



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



In the matter of:)
)
) ISCR Case No. 18-00185
)
)
Applicant for Security Clearance)

Appearances

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

July 25, 2018

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On August 10, 2017, Applicant submitted a security clearance application (SF-86). (Government Exhibit 1.) On January 31, 2018, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. (Item 1.) The action was taken under Executive Order 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*, effective within the DoD after June 8, 2017.

Applicant answered the SOR in writing on February 28, 2018, and requested a hearing before an Administrative Judge. DOHA received the request on April 17, 2018, and the case was assigned to the undersigned Administrative Judge that same day. The notice of hearing was issued on May 2, 2018, scheduling the hearing for June 14, 2018. The hearing was convened as scheduled. At the hearing the Government

presented five exhibits, referred to as Government Exhibits 1 through 5, which were admitted without objection. Applicant presented two exhibits, referred to as Applicant's Exhibits A and B, which were admitted without objection. He also testified on his own behalf. DOHA received the transcript of the hearing (TR) on June 22, 2018. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

Applicant is 38 years old and is divorced with eight children, ranging in age from two days old to twenty. He has custody of one child. He has a high school diploma. He is employed with a defense contractor as an Aircraft Mechanic. He is seeking to obtain a security clearance in connection with his employment.

Guideline F - Financial Considerations

The Government alleged that Applicant is ineligible for a clearance because he made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness and ability to protect classified information.

The SOR identified sixteen delinquent debts totaling approximately \$15,000. Applicant admits all of the debts set forth under this guideline. The debts consist of tax debt as well as numerous collection and charged off accounts. Credit reports of Applicant dated August 22, 2017; and April 16, 2018, reflect that each of the debts remain outstanding. (Applicant's Exhibits 3 and 4.) Applicant has been working for his current employer since April 2018. He has never held a security clearance before.

The following delinquent debts became outstanding. Applicant testified that he has had financial problems, which had a lot to do with almost 50 percent of his income being deducted for child support, plus the cost of insurance, which has placed him in a financial bind. (Tr. p. 40.) Applicant states that he has contacted his creditors to set up payment plans, but had not been able to follow through given his financial situation. Applicant is paid \$266 per week without overtime and with overtime he makes \$382 weekly. He spends roughly \$1,000 monthly on his expenses. He has about \$150 in his bank account and is living check to check.

1.a. A delinquent Federal tax debt in the amount of \$956 for tax year 2016 remains owing. Applicant states that he has not filed his Federal or state income tax returns for tax years 2016 or 2017 yet. (Tr. p. 41.)

1.b. A delinquent medical debt was placed for collection in the approximate amount of \$3,053, and remains owing.

1.c. A delinquent medical debt was placed for collection in the approximate amount of \$1,272, and remains owing.

1.d. A delinquent debt was placed for collection in the approximate amount of \$533, and remains owing.

1.e. A delinquent debt was charged off in the approximate amount of \$2,367 and remains owing. Applicant states that he and the creditor agreed to settle the balance for \$1,586. Applicant has not been able to comply with the payment plan of \$250 on February 18, 2017, and additional payments of \$1,336 beginning March 28, 2018, and every other month thereafter until paid in full. (Tr. p. 32.)

1.f. A delinquent medical debt was charged off in the approximate amount of \$121, and remains owing.

1.g. A delinquent debt was charged off in the approximate amount of \$438, and remains owing.

1.h. A delinquent debt was charged off in the approximate amount of \$274. Applicant states that he has paid the debt off in February 28, 2018. (Tr. pp. 29 and 38-39)

1.i. A delinquent debt was placed for collection in the approximate amount of \$1,726, and remains owing.

1.j. A delinquent debt was placed for collection in the approximate amount of \$750, and remains owing.

1.k. A delinquent debt was placed for collection in the approximate amount of \$108.32, and remains owing. Applicant states that he paid the debt in full.

1.l. A delinquent medical debt was placed for collection in the approximate amount of \$57, and remains owing.

1.m. A delinquent medical bill was placed for collection in the approximate amount of \$895, and remains owing.

1.n. A delinquent medical debt was placed for collection in the approximate amount of \$56, and remains owing.

1.o. A delinquent debt was placed for collection in the approximate amount of \$647, and remains owing.

1.p. A delinquent debt was placed for collection in the approximate amount of \$2,401, and remains owing.

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 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 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 avoided drawing 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, 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 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 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 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:

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. Three are potentially applicable in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debt regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant is delinquently indebted in the amount of approximately \$15,000. His actions demonstrate both a history of not addressing his debt and an inability to do so. The evidence is sufficient to raise the above disqualifying conditions.

The following mitigating condition under the Financial Considerations is potentially applicable under 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, or a death, divorce, or separation), and the individual acted responsibly under the circumstances.

It is recognized that Applicant's child support expenses and other related matters have contributed to his current financial situation. Applicant testified that he has plans to pay his debts, but is not able to do so at this time. There is no pattern of systematic payments to show a pattern of financial responsibility. There is insufficient evidence here to show that he has acted responsibly under the circumstances. His inaction casts doubt on his current reliability, trustworthiness, or good judgment.

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 relevant facts and circumstances surrounding this case. I conclude Applicant has not mitigated the Financial Considerations security concern.

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.:	Against Applicant
Subparagraphs 1.b.:	Against Applicant
Subparagraphs 1.c.:	Against Applicant
Subparagraphs 1.d.:	Against Applicant
Subparagraphs 1.e.:	Against Applicant
Subparagraphs 1.f.:	Against Applicant
Subparagraphs 1.g.:	Against Applicant
Subparagraphs 1.h.:	Against Applicant
Subparagraphs 1.i.:	Against Applicant
Subparagraphs 1.j.:	Against Applicant
Subparagraphs 1.k.:	Against Applicant
Subparagraphs 1.l.:	Against Applicant
Subparagraphs 1.m.:	Against Applicant
Subparagraphs 1.n.:	Against Applicant
Subparagraphs 1.o.:	Against Applicant

Subparagraphs 1.p:

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 or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge