



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



In the matter of:)	
)	
-----)	ISCR Case: 18-00538
)	
Applicant for Security Clearance)	

Appearances

For Government: Tara Karoian, Esquire, Department Counsel
For Applicant: Ryan Nerney, Esquire

June 21, 2019

Decision

ROSS, Wilford H., Administrative Judge:

Statement of Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on May 12, 2016. (Government Exhibit 1.) On March 5, 2018, 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 *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, with attachments, on April 5, 2018, and requested a hearing before an administrative judge. (Answer.) Department Counsel was prepared to

proceed on May 11, 2018. The case was assigned to another administrative judge on June 15, 2018. It was then assigned to a second administrative judge on July 5, 2018. The case was reassigned to me on July 10, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 5, 2018, scheduling the hearing for August 20, 2018. The hearing was convened as scheduled. The Government offered Government Exhibits 1 through 6, which were admitted without objection. Applicant testified on his own behalf and submitted Applicant Exhibits A through BB, which were also admitted without objection. The record remained open until September 14, 2018, at Applicant's request for the receipt of additional documentation. Applicant submitted Applicant Exhibits CC through EE in a timely manner, which were also admitted without objection. DOHA received the transcript of the hearing (Tr.) on August 29, 2018.

Findings of Fact

Applicant is 38 years old. He married his second wife in September 2017. They have two children, and he has two children from his first marriage. Applicant was married to his first wife from 2006 until March 2017, though the parties separated in May 2012. He has received both a Bachelor of Arts degree and a Bachelor of Science degree. He has worked for his current employer since 2006 and wishes to retain national security eligibility for a security clearance in connection with that employment. (Government Exhibit 1 at Sections 13A and 17; Applicant Exhibit B; Tr. 22-25.)

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has failed to meet his financial obligations and is therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. Applicant admitted SOR allegations 1.a, 1.j, 1.p, and 1.q. He denied SOR allegations 1.m and 1.n. Applicant admitted in part and denied in part the debts set forth in SOR allegations 1.b through 1.i, 1.k, 1.l, and 1.o. The existence and amounts of all of the debts are set forth in credit bureau reports dated July 26, 2016; and May 11, 2018. (Government Exhibits 5 and 6.)

Applicant argued that a long and arduous divorce proceeding from his now ex-wife was the primary cause of all of his financial issues. According to Applicant, he had to pay excessive spouse and child support, as well as his ex-wife's attorney fees. Eventually, he was unable to maintain payments on his debts. Only recently has he been able to begin to resolve his debts. (Applicant Exhibits G, H, and K; Tr. 26-29, 59-62.)

The current status of the debts is as follows:

1.a. Applicant admitted that he owed several unpaid student loans, as set forth in this allegation and SOR allegation 1.j. Applicant entered into a rehabilitation agreement concerning all of his student loans, totaling approximately \$61,646. Beginning in March

2018, Applicant began making monthly payments of \$240 a month. Applicant had made seven payments as of the date the record closed. Once he has made nine payments in ten months, his loans will be taken out of default status and then regular payments can begin. His actions are sufficient to show a good-faith effort to resolve this debt. This debt is being resolved through agreed payments. (Applicant Exhibits V and L; Tr. 28-34, 79-80, 88-89.)

1.b. Applicant admitted in part and denied in part that he owed \$15,958 for a past-due credit card bill. He admitted to this allegation on the record, and that he had not made any payments towards it. Applicant entered into an agreement with a debt relief company on August 16, 2018, to attempt to resolve this and other past-due indebtedness. The agreement posits that Applicant will make monthly payments of \$290, out of which the debt relief company will attempt to make payment arrangements with his creditors. Applicant made his first payment on September 7, 2018, which is the only one before the record closed. One payment is insufficient to show that Applicant has made a good-faith effort to resolve this debt. This debt is not resolved. (Tr. 34-36, 39-40, 81-83; Applicant Exhibit BB.)

1.c. Applicant admitted in part and denied in part that he owed \$3,245 for a past-due credit card bill. He admitted to this allegation on the record, and that he had not made any payments towards it. Applicant entered into an agreement with a debt relief company on August 16, 2018, to attempt to resolve this and other past-due indebtedness. The agreement posits that Applicant will make monthly payments of \$290, out of which the debt relief company will attempt to make payment arrangements with his creditors. Applicant made his first payment on September 7, 2018, which is the only one before the record closed. One payment is insufficient to show that Applicant has made a good-faith effort to resolve this debt. This debt is not resolved. (Tr. 38-40, 81-83; Applicant Exhibit BB.)

