



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



In the matter of:)
)
) ISCR Case No. 15-00427
)
Applicant for Security Clearance)

Appearances

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

10/6/2015

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On May 21, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. 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 (AG) effective within the DOD on September 1, 2006.

Applicant answered the SOR on June 23, 2015, and requested a hearing before an administrative judge. The case was assigned to me on August 12, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 19, 2015. I convened the hearing as scheduled on September 17, 2015. The

Government offered exhibits (GE) 1 through 3, which were admitted into evidence without objection. In addition, the Government submitted a copy of the discovery letter sent to Applicant and an exhibit list that were marked as Hearing Exhibits I and II. Applicant testified and did not offer any exhibits. DOHA received the hearing transcript (Tr.) on September 25, 2015.

Findings of Fact

Applicant admitted all the allegations in the SOR. His admissions have been incorporated into the findings of fact. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 34 years old. He married in 2005. He earned a bachelor's degree in 2006. He has two children, ages seven and three. He began working for a federal contractor in 2006, was laid off for four to six weeks in 2009, and then resumed work with the same employer.¹

Applicant stated that he was financially irresponsible and accumulated debt when he was younger. He had a credit card and purchased a jet ski in 2006. He was able to pay his bills at the time. His wife lost her job in approximately 2008 or 2009. She was a secretary. He was laid off for four to six weeks around the same time. His eldest child was born in 2008, and his medical insurance did not cover all of the costs. He estimated he owed a couple of thousand dollars for medical expenses. He contacted some of his creditors at the time because he had difficulty paying his bills. The creditors would not work with him until the debts were delinquent. Once the bills were delinquent, the creditors' payment plans called for large payments that mostly paid interest and not principal. He could not afford the payments. When he was laid off, he stopped making any payments because he did not have enough money. When he resumed working, the debts were with collection companies, which required high payments that he could not afford. The collection companies would not accept lesser amounts.²

Applicant acknowledged that he made mistakes with his finances because he was eager to acquire things and did not live within his means. He has learned from his mistakes. All of his current expenses are paid timely. His wife went back to work part-time after their second child was born, and she will start full-time employment shortly. Applicant earns approximately \$60,000 annually, and he anticipated his wife will earn between \$1,000 and \$1,500 a month.³

Applicant has two credit cards with balances of \$500 and \$700 that he is making payments on. He has a loan he owes for a surgery for his son (balance of \$800) and two car loans for new vehicles he and his wife purchased in 2011. Each car loan was

¹ Tr. 14-17.

² Tr. 18-24.

³ Tr. 15-17, 22.

\$21,000. These loans are all current. Applicant also is in good standing on a \$27,000 student loan.⁴

Applicant admitted he owes the eight debts totaling more than \$24,000, alleged in the SOR, but has not paid any of them. He was disputing the amounts of some of the medical debts, and he was unable to work out payment plans. He stated he believed he already paid the debt in SOR ¶ 1.c (\$88), and tried to dispute it, but was unsuccessful. He did not provide any documents to support his claim. He acknowledged the debts in SOR ¶1.d (\$327) and ¶ 1.e (\$241), but has not been able to work out a payment plan. He decided to focus on paying his monthly expenses. He expects his delinquent debts will eventually drop off his credit report. He has not contacted any of the creditors of the delinquent debts recently. He explained he tried to take care of the debts at one time, but the creditors wanted too much money. He has no way to pay the amounts the creditors want.⁵

Applicant had credit counseling in 2009 or 2010 with a company that was supposed to negotiate reasonable payment plans with his creditors. He paid the company \$300 a month for two years, but none of his debts were resolved. He ceased working with them. Applicant explained that his wife pays some of their bills and he pays others. They have on average between \$500 and \$1,000 remaining at the end of each month after paying their bills. They have no savings, but Applicant has about \$15,000 to \$20,000 in a 401(k) retirement account.⁶

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 list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied 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.

⁴ Tr. 23-29.

⁵ Tr. 22-23, 29-34.

⁶ Tr. 34-38.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information 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. Likewise, I have not drawn 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, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that 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 or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and the following two are potentially applicable:

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

Applicant has eight delinquent debts totaling more than \$24,000. He has been unwilling or unable to pay or resolve them for several years. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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;
- (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;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated 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.

Applicant has been consistently employed since 2006, except for four to six weeks in 2009. Also his wife became unemployed during that time. She recently went back to work part-time and expects to work full-time. Applicant's has numerous debts that are unpaid and unresolved. AG ¶ 20(a) does not apply.

Applicant and his wife's unemployment and medical expenses were conditions beyond his control. For the full application of AG ¶ 20(b), he must have acted responsibly under the circumstances. At first, Applicant attempted to negotiate payment plans that he could afford with creditors, but was unsuccessful. He contracted with a credit counseling service to help him resolve his debts, but it did not. His actions show an attempt to act responsibly, but eventually he decided to only focus on his current

expenses and wait for the delinquent debts to drop off his credit report. I find AG ¶ 20(b) partially applies.

AG ¶ 20(c) partially applies to the extent that he sought credit counseling. But none of the debts have been paid or resolved. Initially, Applicant made a good-faith effort to repay overdue creditors and resolve his delinquent debts when he paid \$300 a month for 24 months to a credit counseling company. The company failed to resolve any of his debts. AG ¶ 20(d) partially applies.

Applicant disputes a debt, but he did not provide documentary proof to substantiate the basis of the dispute or to show what actions were taken to resolve the debt. AG ¶ 20(e) does not apply.

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(a):

- (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. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a 34-year-old married father of two young children. He admitted that when he was younger he was not responsible with his finances and lived beyond his means. He is older now and understands the importance of financial stability. He made some attempts to resolve his debts, but when he was unsuccessful, he decided to wait and let the debts drop off his credit report. His early efforts to resolve his debts do not outweigh his recent abandonment of addressing them. He is paying his current bills, but is unable to pay his legitimate delinquent debts. Applicant's conduct raises questions about his judgment, reliability, and trustworthiness. Overall, the record evidence leaves

