



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



In the matter of:)	
)	
-----)	ISCR Case No. 18-00919
)	
Applicant for Security Clearance)	

Appearances

For Government: Tara Karoian, Esquire, Department Counsel

For Applicant: *Pro se*

July 22, 2019

Decision

ROSS, Wilford H., Administrative Judge:

Applicant has over \$73,000 in past-due debts. He presented insufficient evidence showing that he can, or has, resolved these 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 January 5, 2017. (Government Exhibit 1.) On April 12, 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 in writing (Answer) on May 9, 2018, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on June 29, 2018. The case was assigned to another administrative judge on July 5, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on July 5, 2018. The case was assigned to me on July 10, 2018. I convened the hearing as scheduled on August 20, 2018. 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 H, which were also admitted without objection. DOHA received the transcript of the hearing (Tr.) on August 31, 2018. The record was left open at the request of Applicant until September 17, 2018, for the receipt of additional documentation. No further documentation was submitted by Applicant and the record closed as scheduled.

Findings of Fact

Applicant is a 31-year-old test engineer. He is married with two stepchildren, and has a Bachelor of Science degree. He is seeking to retain a security clearance in connection with his work with the defense industry.

Applicant served on active duty with the Air Force from December 2004 through December 2008. He then served in the Air Force Reserve until April 2015, when he received an Honorable Discharge. He did a period of active duty with the Air Force from April to October 2014. Applicant stated that this period on active duty had an adverse effect on his ability to pay his debts due to his drop in pay. (Government Exhibit 1 at Sections 13A and 15; Applicant Exhibit D; Tr. 38-39.)

Applicant stated that his finances were also adversely affected by his being on disability from September 8, 2017, through February 28, 2018. This status was confirmed by medical records contained in his exhibits. This affected his ability to pay the mortgages set forth in subparagraphs 1.a and 1.b. (Applicant Exhibit A at 4-11; Tr. 29.)

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 the debts set forth in SOR subparagraphs 1.a through 1.e, with qualifications and explanations. He denied subparagraph 1.f. The total amount

of indebtedness Applicant is alleged to be past due and owing is approximately \$73,000. The existence and amount of the debts are documented by credit reports dated October 10, 2017; March 12, 2018; and June 28, 2018. (Government Exhibits 4, 5, and 6.) (See Government Exhibit 3.)

The current status of the debts is as follows:

1.a. Applicant admitted owing \$21,422 for a past-due mortgage on a rental property. As stated, Applicant maintained that his period on disability severely impacted his ability to maintain his mortgage payments. Applicant submitted documentation to the mortgage company to have this mortgage modified. Applicant stated, in Applicant Exhibit A, that the proposed modification had been accepted and this debt was in a trial payment period, which was to end in July 2018. At the hearing he testified that due to an error by the mortgage company the trial payments had not started. Applicant was given an opportunity to provide documentation clarifying the current situation concerning this debt. Such documentation was not provided. Based on all the available evidence I find that this debt is not resolved. (Applicant Exhibits A, G, and H; Tr. 32-35, 37, 40-46.)

1.b. Applicant admitted owing \$15,145 for a past-due mortgage on his primary residence. As stated, Applicant maintained that his period on disability severely impacted his ability to maintain his mortgage payments. Applicant submitted documentation to a second mortgage company to have this mortgage modified. The mortgage company agreed, and Applicant stated that he had made two of the required three trial mortgage payments that would make the mortgage current. Applicant was given an opportunity to provide documentation verifying his statements as to the payments. Such documentation was not provided. Based on all the available evidence I find that this debt is not resolved. (Government Exhibit 3 at 10-11; Applicant Exhibit B; Tr. 30-31, 33, 35-36, 44-45.)

1.c. Applicant admitted owing a past-due debt to a credit union for a repossessed automobile in the amount of \$29,442. This vehicle was repossessed in December 2015. According to Applicant two events made it impossible to continue payments on this car. First, in March 2015 Applicant's wife was terminated from her employment after a two-year medical leave of absence. Second, the credit union added additional fees to the payment amount in order to purchase unnecessary insurance on the vehicle. Applicant submitted evidence showing that there was valid insurance on the vehicle. He also submitted evidence showing that he had been in contact with the creditor and its lawyers with his complaints. Applicant testified that the credit union had written off the past-due amount and provided him with a Form 1099-C. Applicant was requested to provide a copy of the Form 1099-C or the applicable year's tax return. No additional information was provided. Based on the available information, Applicant did not demonstrate this debt has been resolved, or is legitimately in dispute. This debt is not resolved. (Applicant Exhibit C; Tr. 47-56.)

1.d. Applicant admitted owing \$6,278 for a past-due timeshare debt. He stated that his mobilization to active duty in 2014 affected his ability to pay this debt. However,

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. (Applicant Exhibit D; Tr. 57-61.)

1.e. Applicant admitted owing \$647 for a past-due credit card debt. This debt became delinquent in 2014. Applicant stated that the failure to pay the debt was due to his military service. Documentation was supplied by Applicant showing that the creditor acknowledged his active duty and asked for additional information. He stated that the account was wrongfully closed by the creditor. However, there was no evidence of that fact other than Applicant's testimony. No additional information was provided. 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. (Applicant Exhibit E; Tr. 62-65.)

1.f. Applicant denied owing the United States Treasury \$168. He stated that this debt was due to medical care he received while on active duty that should have been handled by TRICARE. It appears that the debt was incurred during his time on active duty. Applicant has made several phone calls attempting to resolve this debt, all to no avail. This debt does not appear on the Government's most recent credit report. Based on all of the available information I find that Applicant has a legitimate dispute concerning this debt. This allegation is found for Applicant. (Government Exhibit 6; Tr. 52, 55.)

Applicant provided proof of current income. Applicant stated that his income is stable and that he and his wife can "rectify all of these debts in due time." (Applicant Exhibit F; Tr. 69-74.)

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 five 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 five 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;
- (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.

The evidence does not establish that any of the above mitigating conditions apply to Applicant, except in regard to allegation 1.f, which is found for him due to a legitimate dispute under AG ¶ 20(e). AG ¶ 20(a) does not apply because the debts continue to be due and owing. AG ¶ 20(b) does not apply in full force. Applicant did have financial issues due to his being off work, and his Air Force service. However, Applicant did not supply sufficient information for me to make a conclusion that he had "acted responsibly under

the circumstances.” AG ¶¶ 20(c) and (d) also do not apply. Applicant did not provide proof of payments to any of his creditors, despite statements that he would do so. Applicant has not mitigated the security concerns created by his financial situation. Paragraph 1 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. He remains susceptible to pressure, coercion, and exploitation. Continuation of serious financial duress is likely. 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

Subparagraphs 1.a through 1.e:
Subparagraph 1.f:

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

WILFORD H. ROSS
Administrative Judge