



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-05286

Appearances

For Government:
Jeff Nagel, Esquire, Department Counsel

For Applicant:
Alan Edmunds, Esquire
The Edmunds Law Firm

November 4, 2015

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on January 21, 2013. (Government Exhibit 1.) On December 16, 2014, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F (Financial Considerations) regarding 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 January 20, 2015 (Answer), and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on April 27, 2015. This case was assigned to me on May 4, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 20,

2015. I convened the hearing as scheduled on June 9, 2015. The Government offered Government Exhibits 1 through 5, which were admitted without objection. Applicant testified on his own behalf, called three additional witnesses, and submitted Applicant Exhibits A through U, also without objection. Applicant asked that the record remain open for the receipt of additional documents. Applicant submitted Applicant Exhibits V through BB on July 1, 2015. They were admitted without objection. DOHA received the transcript of the hearing (Tr.) on June 18, 2015. The record closed on July 2, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant is 56, and married. Applicant retired in 2000 after a very distinguished 24 years of military service. He is employed by a defense contractor, and seeks to retain 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. Applicant admitted allegations 1.a and 1.b in the SOR. He denied the remaining allegations. He also submitted additional information to support his request for a security clearance.

Before 2010 Applicant lived in State A. He and his wife were both employed and their financial status was good. On July 22, 2010, Applicant's wife's mother and grandmother were involved in a house fire in State B, which is across the country from State A. The grandmother was killed in the fire, and Applicant's wife's mother was severely burned. At her mother's request, Applicant's wife left her job in State A and moved to State B to be with her parents. At around this time it was also discovered that Applicant's father-in-law was suffering from terminal cancer. The upshot of all of this was a decrease in Applicant's income by at least half, which caused the financial issues. (Applicant Exhibit C; Tr. 52, 71-72.)

The SOR lists five delinquent debts, totaling approximately \$376,751. The existence and amount of the debts is supported by credit reports dated August 22, 2008; September 23, 2014; April 27, 2015; and June 9, 2015. (Government Exhibits 2, 3, 4, and 5.)

The current status of the debts is as follows:

1.a. Applicant admitted that he owed a mortgage company approximately \$344,638 in arrearages on a house in State A, with a total mortgage balance of approximately \$750,818. As stated above, in 2010 Applicant's wife had to move from State A to State B to help with the medical and personal care of her parents after the fire that killed her grandmother. Beginning in early 2011, and proceeding to a month

before the hearing, Applicant, and his wife have had protracted, and still unsuccessful, negotiations with the mortgage holder. (Applicant Exhibits A, B, C, D, and E; Tr. 57-61, 73-74, 80-83.)

Applicant states on page 2 of his Answer:

To date, we have submitted 4 letter of hardship, 8 short sale packages, we have had realtors show the house 21 times, and had our lawyers provide volumes of data for the . . . property. We are at a documented impasse for this property as we cannot move forward because [the mortgage service company] will not engage on any property over the \$729,000 amount.

In addition, the mortgage service company refused to accept a deed in lieu of foreclosure on the property. In fact, in an email dated September 1, 2011, Applicant's lawyer stated in regard to this refusal, "[Mortgage service company's attorney] can not explain his clients' stupidity." (Applicant Exhibit V; Tr. 83-84.)

In a letter dated January 4, 2013, Applicant wrote to the mortgage service company, stating:

The property has been available for sale since October 2010 either via short sale or via public auction. You have failed to take any action towards the auction or the sale of the property in over three years. This is irresponsible on your behalf to not at least try to liquidate the property while still assessing fines upon us.
(Applicant Exhibit A at 1.)

Finally, Applicant submitted documentation showing that the mortgage service company was subject to a class-action lawsuit regarding irregularities in how it serviced loans like his. Applicant believes that he was subject to fraudulent business practices by the mortgage service company. (Applicant Exhibit W; Tr. 91-93.)

1.b. Applicant admitted that he was indebted to a cable television company in the amount of \$130 due to a billing error in connection with his move to State B. Applicant showed proof of payment of this debt. This debt is resolved. (Applicant Exhibit F; Tr. 53, 61, 74.)

1.c. Applicant denied that he owes \$3,937 for a time share. Applicant is disputing this debt, which he believed is the result of a communication mixup between him and the company. He submitted documentation showing that there was an ongoing discussion, from 2007 until 2011, between the company and Applicant in how to proceed to pay this arrearage, or otherwise resolve the issue. Applicant wishes to resolve this situation, but is unsure how to proceed. (Applicant Exhibit G; Tr. 61-63, 74-75, 85-88.) This debt is not resolved, but is in dispute.

1.d. Applicant denied that he currently owes \$27,533 for a time share. Applicant stated that he and his wife never signed a binding contract with this company

in 2006. In fact, he submitted an email between Applicant and his wife in 2006 wherein they discussed cancelling this contract. He submitted documentation showing that written dispute letters concerning this debt were sent to the collection agent and the credit bureaus in 2011, and again in 2015. (Applicant Exhibits H, I, J, and X; Tr. 56, 63-64, 75-76, 88-91, 93.) This debt is not resolved, but is in dispute.¹

1.e. Applicant denied owing \$513 to a mobile telephone company. He submitted documentation showing that the company's collection agent stopped collecting on the account stating, "You have no further financial obligation regarding this account." (Applicant Exhibit P; Tr. 56-57, 68-69.) This debt is resolved.

Applicant and his wife completed an intensive money and debt management program run by a state consumer credit counseling service. Applicant's current financial situation is stable. He is able to pay his monthly debts, and have savings. (Applicant Exhibits M, N, and Z; Tr. 67-68, 77-80.)²

Mitigation

As stated, Applicant had a long and distinguished military career. When he retired he was a chief warrant officer. (Applicant Exhibits Q, R, S and BB; Tr. 48-51.) Since his retirement he has had an equally successful career in the defense industry. (Applicant Exhibit T.)

Three co-workers of Applicant testified. All the witnesses had knowledge of the allegations in the SOR and of Applicant's family situation. They recommend him for a position of trust.

The first one has worked with Applicant for over two years. He testified, "[Applicant] is probably one of the most honest, trustworthy Engineers I've ever worked with." (Applicant Exhibit U at 3; Tr. 24-28.)

The second witness is senior to Applicant and provides input to his evaluations. With regard to Applicant he stated, "[Applicant] is my right-hand man. He is the person that I trust when I'm away and I don't have to worry about anything else when I use him." (Applicant Exhibit U at 4-5; Tr. 30-36.)

The final witness is Applicant's supervisor. He has known Applicant for five years. He trusts Applicant and has a high respect for his ethics and abilities. Applicant ranks high in the organization and his evaluations also show Applicant is above average, exceeding expectations. (Tr. 37-46.)

¹Applicant submitted evidence that he had successfully owned and timely paid on another time share property. (Applicant Exhibit K; Tr. 64-65.)

²Applicant submitted evidence that he had successfully paid off a judgment he did not know about until he pulled his credit report. (Applicant Exhibits L and Y; Tr. 65-67.)

Applicant Exhibit U contains four other letters of recommendation. They are from people who have known Applicant in the military, as well as in the defense industry. The writers include a former service member who has known Applicant for 20 years, as well as current and former Federal employees. All of them describe Applicant's technical ability and trustworthiness, as well as his reputation for honesty and integrity. Several had intimate knowledge of Applicant's issues with the mortgage service company regarding his house in State A.

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, by his own admission, and supported by the documentary evidence, had five delinquent accounts that he formerly could not resolve. 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), 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.” In addition, AG ¶ 20(b) states that 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.”

The evidence shows that both of the above mitigating conditions apply to Applicant. When informed of the two commercial debts in allegations 1.b and 1.e, Applicant immediately resolved them.

With regard to the three debts involving property, it is worthwhile to explore each debt individually:

1.a. In 2010 Applicant was faced with a horrible situation. A house fire had killed his wife's grandmother and left her mother gravely hurt. An only child, Applicant's wife had to leave her job and move across the country. The loss of her income meant that Applicant could no longer cover the costs of the mortgage. That began a long-term, concerted attempt by Applicant to reach some resolution with the mortgage service company and resolve the debt. Five years later, despite Applicant's documented best efforts, no resolution has been reached. There is also some evidence that Applicant may be part of a class-action lawsuit, which may actually result in financial or other restitution to him from the mortgage service company. What is obvious is that Applicant has behaved responsibly, not simply allowing this sad situation to fester.

1.c. The situation involving the past-due time share debt for \$3,937 is somewhat confusing. Based on the documentation submitted by Applicant, it appears that both he and the time share company had different ideas how to proceed. At one point in 2011 Applicant repeatedly informed them that documentation to resolve the situation, which the time share company stated was forthcoming, was not delivered. It appears that at this point, given other situations in his life, Applicant simply gave up. Under his particular circumstances in 2010 and 2011, I find that he behaved responsibly with regard to this debt.³

1.d. Applicant vehemently denies that he owes any money to this time share company, alleging that they are attempting to fraudulently obtain over \$27,000 from him. He submitted contemporaneous documentary information showing he and his wife did not intend to enter into a contract with this company. He also showed that he has submitted dispute letters to the creditor, as well as to the credit bureaus. He has behaved responsibly with regards to this debt, and documented his legitimate basis to dispute it.

Based on the particular facts of this case, I find that he has "initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," as required by AG ¶ 20(d). Applicant has received financial counseling. In addition, as found above, his current financial situation is stable. I find that "there are clear indications that the problem is being resolved or is under control," as required by AG ¶ 20(c). Finally, with regard to the two larger real-estate debts, "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," as required by AG ¶ 20(e).

Applicant has acted in a way that shows good judgment, making the best he could out of a very difficult situation. As the DOHA Appeal Board has said, "An applicant is not required to show that [he] has completely paid off [his] indebtedness, only that

³Applicant stated on page 88 of the Transcript that he wants to resolve this debt, since he realizes that he still owes it. He appears to have the financial means to do so.

[he] has established a reasonable plan to resolve [his] debts and has taken significant actions to implement that plan.”⁴ All of these mitigating conditions apply to the facts of this case. Guideline F is found for 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. While Applicant has had financial problems in the past, they were primarily the result of circumstances beyond his control, have been or are being resolved, and he has the knowledge and ability to avoid such problems in the future.

Under AG ¶ 2(a)(2), I have considered the facts of Applicant’s debt history. Based on the record, I find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); and that there is a low likelihood of recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with no questions or doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his financial situation. Accordingly, the evidence supports granting his request for a security clearance.

⁴ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006)).

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: FOR APPLICANT

Subparagraphs 1.a. through 1.e.: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS
Administrative Judge