



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



In the matter of:)
)
) ISCR Case No. 17-03921
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Department Counsel
For Applicant: *Pro se*

July 10, 2018

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of the Case

On January 3, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective for cases after June 8, 2017.

Applicant answered the SOR on February 5, 2018, and requested a hearing before an administrative judge. The case was assigned to me on April 12, 2018. The Defense Office of Hearings and Appeals issued a notice of hearing on April 17, 2018, and the hearing was convened as scheduled on May 8, 2018. The Government offered four exhibits, referred to as Government Exhibits 1 through 4, which were admitted without objection. Applicant offered no exhibits at the hearing. Applicant testified on his own behalf. The record remained open until close of business on May 22, 2018, to allow

Applicant the opportunity to submit additional supporting documentation. Applicant submitted two Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits A and B, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on May 14, 2018.

Findings of Fact

Applicant is 32 years old and is married with four children. He has a high school diploma. He holds the position of Security Guard for a defense contractor. He seeks to obtain a security clearance in connection with his employment in the defense industry.

Paragraph 1 Guideline F – Financial Considerations The Government alleges that the Applicant is ineligible for clearance because he is financially overextended and at risk of having to engage in illegal acts to generate funds.

The SOR alleges that Applicant has one large medical debt totaling approximately \$16,500. In his Answer, Applicant admits the debt. Credit reports of the Applicant dated November 23, 2016; and October 26, 2017, reflect that the debt remains owing. (Government Exhibits 3 and 4.) Applicant has held never held a security clearance before.

Applicant testified that he provides the only source of income for his wife and four children. In 2015, he suffered three separate asthma attacks. Together the medical expenses he incurred totaled approximately \$16,500. At the time, Applicant had medical insurance through the Government, but, he states that apparently, the medical services he received for his condition fell outside of the coverage. Applicant has not tried to explore other options for medical insurance even though his employer offers it. Applicant states that he cannot afford to make any payments toward the debt at this time, as his wife is not working. After taxes, Applicant brings home approximately \$2,500 monthly. At the end of the month, after paying his regular monthly expenses, including \$750 in rent, he has about \$350 left that puts in savings. Applicant tried to negotiate a payment plan with the creditor, but they wanted a payment plan of \$200 per month. Applicant proposed that he could pay \$50 or \$75 per month, but the creditor was unwilling to accept it.

Two letters of recommendation, one from Applicant's site supervisor, and the other from a coworker, attest to Applicant's hard working nature and go-getter attitude. He is described as a natural leader, who is confident, optimistic, intelligent and detailed. He has a high moral character and unique ability to motivate and inspire himself and others around him. Both of these individuals recommend Applicant for a security clearance. (Applicant's Post-Hearing Exhibits A and B.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the guidelines 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 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.

Under Directive ¶ E3.1.14, the Government must 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." The applicant 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 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 information.

Section 7 of EO 10865 provides that adverse 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 for Financial Considerations is set out in AG ¶ 18, as follows:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

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

In 2015, Applicant suffered three asthma attacks that caused him to become excessively indebted with a large medical bill. He cannot afford to pay the bill. The evidence is sufficient to raise the above disqualifying conditions.

Two Financial Considerations 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 doubt on the individual's current reliability, trustworthiness, or good judgment; and
- (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.

Applicant's medical condition in 2015, resulting in delinquent medical bills was at some point beyond his control. However, since then, three years has past and Applicant has done nothing to resolve his excessive delinquent medical debt. Although he has about \$350 left in discretionary funds, at the end of the month, he has chosen to put it in his savings account, instead of using it to pay his delinquent medical bill. He has not acted reasonably nor responsibly under the circumstances. His conduct does not show good judgment or reliability. There are no clear indications that his financial problem is resolved and under control. There has been no good faith effort to pay the debt. The Financial Considerations concern has been not been mitigated.

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 in my whole-person analysis. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the Financial Considerations security concerns.

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
Subparagraph 1.a.:	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 national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge