



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



In the matter of:)
)
-----) ISCR Case No. 14-03493
)
Applicant for Security Clearance)

Appearances

For Government: Tovah A. Minster, Esquire, Department Counsel
For Applicant: *Pro se*

November 24, 2015

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on April 22, 2013. (Item 4.) On August 7, 2014, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F (Financial Considerations) concerning Applicant. The action was taken under Executive Order 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 within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on November 13, 2014, and requested a decision by an administrative judge without a hearing. (Item 3.) Department Counsel submitted the Government's written case (FORM) to Applicant on May 20, 2015.¹ Applicant acknowledged receipt of the FORM on June 2, 2015. He was given 30 days from receipt of the FORM to submit any additional documentation. Applicant elected not to submit any additional information. The case was assigned to me on August 5, 2015.

¹Department Counsel submitted nine Items in support of the SOR allegations.

Based upon a review of the pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant is 32 and married. He served honorably in the United States Navy from 2000 through December 2012. (Item 4 at Section 15.) He is employed by a defense contractor, and seeks to obtain a security clearance in connection with his employment.

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. As described below, Applicant admitted some of the SOR allegations and denied others. He also submitted additional evidence to support his application for a security clearance.

The SOR allegations fall into two distinct areas. Subparagraphs 1.a through 1.e, and 1.i through 1.l concern debts Applicant is alleged to owe. These nine debts total \$33,458. He denied these allegations. The existence and amount of these debts is supported by credit reports in the record dated April 27, 2013; and May 20, 2014. (Items 6 and 5.)

Applicant argues that all of the above debts were included in the Schedule F of a Chapter 7 bankruptcy he filed on March 11, 2014. That is true except for allegations 1.b and 1.e. These debts are to the same creditor. Allegation 1.e is for a judgment entered in 2012, and I find that it is a duplicate of 1.b. There is no evidence that this judgment was satisfied. He subsequently received a discharge from the bankruptcy court on June 23, 2014. (Item 3 at 1, 6-11.)²

Applicant has filed for bankruptcy three times. They will be described in chronological order:

1.h. Applicant first filed for a Chapter 7 bankruptcy on April 18, 2003. He received a discharge on August 9, 2003. The amount of debt he discharged is not known. Of note in the available bankruptcy records is the fact that he reaffirmed a debt with the creditor set forth in allegation 1.e. (Item 8.)

1.g. Applicant filed a Chapter 13 bankruptcy on December 15, 2010. He stated that he had \$40,106 worth of debt, both secured and unsecured. The creditor in 1.e was stated to have a secured claim on the estate. Applicant and his wife took the required credit counseling. A Chapter 13 plan was confirmed by the bankruptcy court on January

²Even though they were not listed on his Schedule F, absent an allegation of fraud, the debts set forth in SOR allegations 1.b and 1.e were also discharged by operation of bankruptcy law.

20, 2012. Applicant subsequently voluntarily dismissed the case on September 12, 2012. There is no information as to how much money was paid to the Chapter 13 Trustee during the bankruptcy, or how many creditors were paid through the plan, if any. (Item 9.)

Applicant states in his Answer (Item 3):

The 2010 chapter 13 bankruptcy had to be dismissed because of my PTS [sic] from the military. Due to the loss of employment in the USN I lost all the benefits that I was receiving. I chose to dismiss the case because I knew that my family would need the money being used to make payments to be able to move back into civilian life.

1.f. Applicant filed a second Chapter 7 bankruptcy on March 11, 2014. He stated that he had no secured debt, and that he had \$39,168 of unsecured debt. In addition to the debts in the SOR, Applicant lists an additional 15 creditors, to whom he owed a total of \$19,906. Of note is the fact that two of the debts concern repossessed automobiles. Once again, Applicant and his wife took the required credit counseling. Applicant received a discharge from his debts on June 23, 2014.

No information was provided concerning Applicant's current financial situation. Applicant provided no evidence concerning the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

Policies

Security clearance decisions are not made in a vacuum. 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 as appropriate 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 AG ¶ 2 describing the adjudicative process. The administrative judge's over-arching 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. In addition, the administrative judge may also rely on

his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, “Any 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, “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 access to classified information. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized in Section 7 of Executive Order 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

Paragraph 1 (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. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant had over \$39,000 in past-due debts, which were due and owing for several years. In addition, he has filed for bankruptcy three times, and been discharged under Chapter 7 of the Bankruptcy Code twice, the last time just last year. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying conditions may be mitigated where “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.” Applicant’s financial difficulties have been in existence for several years. Bankruptcy is a legitimate and legal means to resolve debt. However, multiple bankruptcies can show an inability to control finances. This mitigating condition does not have application in this case.

AG ¶ 20(b) states that the disqualifying conditions may be mitigated where “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.” Applicant did not allege any conditions that might bring this condition into operation. In fact, his e-QIP (Item 4) shows that he began work as a civilian immediately after leaving the military. This mitigating condition does not have application in this case.

AG ¶ 20(d) states it can be mitigating where, “the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” As stated, bankruptcy is a legal means to resolve debt. However, in this case there is insufficient evidence that Applicant is now financially stable after his last discharge. This mitigating condition does not have application in this case.

Applicant has received financial counseling, as required by the Bankruptcy Code. However, as stated above, looking at Applicant’s entire financial situation at the present time, I cannot find that “there are clear indications that the problem is being resolved or is under control,” as is required by AG ¶ 20(c). Paragraph 1 is found against Applicant.

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 relevant circumstances. 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. The administrative judge must 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. The discussion under Guideline F, above, applies here as well. Applicant has had financial problems for several years, which have been resolved by bankruptcy twice. He has a long history of not paying his debts, and no evidence was presented about his current financial situation. Applicant's conduct with regard to his finances was not mitigated.

Under AG ¶ 2(a)(3), his conduct is recent and continuing. I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I also cannot find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); or that there is no likelihood of continuation or recurrence (AG ¶ 2(a)(9)).

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 security concerns arising from his financial situation. Accordingly, the evidence supports denying his request for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant

Subparagraph 1.k:
Subparagraph 1.l:

For Applicant
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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

WILFORD H. ROSS
Administrative Judge