



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



In the matter of:)	
)	
-----)	ISCR Case No. 14-06398
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrew Henderson, Esquire, Department Counsel
For Applicant: Ryan C. Nerney, Esquire

May 27, 2016

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on March 27, 2013. (Government Exhibit 1.) On January 28, 2015, 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 March 9, 2015 (Answer), and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on July 7, 2015. This case was assigned to another administrative judge on July 16, 2015. The case was reassigned to me on August 27, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 14, 2015. I convened the hearing as scheduled on October 21, 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 Z, also without objection. DOHA received the transcript of the hearing (Tr.) on October 30, 2015. The record closed on October 21, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant is 34, and divorced. He has custody of the two children from his previous marriage. Applicant is an honorably discharged Air Force veteran. 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 denied all eight of the allegations in the SOR (1.a through 1.h). He also submitted additional information to support his request for a security clearance.

Applicant married his ex-wife in 2001. Applicant and his ex-wife physically separated in 2010, and the divorce was finalized in April 2013. During the pendency of the divorce, Applicant's ex-wife was very uncooperative. She refused to sign important documents, and also failed to provide documentation to Applicant during that period. In addition, Applicant was unemployed or underemployed from August 2011 through June 2012. These facts caused many of his financial problems. (Government Exhibit 1 at Section 13A; Applicant Exhibits B and U.)

1.a. The Government alleged in this subparagraph that Applicant failed to file his Federal tax returns for tax years 2011 and 2012. Those tax years were during the pendency of the divorce. Applicant's ex-wife refused to give him her W-2 forms until after the divorce was completed. On the advice of his counsel, Applicant decided not to file those tax returns separately. Once the divorce was finalized Applicant's ex-wife provided the forms. Those tax returns were filed in June 2013. Applicant has filed all subsequent returns in a timely fashion. (Applicant Exhibits P, X, and Z; Tr. 86-90, 93-101.)

The SOR lists seven delinquent debts, totaling approximately \$10,018. The existence and amount of the debts is supported by credit reports dated April 9, 2013; October 16, 2014; and July 6, 2015. (Government Exhibits 3, 4, and 5.) As further described below, Applicant began working to settle his past-due debts in 2013, which was before issuance of the SOR. (Tr. 71.)

The current status of the debts is as follows:

1.b. Applicant denied that he owed \$446 for a past-due credit card debt. This debt was established by Applicant's wife without his consent during the time he was in the Air Force in 2005. The collection agency assigned to this debt went out of business and Applicant, despite his best efforts, has been unable to pay this debt to another entity. This includes the original creditor. Applicant filed disputes with the credit reporting agencies due to the age of the debt, and it was removed from his current credit report. (Applicant Exhibits X, and Y; Tr. 70-74.) I find Applicant has done everything he reasonably can to resolve this debt.

1.c. Applicant denied that he owed \$6,507 for a repossessed automobile. Applicant's ex-wife received the automobile as part of the divorce. She was unable to maintain payments and the car was repossessed. She has settled this account, and submitted documentation from the collection agent to that effect. (Applicant Exhibits R, U, and X; Tr. 74-75.) This debt is resolved.

1.d, 1.g, and 1.h. These three debts are all owed to the county where Applicant used to live. They are for traffic violations and related fines. Applicant denied that he owed a total of \$2,666 in fines. Applicant arranged a payment plan through his state's taxing authority. His first payments were in 2012. Beginning in April 2014 he paid monthly on these accounts, with his final payment being in July 2015. (Applicant Exhibits Q, V, and X; Tr. 75-83.) These debts are resolved.

1.e, and 1.f. These two debts, totaling \$399, are for medical care provided to Applicant and his children. Applicant provided documentation showing these debts were paid in August 2013. (Applicant Exhibit S; Tr. 83-86.) These debts are resolved.

Applicant submitted documentation showing that he paid off, or resolved, other debts in addition to those identified in the SOR. (Applicant Exhibits I through O; Tr. 102.) His current financial situation is stable. He is able to pay his monthly debts, and has resolved his past-due indebtedness. (Applicant Exhibit W; Tr. 18-19, 90-91.)

Mitigation

Applicant's witnesses and documentation show that he is a respected and successful employee, and former member of the Air Force. (Applicant Exhibits A, D, E, and F.)

Applicant Exhibit A contains eleven letters of recommendation for Applicant. They are from civilian employees of the Air Force, officers and senior non-commissioned officers of the Air Force, and co-workers. The Chief Executive Officer of Applicant's employer wrote one of the letters. This person has known Applicant since 2007, when they both served in the Air Force together. The writer states, "I do not have any concerns with [Applicant's] access to classified information as he personally and professionally exhibits trustworthy behavior." The other letters are of a similar tenor.

Three witnesses testified for Applicant. One is a senior civilian employee of the Air Force, the second is a senior non-commissioned officer of the Air Force, and the third was the commander of the base where Applicant is employed. All three of them viewed Applicant as an extremely trustworthy and reliable employee. His former commander, a lieutenant colonel, also served as a professional mentor for Applicant. That witness stated he trusts Applicant, and made a particular point of the fact that Applicant always informed him of Applicant's financial situation, including issues beyond those stated in the SOR. (Tr. 20-62.)

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, based on documentary and testimonial evidence, had seven delinquent accounts that he formerly could not resolve. In addition, AG ¶ 19(g) applied because of Applicant’s “failure to file annual Federal . . . income tax returns as required.” 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. Applicant’s financial problems began when he and his ex-wife separated,

during the same time he had an extensive bout of unemployment. After the divorce became final his ex-wife cooperated with Applicant in filing the two years of tax returns that were delinquent. Once he was financially able to resolve the debts, he paid six of them off. 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).

Regarding the debt is SOR 1.b, Applicant credibly testified that he has attempted several times to resolve the debt, with no success. Under the particular circumstances of this case I find that AG ¶ 20(e) applies to this *de minimis* debt; “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 not received financial counseling. However, as shown 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).

Applicant has acted in a way that shows good judgment, beginning work before issuance of the SOR to resolve his financial 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 [he] has established a reasonable plan to resolve [his] debts and has taken significant actions to implement that plan.”¹ Applicant has done that. All of these mitigating conditions apply to the facts of this case. Paragraph 1 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.

¹ISCR 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)).

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 have been 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.

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.h.:	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