



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

In the matter of:)
)
-----) ISCR Case No. 17-03498
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne Driskill, Esquire, Department Counsel

For Applicant: *Pro se*

May 9, 2019

Decision

ROSS, Wilford H., Administrative Judge:

Applicant has over \$23,000 in past-due debts that he cannot, or will not, resolve. Applicant falsified a government questionnaire in 2016 concerning his past-due debts. Based on a review of the pleadings, testimony, and exhibits, national security eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on February 22, 2016. (Government Exhibit 1.) On October 18, 2017, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct). 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective within the Department of Defense on June 8, 2017.

Applicant answered the SOR in writing (Answer) on January 9, 2018, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on January 31, 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 9, 2018. I convened the hearing as scheduled on May 1, 2018. The Government offered Government Exhibits 1 through 5, which were admitted without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on May 9, 2018.

Findings of Fact

Applicant is a 34-year-old Technician II. He is divorced with one child, and has an Associate of Arts degree. He is seeking to retain a security clearance in connection with his work with the DoD.

Applicant served on active duty with the Navy from November 2003 through November 2007, when he obtained an Honorable Discharge. He has had several periods of unemployment between November 2007 and June 2015, when he began work with his current employer. The longest period of unemployment was between May 2010 and August 2013. During that period Applicant went to college and supported himself with the GI Bill. (Government Exhibit 1 at Sections 13A and 15.)

Paragraph 1 (Guideline F – Financial Considerations)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has a history of past-due indebtedness that can raise questions about his reliability, trustworthiness, and ability to protect classified information.

Applicant admitted owing all nine debts set forth in the SOR (subparagraphs 1.a through 1.i), with qualifications and explanations. The total amount of money Applicant is alleged to owe is approximately \$23,094. The existence and amount of the debts are documented by credit reports dated March 2, 2016; September 5, 2017; and April 30, 2018. (Government Exhibits 4, 3, and 5.) (See Government Exhibit 2.)

The current status of the debts is as follows:

1.a. Applicant admitted owing \$5,121 for a past-due student loan debt. Applicant had not made any recent payments on this debt and did not have a plan to pay this debt in the near future. This debt is not resolved. (Tr. 44-48.)

1.b. Applicant admitted owing \$3,578 for a second past-due student loan debt. Applicant had not made any recent payments on this debt and did not have a plan to pay this debt in the near future. This debt is not resolved. (Tr. 44-48.)

1.c. Applicant admitted owing a past-due debt to a cable company, however he denied owing \$1,257. He stated that this debt was allegedly for equipment he had not returned, when in fact he had returned it. Applicant further stated that he had attempted to dispute the account with the creditor, but his testimony was unclear on this point. He further stated, "I will be addressing this one [debt] in the very near future." No further information was provided. This debt is not resolved. (Tr. 49-51.)

1.d. Applicant admitted owing \$1,012 for a past-due wireless telephone debt. Applicant had not made any recent payments on this debt and did not have a plan to pay this debt in the near future. This debt is not resolved. (Tr. 52-54.)

1.e. Applicant admitted owing \$351 for a past-due debt to a credit union. Applicant had not made any recent payments on this debt and did not have a plan to pay this debt in the near future. This debt is not resolved. (Tr. 54-55.)

1.f. Applicant admitted owing \$264 for a past-due telephone debt. Applicant had not made any recent payments on this debt and did not have a plan to pay this debt in the near future. This debt is not resolved. (Tr. 52, 55.)

1.g. Applicant admitted owing \$5,000 for a judgment entered against him in February 2011 for past-due home owners' association fees. Applicant had no information as to whether this judgment had been resolved. Once again, his testimony was unclear on this point. He had not made any recent payments on this debt and did not have a plan to pay this debt in the near future. This debt is not resolved. (Tr. 55-57.)

1.h. Applicant admitted owing \$235 for a past-due gym membership debt. Applicant had not made any recent payments on this debt and did not have a plan to pay this debt in the near future. This debt is not resolved. (Tr. 57-58.)

1.i. Applicant admitted owing \$6,276 for a past-due bank credit card debt. Applicant had not made any recent payments on this debt and did not have a plan to pay this debt in the near future. This debt is not resolved. (Tr. 59-61.)

As stated, after Applicant left the Navy he had several periods of unemployment. This had some impact on his ability to pay his bills. However, Applicant admitted that part of the problem was poor financial planning, decision making, and budgeting on his part. He had been employed by his current company for almost three years as of the date of the hearing and had not made any payments towards any of his past-due debts. (Tr. 30-36, 39-40, 42-43.)

Applicant stated, and the credit reports support, that he had not acquired any new delinquent debt. He testified that he hoped to pay his past-due debts off over the next five years. However, he had not made any specific plan to pay off his past-due indebtedness. (Tr. 20, 48, 61-63, 74.)

Paragraph 2 (Guideline E – Personal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has engaged in conduct that shows poor judgment, untrustworthiness or unreliability. Applicant admitted both the allegations under this paragraph, with qualifications.

Applicant filled out an e-QIP on February 22, 2016. (Government Exhibit 1.) Section 26 of that questionnaire concerned Applicant's financial record. Both allegations in the SOR concern different questions from this section.

2.a. Appellant was asked in Section 26 whether, in the past seven years, he had a judgment entered against him. Appellant answered this question, "No." In fact, as stated above, Applicant had a judgment entered against him in 2011, five years before his filling out the e-QIP, in the amount of \$5,000. This was a false answer to a relevant question concerning Appellant's financial situation.

Applicant testified that he did not talk about the judgment because he thought it had occurred more than seven years before he filled out the questionnaire. Appellant's explanation is not unreasonable as to this question. Subparagraph 2.a is found for Applicant. (Tr. 68-71.) (See Answer.)

2.b Section 26 goes on to ask Applicant if, in the seven years before the date he filled out the questionnaire, he had bills or debts turned over to a collection agency, or had an account charged off for failing to pay as agreed? Applicant answered both questions, "No." These were false answers to relevant questions about his financial status.

Applicant testified that he did not intend to falsify the questionnaire, but he was not really "on top of it" with regard to his debts. Applicant's testimony as to his reasons for leaving his debts off of the questionnaire was often vague, unclear, or contradictory. (Tr. 71-78.) Subparagraph 2.b is found against Applicant.

Policies

When evaluating an applicant's national security eligibility for a security clearance, 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 concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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 personnel 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 three conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant, based on the evidence, had nine delinquent accounts that he could not or chose not to resolve. These debts have been in existence for a considerable period of time. The evidence is sufficient to raise these potentially disqualifying conditions.

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

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

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

The evidence does not establish that any of the above mitigating conditions apply to Applicant. With regard to AG ¶ 20(b), Applicant was unemployed between 2010 and 2013. However, he was going to school during that time and was supporting himself with the GI Bill. In addition, he had been employed just short of three years as of the time of the hearing and had not paid any of the past-due debts. He failed to submit evidence that would tend to support any of the other mitigating conditions. There is no basis for me to find that Applicant has mitigated the security concerns of his financial situation. Paragraph 1 is found against Applicant.

Paragraph 2 (Guideline E – Personal Conduct)

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. One is potentially applicable in this case:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant knowingly falsified material facts about his financial situation on a Government personnel security questionnaire in 2016. None of the potentially mitigating conditions under this guideline apply to his conduct in this case with regard to that questionnaire. Paragraph 2 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 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 not mitigated his significant financial difficulties, or his falsifications to the Government concerning his financial situation. Overall, the record evidence does 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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.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 or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

WILFORD H. ROSS
Administrative Judge