



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-03220

Appearances

For Government:
Adrienne Driskill, Esquire, Department Counsel

For Applicant:
Ryan Nerney, Esquire
The Edmunds Law Firm

April 4, 2019

Decision

ROSS, Wilford H., Administrative Judge:

Statement of the Case

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on September 23, 2015. (Government Exhibit 1.) On October 17, 2017, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, 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; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security*

Clearance Review Program (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines effective within the Department of Defense after June 8, 2017.

Applicant answered the SOR in writing (Answer) on December 7, 2017, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on January 30, 2018. The case was assigned to me on February 6, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on March 8, 2018. I convened the hearing as scheduled on April 30, 2018.

The Government offered Government Exhibits 1 through 4, which were admitted without objection. Applicant offered Applicant Exhibits A through DD, which were admitted without objection, and testified on his own behalf. DOHA received the transcript of this hearing on May 8, 2018. The record then closed.

Findings of Fact

Applicant is 48 years old and employed by a defense contractor. He is married for the second time, and has three children. Applicant is seeking 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.

The SOR alleged that Applicant owed approximately \$54,000 in past-due indebtedness to various creditors. Applicant denied owing the debt in SOR allegation 1.c. Applicant partially admitted and partially denied the remaining allegations. The existence and amount of the debts is supported by admissions of Applicant, and credit reports submitted by the Government dated October 6, 2015; and August 24, 2017. (Government Exhibits 4 and 3.) Applicant submitted credit reports dated November 16, 2017; November 25, 2017; and two different reports each dated April 12, 2018. (Applicant Exhibits K, B, P, and Q.)

Applicant was married to his first wife from 1988 through 2013. From 2010 to 2012 Applicant was stationed in a combat zone, and was making a substantial monthly income. He believed his wife was taking care of the family finances, but she was not. He had to pay this wife substantial spousal support after their divorce, because of his income at that time. This began his financial difficulties. Applicant was able to reduce his spousal support to a more manageable amount in July 2017. (Tr. 24-30; Applicant Exhibits F and G.)

Applicant moved to Germany in 2012, and married his second wife in August 2014. His wife and her son moved to Germany, but she did not work there. (Tr. 31, 35; Government Exhibit 1 at Section 17.)

Applicant was stricken with a case of bacterial meningitis in March 2015. He was hospitalized for over a month, and was in a coma for approximately three weeks. He was off work for approximately three months. During that time he was only earning 65% of his normal pay. This increased his already serious financial issues. (Tr. 32-38, 67-71; Applicant Exhibit L.)

Applicant returned to the United States in December 2016. He began trying to resolve his past-due indebtedness starting in 2017. (Tr. 73-77.)

The current status of the debts is as follows:

1.a. Applicant admitted that he owed approximately \$12,970 to a credit union for a charged-off debt. SOR allegations 1.b and 1.d relate to different debts with the same credit union. He reached a payment agreement with this credit union in August 2017, and has been consistently making monthly payments in accordance with this agreement, as is shown by documents from the credit union. This debt is being resolved. (Applicant Exhibits N and U; Tr. 38-42, 77-83.)

1.b. Applicant admitted that he owed \$11,579 to a credit union for a charged-off debt. He reached a payment agreement with this credit union in August 2017, and has been consistently making monthly payments in accordance with this agreement, as is shown by documents from the credit union. This debt is being resolved. (Applicant Exhibits N and U; Tr. 38-42, 77-83.)

1.c. Applicant denied that he owed \$10,215 for a charged-off debt on a department store credit card. Applicant disputed this debt, stating that the account belonged to his mother. Applicant further stated that he was an authorized user on the account, but he did not incur the debts. Records from the creditor confirm that Applicant's mother is the account holder. Applicant's mother submitted a notarized letter stating that Applicant was not responsible for the debt. Finally, Applicant has disputed the debt in writing with the creditor. Based on the available information, I find that insufficient evidence has been submitted to show that this is actually Applicant's debt. It is in dispute. (Applicant Exhibits BB, CC, and DD; Tr. 49-55, 83-85.)

1.d. Applicant admitted that he owed \$8,085 to a credit union for a charged-off debt. He reached a payment agreement with this credit union in August 2017, and has been consistently making monthly payments in accordance with this agreement as shown by documents from the credit union. This debt is being resolved. (Applicant Exhibits N and U; Tr. 38-42, 77-83.)

1.e. Applicant admitted that he owed another credit union \$777 for a charged-off debt. He submitted documentary evidence showing that he paid this debt in full. It has been resolved. (Applicant Exhibits J, P at 25, Q at 44-46; Tr. 42-45.)

1.f. Applicant admitted owing a delinquent medical bill in the amount of \$376. He has paid this debt in full, as shown by documentation from the creditor's collection agent. This debt is resolved. (Government Exhibit 15 at 3; Applicant Exhibit H at 4-5; Tr. 45-46.)

1.g. Applicant admitted that he owed \$10,914 for a charged-off personal loan. Applicant made a payment arrangement with the creditor's collection agent, and submitted documentation from the collection agent that showed he has been in compliance with that arrangement. This debt is being resolved. (Applicant Exhibits H, M, W, and X; Tr. 46-49.)

Applicant's current financial situation is stable. His wife is employed, and they are able to pay their current indebtedness with no trouble. Applicant has taken credit counseling courses. He also submitted documentation showing that he is current on other formerly delinquent accounts not discussed in the SOR. Applicant understands the importance of resolving his past-due debts and remaining fiscally secure into the future. (Applicant Exhibits C, D, T, V, Y, Z, and AA; Tr. 55-64, 85-87.)

Mitigation

Applicant provided nine letters of recommendation from people who know him in the defense industry, both military members and civilians. He is described as a man of character, a person who is trustworthy, and a valued professional. They all recommend him for a position of trust. (Applicant Exhibits A and R.)

Applicant served in the Air Force from 1992 to 2001. He received an Honorable Discharge at the end of his military service. (Government Exhibit 1 at Section 15.)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire

process is a conscientious scrutiny of applicable guidelines in the context 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, “Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk 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 or sensitive 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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Paragraph 1 (Guideline F, Financial Considerations)

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personal security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

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

Applicant had approximately \$54,000 in past-due debts that he had not paid or resolved as of the time the SOR was issued. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged financial difficulties:

- (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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (d) the individual initiated and is adhering to 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 paid or otherwise resolved the debts in the SOR. The financial situation occurred because of malfeasance by his ex-wife, Applicant having to pay an excessive amount of spousal support related to his income, and Applicant suffering from a serious health issue that kept him out of work for three months. His current financial

status is stable, and he evinces a credible intent and ability to maintain that stability into the future. Applicant has the knowledge and ability that will allow him to stay on a proper financial footing. He has fully mitigated all the allegations in the SOR. 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 national security eligibility 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(d):

- (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 national security 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 pertinent facts and circumstances surrounding this case. Applicant has mitigated the concerns regarding his financial situation. He did not knowingly or voluntarily create the delinquencies, and acted responsibly to resolve them. He has minimized the potential for pressure, coercion, or duress, as well as the likelihood of recurrence. Overall, the record evidence does not create substantial doubt as to Applicant's present suitability for national security eligibility, and 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.g:

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 or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS
Administrative Judge