claimed his attorney arranged an agreement with the prosecuting attorney that Applicant fulfill the state's division of motor vehicles 20-month period of using an interlock device on his vehicle. In addition, Applicant must complete a DUI education course and pay the reinstatement fee. If he successfully completed these requirements, then the charge against him would be dismissed. Applicant listed in his FORM response that he had successfully completed the interlock period, and it had been removed from his vehicle. His hearing for the charge dismissal had not yet been set. There was no supporting documentation provided by Applicant. (AE A)

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 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(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 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.

Section 7 of Executive Order 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;
- (c) a history of not meeting financial obligations; and
- (f) ... failure to pay annual Federal, state, or local income tax as required.

In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

Applicant experienced financial difficulty after a period of unemployment in 2016 and the finalization of his divorce in 2017. Applicant admitted that most of the debts alleged in the SOR have not been resolved. He also did not exhibit any inclination to resolve his delinquent debts, as demonstrated by his allowing the repossessed car loan to fall off his credit bureau report. He claimed that his student loans were currently in forbearance, and that the Federal tax lien filed against him was paid, but he failed to provide any supporting documentation. The delinquent debts alleged are unresolved. 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,¹ 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

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's financial issues have continued to the present time. He has been employed full-time since August 2016. He has not provided proof that he has paid or resolved even the smallest debt in the SOR. There is no evidence that he has acted responsibly under the circumstances. AG ¶¶ 20(a) and (b) do not apply.

There is no evidence that Applicant is enrolled in a credit service or undertaken financial counseling. There is insufficient evidence to show that he has made a good-faith effort to repay overdue creditors or otherwise resolve his delinquent debts. Insufficient evidence was provided to apply AG ¶¶ 20(c) and 20(d).

Applicant claimed that the Federal tax lien was satisfied, however, the two credit bureau reports show that the tax lien has not been released. He failed to provide documentation to support his claim. AG ¶ 20(g) does not apply.

The financial security 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.

¹ A debt that became delinquent several years ago is still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)).

Guideline J, Criminal Conduct

AG ¶ 30 expresses the security concern pertaining to criminal conduct:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant:

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted or convicted.

Applicant was arrested for a recent charge of Driving Under the Influence offense. At the time the SOR was issued, he was still in the 20-month period of compliance under the terms of the prosecutor's agreement. AG¶ 31(b) is established.

I have considered all of the mitigating conditions under AG ¶ 32 and considered the following relevant:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Applicant's 2015 DUI offense is his first criminal offense. He is very remorseful about the incident and has made assurances that this will never happen again. He has successfully completed the 20-month period of the interlock device on his vehicle. He is currently waiting for his upcoming hearing to have the charge dismissed. I find that the behavior which resulted in his arrest is unlikely to recur and does not cast doubt on Applicant's reliability, trustworthiness, or good judgment. Both AG ¶¶ 32(a) and 32(d) 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, and Guideline J in my whole-person analysis. Some of the factors in AG ¶ 2(d) was addressed under those guidelines, but some warrant additional comment.

Applicant is 51 years old and employed by a DOD contractor as a systems engineer since August 2016. He obtained a master's degree in 1993. Applicant's debts have accumulated over the years, and his overall debt is substantial. Applicant chose not to submit any mitigating evidence with his FORM response despite Department Counsel noting in the Government's brief that Applicant failed to provide any supporting documentation to demonstrate that he is resolving his delinquent debts. There is no showing that Applicant has a viable plan to resolve his delinquent debts, or any information in the file to support that he has paid even the smallest debt alleged in the SOR.

Overall, the record evidence leaves me with serious questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude he failed to mitigate the security concerns alleged 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

Subparagraphs 1.a-i: Against Applicant

Paragraph 2, Guideline J: FOR APPLICANT

Subparagraph 2.a: For 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 a security clearance. Eligibility for access to classified information is denied.

Pamela C. Benson
Administrative Judge