



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



In the matter of:

Applicant for Security Clearance

)
)
)
)
)

ISCR Case No. 17-04191

Appearances

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

09/10/2018

Decision

LYNCH, Noreen A., Administrative Judge:

This case invokes security concerns raised under Guideline F (Financial Considerations). Applicant presented sufficient evidence to mitigate the financial security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On December 22, 2017, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline F. The SOR further informed Applicant that, based on information available to the Government, DoD adjudicators could not make the preliminary affirmative finding that it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant timely answered the SOR, and requested a review based on the written record in lieu of a hearing. (Answer.) The case was originally assigned to another administrative judge in April 2018, but was assigned to me on August 27, 2018. Department Counsel submitted a File of Relevant Material (FORM), dated February 8, 2018. The Government submitted six Items for the record. Applicant timely responded to the FORM with a packet of documentation, which was marked as AX A, and entered into the record without objection.

Findings of Fact

Applicant, age 38, is single and has no children. He graduated from college in 2015, obtaining his undergraduate degree. Applicant completed a security clearance application on August 28, 2016. He has not held a security clearance in the past. (Item 3) He has worked for his current employer since September 2016.

The SOR alleges that Applicant has delinquent debt in the amount of approximately \$18,500 for collection or charged-off accounts and two accounts past due in the total amount of \$1,532. (Item 1) Applicant admitted the debts, and provided explanations. (Item 2) He noted that two accounts were on a payment plan.

Applicant was gainfully employed from January 2002 to August 2015. His credit report reveals that he paid his accounts and bills as agreed. His job required him to commute a distance from his home and travel frequently. He learned in 2015, that his mother was diagnosed with stage four breast cancer. He needed to be close to home so that he could aid his mother while she was receiving treatments of chemotherapy and radiation. He left his good job and obtained one close to home. He acknowledged that it was a big reduction in pay, but he had to help his mother everyday with medication and obtaining groceries. He admits that the year he worked with that company, he paid the minimum on his credit bills, but eventually was unable to maintain them. However, he has no new delinquent bills. This was the first time that he had not been financially stable. His mother died in November 2017. (AX A)

Applicant started a better job in September 2016, which allows for overtime pay. He was overwhelmed with the interest and penalty fees, but as he told the investigator during his interview in 2017, his plan was to arrange for payment plans in 2018. He had several accounts that he already made frequent payments on which were non-SOR accounts. When he received his new employment in late 2016, he put two accounts in payment plans. (Attachments to Answer)

In Applicant's response to the FORM, he provided documentation of payments and payment plans for the following SOR accounts: 1.k, for which he has made two monthly payments of \$109.73; 1.i, for which he has made a monthly payment of \$53.03; 1.n. paid in full - \$368.36; 1.f in a payment plan with monthly payments of \$78.01; 1.l in payment plan with monthly payment of \$64.42. Applicant provided the terms of each plan and the payments that he has made. (AX A)

As to the other SOR accounts, Applicant has contacted the creditors and they have responded with payment options. (SOR 1.a; 1.d; and 1.h). He included the documentation from each creditor. (AX A)

Applicant also contacted the remaining creditors in SOR 1.b; 1.c; 1.e; 1.g; 1.j; 1.m; and 1.o and is waiting for payment options and when he is able to start payments on the remaining accounts. (AX A)

Applicant submitted his pay checks from his current employer showing his salary of about \$40,000 annually and his 20 overtime hours per pay period. He is working as much as he can to continue his payment plans and start the remaining ones listed above. He has a savings account and contributes to a Roth retirement account. Applicant produced documentation that he is current on his car loan. (AX A) He submitted a letter of recommendation from his employer from 2002 to 2015, who praises his exemplary work habits and exceptional leadership skills. He is respected by peers and supervisors. He has many certifications. In addition, he received an award from his current employer and a performance evaluation of "exceeds standards."

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, corroborated by his credit reports establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"), 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.

Applicant's debts are the result of a grave medical emergency for his mother, which resulted in her death in November 2017. He left a well-paying job in 2015, so that he could attend to her at her home. Before that time, his credit reports show that he paid his bills. He took a lower-paying job and eventually could not maintain his bills. He was candid with the investigator in 2017 that his plan was to begin payment plans for all his delinquent debts in 2018. He already had started two plans. He kept his promise and is current with his various payments. He has no new delinquent bills.

Applicant has paid two accounts in full and has current payment plans for several other accounts. The remaining account creditors have been notified and sent Applicant payment options. He clearly has a plan. He has a past record of financial responsibility. AG ¶ 20(a) is fully established and does not cast doubt on his trustworthiness. His mother was gravely ill and died in November 2017.

AG ¶ 20(b) is established. While Applicant's mother's illness and underemployment was a condition beyond his control, he acted responsibly to address the resulting debts from his lower pay. He provided documentation that he has a plan in place with current payments for many of the accounts. Two are paid in full. He is working overtime now to supplement his income. He acted responsibly given his mother's condition and death.

AG ¶ 20(c) is partially established. AG 20(d) is fully established. Applicant is adhering to good-faith efforts to pay each and every creditor. He produced documentation to support this allegation. He provided sufficient documentation to support the claim. Applicant met his burden to mitigate the financial concerns set out in the SOR.

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 commonsense 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 his many years of employment with one company, character reference and award, I conclude that Applicant has mitigated the security concerns raised by his financial indebtedness. Accordingly, Applicant has 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: FOR APPLICANT

Subparagraph 1.a-o: For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest to continue Applicant's eligibility for access to classified information. Clearance is granted.

Noreen A. Lynch
Administrative Judge