1.d. Applicant admitted in part and denied in part that he owed \$2,889 for a past-due credit card bill. He admitted to this allegation on the record, and that he had not made any payments towards it. Applicant entered into an agreement with a debt relief company on August 16, 2018, to attempt to resolve this and other past-due indebtedness. The agreement posits that Applicant will make monthly payments of \$290, out of which the debt relief company will attempt to make payment arrangements with his creditors. Applicant made his first payment on September 7, 2018, which is the only one before the record closed. One payment is insufficient to show that Applicant has made a good-faith effort to resolve this debt. This debt is not resolved. (Tr. 39-40, 81-83; Applicant Exhibit BB.)

1.e Applicant admitted in part and denied in part that he owed \$2,701 for a past-due credit card bill. He admitted to this allegation on the record, and that he had not made any payments towards it. Applicant entered into an agreement with a debt relief company on August 16, 2018, to attempt to resolve this and other past-due indebtedness. The agreement posits that Applicant will make monthly payments of \$290, out of which the

debt relief company will attempt to make payment arrangements with his creditors. Applicant made his first payment on September 7, 2018, which is the only one before the record closed. One payment is insufficient to show that Applicant has made a good-faith effort to resolve this debt. This debt is not resolved. (Tr. 39-41, 81-83; Applicant Exhibit BB.)

1.f. Applicant admitted in part and denied in part that he owed \$2,012 for a past-due credit card bill. Applicant admitted to this allegation on the record. Applicant entered into an agreement with a debt relief company on August 16, 2018, to attempt to resolve this and other past-due indebtedness. The agreement posits that Applicant will make monthly payments of \$290, out of which the debt relief company will attempt to make payment arrangements with his creditors. Applicant made his first payment on September 7, 2018, which is the only one before the record closed. One payment is insufficient to show that Applicant has made a good-faith effort to resolve this debt. This debt is not resolved. (Tr. 39-41, 81-83; Applicant Exhibit BB.)

1.g. Applicant admitted in part and denied in part that he owed \$695 for a past-due credit card bill. He admitted to this allegation on the record. Pursuant to a motion from the Government, and in accordance with the evidence, the SOR was amended to show the true amount owed as \$6,214 in accordance with Directive, Additional Procedural Guidance ¶ E3.1.17. Applicant entered into an agreement with a debt relief company on August 16, 2018, to attempt to resolve this and other past-due indebtedness. The agreement posits that Applicant will make monthly payments of \$290, out of which the debt relief company will attempt to make payment arrangements with his creditors. Applicant made his first payment on September 7, 2018, which is the only one before the record closed. One payment is insufficient to show that Applicant has made a good-faith effort to resolve this debt. This debt is not resolved. (Tr. 39-42, 81-87; Applicant Exhibit BB.)

1.h. Applicant admitted in part and denied in part that he owed a utility company \$241 for a past-due debt. Based on the available evidence I find that Applicant owed this debt. Applicant had not paid this debt as of the date of the hearing and had no current plans to resolve this debt. This debt is not resolved. (Tr. 42-44; Government Exhibit 6.)

1.i. Applicant admitted in part and denied in part that he owed a utility company \$125 for a past-due debt. Based on the available evidence I find that Applicant owed this debt. Applicant had not paid this debt as of the date of the hearing and had no current plans to resolve this debt. This debt is not resolved. (Tr. 44; Government Exhibit 6.)

1.j. Applicant admitted that he owed several unpaid student loans, as set forth in this allegation and SOR allegation 1.a. Applicant entered into a rehabilitation agreement concerning all of his student loans, totaling approximately \$61,646. Beginning in March 2018, Applicant began making monthly payments of \$240 a month. Applicant had made seven payments as of the date the record closed. Once he has made nine payments in ten months, his loans will be taken out of default status and then regular payments can

begin. His actions are sufficient to show a good faith effort to resolve this debt. This debt is being resolved through agreed payments. (Applicant Exhibits V and L; Tr. 28-34, 79-80, 88-89.)

1.k. Applicant admitted in part and denied in part that he owed \$2,451 for a past-due debt. He admitted to this allegation on the record. Applicant entered into an agreement with a debt relief company on August 16, 2018, to attempt to resolve this and other past-due indebtedness. The agreement posits that Applicant will make monthly payments of \$290, out of which the debt relief company will attempt to make payment arrangements with his creditors. Applicant made his first payment on September 7, 2018, which is the only one before the record closed. One payment is insufficient to show that Applicant has made a good-faith effort to resolve this debt. This debt is not resolved. (Tr. 39-41, 44-45, 81-83; Applicant Exhibit BB.)

1.l. Applicant admitted in part and denied in part that he owed a cable company \$284 for a past-due debt. Applicant retained a credit repair company, which successfully disputed this debt and had it removed from his credit reports. The debt is not on the most recent credit reports in the record provided by the Government and Applicant. It has been resolved. (Government Exhibit 6; Applicant Exhibits O, W and AA; Tr. 45-46.)

1.m. Applicant denied that he owed a creditor \$279 for a past-due debt. Applicant retained a credit repair company, which successfully disputed this debt and had it removed from his credit reports. The debt is not on the most recent credit reports in the record provided by the Government and Applicant. It has been resolved. (Government Exhibit 6; Applicant Exhibits O, W and AA; Tr. 46-47.)

1.n. Applicant denied that he owed a medical creditor \$115 for a past-due debt. Applicant retained a credit repair company, which disputed this debt. The debt was verified by the creditor as a valid debt. Applicant had not paid this debt or made arrangements to resolve it. It is not resolved. (Applicant Exhibits O, W and AA; Tr. 47-48.)

1.o. Applicant admitted in part and denied in part that he owed a medical creditor \$44 for a past-due debt. Applicant retained a credit repair company, which disputed this debt. The debt was verified by the creditor as a valid debt. Applicant had not paid this debt or made arrangements to resolve it. It is not resolved. (Applicant Exhibits O, W and AA; Tr. 48.)

1.p. Applicant admitted that he did not file his Federal tax returns in a timely fashion for the 2013, 2015, and 2016 tax years. Applicant stated that he could not file his tax returns because he lacked essential information concerning child and spousal support during his divorce, as well as other essential financial information. Applicant further stated that he had filed all of his Federal tax returns. Evidence was submitted showing the successful filing of his 2013 and 2015 tax returns in March 2018, and that Applicant had attempted to file his 2016 tax return at the same time. Applicant does not owe any back taxes. (Tr. 48-52, 63-72; Applicant Exhibits I, J, Y, Z, and EE.)

1.q. Applicant admitted that he did not file his state tax returns in a timely fashion for the 2013, 2015, and 2016 tax years. Applicant stated that he could not file his tax returns because he lacked essential information concerning child and spousal support during his divorce. Applicant further stated that he had filed all of his state tax returns in approximately March 2018. Evidence was submitted showing that all of the tax returns in issue had been filed with his state taxing authority. Applicant does not owe any back taxes. (Tr. 48-52, 72; Applicant Exhibits I and DD.)

Mitigation

Applicant has had a successful career. Several co-workers, including supervisors, recommend him for a position of trust. He is described as a person who is “ethical,” “reliable,” and “dependable.” The most recent performance appraisal in the record shows that he “Meets Job Requirements.” (Applicant Exhibits A and F.)

Policies

When evaluating an applicant’s 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

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 several 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;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay Federal, state, or local income tax as required.

Applicant failed to timely file Federal and state tax returns, as required, for at least three years. In addition, there are substantial past-due debts, including student loans. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes several conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's substantial financial issues, including failure to timely file tax returns and unpaid bills:

(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;

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

(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; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Turning first to Applicant's past-due indebtedness. Two of the debts were successfully disputed by Applicant (1.l and 1.m). Those allegations are found for him. In addition, he has shown a good-faith effort to resolve his past-due student loans (1.a and 1.j.) Those allegations are found for him.

Applicant's past-due debts are long-standing, and he continues to be heavily indebted. He still owes approximately \$36,000. Mitigating condition ¶ 20(a) does not apply to his remaining unresolved delinquencies.

Applicant's long divorce undoubtedly had a serious impact on his ability to resolve his debts. However, entering into a debt relief program literally at the 11th hour, with only one payment made after the date of the hearing, does not show he has acted responsibly under the circumstances. Mitigating condition ¶ 20(b) does not apply.

Applicant has not paid any of the debts that he owed, and his debt relief program had barely started as of the date the record closed. Accordingly, while Applicant may have initiated a good-faith effort to resolve his debts, it cannot be said that he is adhering to it, or that there are clear indications that the problem is being resolved or is under control. Mitigating conditions ¶ 20(c) and (d) do not apply, except to his student loan debt.

Applicant successfully disputed two of the debts. Mitigating condition ¶20(e) applies to those two debts only.

Finally, with regard to his taxes, Applicant submitted evidence that he has filed, albeit late, all of his past-due tax returns. It is obvious that his divorce impacted his ability to properly file his taxes. Under the unique circumstances of this case, particularly since Applicant does not owe back taxes, SOR allegations 1.p and 1.q are found for Applicant.

As stated, SOR allegations 1.a, j, l, and m are also found for Applicant. With those exceptions, Applicant did not mitigate his financial issues. Guideline F 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable 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 did not provide

sufficient evidence to show that the majority of his unpaid debts had been responsibly addressed, or were being resolved. The potential for pressure, exploitation, or duress remains undiminished. Overall, the evidence creates substantial doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. He failed to meet his burden to mitigate the security concerns arising under the guideline for financial considerations.

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
Subparagraphs 1.b through 1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	Against Applicant
Subparagraphs 1.l through 1.m:	For Applicant
Subparagraphs 1.n through 1.o:	Against Applicant
Subparagraphs 1.p through 1.q:	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 national security eligibility and a security clearance. Eligibility for access to classified information is denied.

Wilford H. Ross
Administrative Judge