



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



In the matter of:

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ISCR Case No. 18-00020

Applicant for Security Clearance

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: *Pro se*

08/17/2018

DECISION

LYNCH, Noreen A., Administrative Judge:

This case invokes security concerns raised under Guidelines F (Financial Considerations) and E (Personal Conduct).¹ Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on October 20, 2015. (Item 5.) On January 19, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F and E. (Item 1.) 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 (AG) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on March 21, 2018 (Answer), and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on April 16, 2018. On April 21, 2018, a complete copy of the file of relevant material (FORM) was sent to Applicant, including documents identified as

¹ The Government withdrew the allegation under Guideline E (Personal Conduct).

Items 1 through 10. He was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM, but did not send submissions to supplement the record. The case was assigned to me on August 8, 2018.

Findings of Fact

Applicant, age 35, is single. He graduated from high school in 2001, and attended college courses, but he did not obtain an undergraduate degree. He obtained an associate's degree in 2012, and he continues attending college courses. Applicant served in the United States Marine Corps (USMC) inactive reserve from 2001 to 2005, receiving an honorable discharge. In 2010, he enlisted in the Army National Guard. Applicant was granted a security clearance in 2012 with a warning that failure to resolve his delinquent debts may result in the suspension of his security clearance. (Item 9). He has worked for his current employer since March 2015. (Item 5)

The SOR alleges that Applicant is indebted on a charged-off student loan account for approximately \$23,770; a collection account in the amount of \$8,540 from unpaid rent; a charged-off account in the amount of \$1,070; and a collection account in the amount of \$396. He admits the delinquent debts in SOR 1.a and 1.b, but he denies the debts alleged in SOR 1.c and 1.d and provides explanations. (Item 4) The four debts allege in total approximately \$33,000. (Items 6,7)

Applicant attributed the delinquent debt to a loss of employment. In his 2010 investigative interview, he explained that he was out of work from October 2009 to February 2010, and he had no means of income. He lived with friends and received financial support from his mother. (Item 10) However, he was unemployed after being fired because he lost his security clearance after he lied about marijuana use during a polygraph. (Item 5) He was also unemployed from January 2009 to June 2009. At that time, he received unemployment compensation. This is the initial reason that he became late with his bills. He stated that he would contact his creditors and make arrangements to have them paid. (Item 10).

In Applicant's 2017 investigative interview, he acknowledged that he was behind in rent. His girlfriend lost her job, and moved out of the apartment and there was insufficient income to pay for the rent. (Item 10) He also explained that he was deployed to Afghanistan in 2013-2014. He elaborated on his education by stating that some of the college classes were online and part time. He attended the technical institute in person and full time. (Item 10)

As to SOR 1.a, Applicant admitted the local student loan debt of \$23,779. He assumed that this student loan was consolidated with his federal student loans. He knows now that it is not. He is making payments and submitted an authorization of payments to the account in the amount of \$75 a month beginning in February 2018. However, there is no evidence of any payments made.

As to SOR 1.b, Applicant admits the debt of \$8,540 from a 2016 rental issue. He submitted a document from the creditor that he has made two payments of \$373 that started in February 2018. (Attachment to Answer)

Applicant denied the debts alleged in SOR 1.c and 1.d, for a total of \$1,470. He stated that in 2017, he received a 1099-C forgiving him of this debt. (Item 4) He has not submitted evidence of a 1099-C. He stated that he paid the debt in SOR 1.d it on March 15, 2017. He did not provide any evidence of payment.

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 (AG) 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, "Any 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, "The 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 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 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 EO 10865, “Any 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 *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline F (Financial Considerations)

The concern under this guideline 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

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions and credit reports reflect delinquent debts. This establishes two disqualifying conditions under this guideline: AG ¶ 19(a) (“inability to satisfy debts”), and AG ¶ 19(c) (“a history of not meeting financial obligations”).

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(a) is not established. Applicant has a history of delinquent debts since approximately 2009. He was unemployed after being fired for a time but did not take immediate action to resolve the issue in the years since then, until recently to resolve the issue. There are doubts about his ability or willingness to pay his debts.

AG ¶ 20(b) is partially established. Applicant's girlfriend moved out of their apartment and he could not pay the rent. He has now started almost two years later to make two payments. As to the student loans, he may not have realized the private loan was not consolidated, but he should have been more responsible in resolving it. Applicant stated that he paid the other two delinquent accounts, but provided no proof. However, he has not produced any information that he has acted responsibly under the situation. He has started to contact creditors to arrange payment plans, but this is not sufficient mitigation.

AG ¶ 20(c) and 20(d) are not established. Applicant did not respond to the FORM to demonstrate the continuing good-faith efforts that have been made to pay his accounts until recently. He did not provide documentation that he has paid SOR 1.c and 1.d. The record is silent as to any financial counseling.

Applicant has not met his burden to mitigate the financial concerns set out in the SOR. For these reasons, I find SOR ¶¶ 1.a through 1.d. against Applicant.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the applicable guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F and evaluating all the evidence in the context of the whole person, including Applicant's years of military service and his girlfriend's unemployment. I conclude that Applicant has not mitigated the security concern. Especially, since he was given a warning in 2012 concerning his finances and future consequences. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F AGAINST APPLICANT

Subparagraphs 1.a – 1.d: Against Applicant

Paragraph 2, Guideline E WITHDRAWN

Subparagraph 2.a: Withdrawn

Conclusion

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for access to classified information. Clearance is denied.

Noreen A. Lynch
Administrative Judge