



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



In the matter of:)
)
) ISCR Case No. 14-03087
)
Applicant for Security Clearance)

Appearances

For Government: Gina L. Marine, Esq., Department Counsel
For Applicant: *Pro se*

10/15/2015

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 November 5, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued 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 effective within the DOD for SORs issued after September 1, 2006.

On December 9, 2015, Applicant answered the SOR, and he elected to have his case decided on the written record in lieu of a hearing. On April 15, 2015, Department Counsel submitted the Government’s file of relevant material (FORM). The FORM was

mailed to Applicant, and it was received on June 30, 2015. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object and the documents were admitted into evidence. Applicant did not submit additional information. The case was assigned to me on September 10, 2015.

Findings of Fact

Applicant admitted both of the SOR allegations. I have incorporated his admissions into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 35 years old. He has worked for his present employer since October 2006. Before that he was unemployed from August 2006 to October 2006. He worked at a retail store from February 2003 to his termination by mutual agreement due to unsatisfactory performance in August 2006.

On July 26, 2013, during Applicant's background interview with a government investigator, he admitted he had a delinquent student loan and personal loan. He did not disclose them on his SCA because he did not have a copy of his credit report. The student loan debt (SOR ¶ 1.a, \$48,562) was incurred from 1998 to 2004, and was originally between \$30,000 and \$35,000. The loan was deferred for two years after his graduation in 2004 and became due sometime in 2006. He was unable to make payments on the loan due to unemployment and underemployment. He attempted to get an extension on the deferments, and in May 2010 it was sent to a collection agency. Applicant indicated in his interview that he always intended on paying his student loan, and planned on contacting the collection company to arrange a payment plan now that he was making good money and could afford to pay the debt. He indicated he intended to pay every penny back as soon as possible.¹ In his answer to the SOR, Applicant stated: "upon pulling my credit report via Transunion, my debt to [student loan] shows as being removed from collections as of 12-9-2013."² Applicant did not provide any other information about this debt.

Applicant also acknowledged owing the debt in SOR ¶ 1.b (\$3,400) for a personal loan from a creditor obtained in about March 2008. He used the money for day-to-day living expenses. As stated above, he was unable to repay the loan when it became due because of unemployment and underemployment. He always intended to repay it and stated during his background interview he was going to contact the creditor to arrange a payment plan. He indicated he hoped to settle the debt in full within a year. In his answer to the SOR, Applicant indicated the debt was no longer on his credit report as a collection account.³

¹ Item 3.

² Item 1.

³ Item 3.

Applicant did not provide any documentary evidence of efforts he made to fulfill his financial obligations and pay the delinquent accounts as promised.

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 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.

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 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, 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 as to obtaining 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 that an 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 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 relating to the guideline 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 the following under AG ¶ 19:

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

Applicant acknowledged he owed the debts alleged in the SOR. The student loan has been delinquent since before 2010 when it was turned over to a collection agency. The personal loan has been delinquent since 2008. Applicant indicated he was making good money and in a position to repay the loans. Instead, he chose not to fulfill his obligation and promise. Applicant is unwilling to satisfy his debts. He has a history of not meeting his financial obligations. The above disqualifying conditions have been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under 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;
- (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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant used student loans to pay for his college education. He was unemployed and underemployed after completing college. He obtained a personal loan to pay for his living expenses. These were conditions beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly. He became employed in 2006. He has since ignored his financial obligations. In 2013, he advised a government investigator that he was making good money and would repay his delinquent debts. He has not paid his delinquent debts despite acknowledging the financial means and promises to do so. Instead, he relies on the fact that the debts are no longer reported on his credit report. Although the creditors may no longer be able to seek payment, it does not negate that Applicant has failed to act responsibly, reliably, or trustworthy in meeting his financial obligations. AG ¶ 20(b) partially applies. None of the other mitigating conditions 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 the 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 35 years old. After college he was unemployed and underemployed for a period and was unable to pay his student loan and a personal loan. He began working with his current employer in 2006 and indicated he was making good money. During his background interview, he admitted he owed the debts and promised to contact the creditors and pay them. He did not. Applicant's disregard for his legitimate financial obligations and responsibilities is a security concern. His empty promises raise questions about his trustworthiness, reliability, and good judgment. 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 failed to mitigate the security concerns arising under Guideline F, financial considerations.

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-1.b: | 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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge