



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



In the matter of:)	
)	
)	ISCR Case No: 18-01216
)	
Applicant for Security Clearance)	

Appearances

For Government: Chris Morin, Esquire, Department Counsel
For Applicant: *Pro se*

12/03/2018

Decision

DAM, Shari, Administrative Judge:

Applicant refuted the personal conduct security concerns. He did not mitigate the financial considerations security concerns related to unresolved delinquent debts. Based upon a review of the pleadings and exhibits, national security eligibility is denied.

Statement of Case

On May 1, 2018, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct. Applicant answered the SOR on May 16 and July 3, 2018, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.)

On June 26, 2018, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing six Items, was mailed to Applicant on July 10, 2018, and received by him on July 18, 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. The Government's evidence is identified as Items 1 through 6. Applicant did not submit a

response to the FORM or object to the Government's documents. Items 1 through 6 are admitted into evidence. The Defense Office of Hearings and Appeals (DOHA) assigned this case to me on October 29, 2018.

Findings of Fact

Applicant is 46 years old and divorced since 2015. He and his former wife have two adult children. He remarried in 2017. He served on active duty in the Navy from 1995 to 2016. He received an honorable discharge when he retired as an E-6. He then started a position with a defense contractor. He has held a security clearance since joining the Navy. (Item 3) He earned an associate's degree in 2010. (Item 4)

Applicant stated that his divorce contributed to his financial problems. He was unable to pay all of his obligations and care for his son on one income. He said it was an emotionally and financially difficult time for him. Prior to the divorce, he stated he had a high credit score. He said his financial situation has improved. (Items 2, 4)

Based on credit bureau reports (CBR) from September 2016 and March 2018, the SOR alleged 10 debts totaling \$42,043, which became delinquent between 2015 and 2018. They include unpaid credit cards and retail bills. Applicant admitted owing all of the debts. (Items 2, 5, 6)

Applicant did not provide proof that he has paid, is paying, or has a legitimate reason not to pay any of the 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.

Applicant submitted a Questionnaire for National Security Positions (SF 86) in September 2016. He did not report any issues under the section inquiring into financial problems. In his answer to the SOR, he strongly denied that he intentionally falsified the SF 86. He stated that he "rushed" through the application due to employment time constraints. He stated that through his long service in the Navy and continued support to the Federal Government, he has exhibited loyalty and dedication to the United States. (Item 2)

After considering the evidence, I find it insufficient for a determination that Applicant intentionally falsified the SF 86. His omissions were negligent, but not intentional.

Policies

This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 6220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as

amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

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:

- (a) inability to satisfy debts; 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 five 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;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

All ten SOR-alleged debts are ongoing, unresolved, and total over \$42,000. 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 a period of unemployment. Those were circumstances beyond his control; however, he did not submit 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 ten delinquent debts are under control. Nor is there sufficient evidence that he made a good-faith effort to resolve any of them. AG ¶¶ 20(c) and (d) do not apply. He did not submit evidence that he has a reasonable basis to dispute any of the alleged debts. The evidence does not establish mitigation under AG ¶ 20(e).

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 disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. I have incorporated my comments under

Guideline F and in my whole-person analysis. I also considered Applicant's honorable military service. However, he has unresolved financial problems, which he has not begun to address. Overall, the evidence leaves me with questions about Applicant's eligibility and suitability for a security clearance. He refuted the personal conduct security concerns, but he did not mitigate the financial considerations security concerns.

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
Subparagraphs 1.a through 1.j:	Against Applicant
Paragraph 2, Guideline E:	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 continue Applicant's access to classified information. National security eligibility is denied.

SHARI DAM
Administrative Judge