



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

)
)
)
)
)
)

ISCR Case No. 19-02445

Appearances

For Government:

Tara Karoian, Esquire, Department Counsel

For Applicant:

Pro se

November 13, 2020

Decision

ROSS, Wilford H., Administrative Judge:

Statement of the Case

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on March 22, 2019. (Government Exhibit 1.) On December 12, 2019, 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 1) on January 28, 2020, and requested a hearing before an administrative judge. He submitted an Additional Answer (Answer 2) dated September 30, 2020. Department Counsel was prepared to proceed on March 17, 2020. The case was assigned to me on April 28, 2020. The Defense Office of Hearings and Appeals (DOHA) issued a final Notice of Hearing on September 28, 2020. I convened the hearing as scheduled on October 20, 2020.

The Government offered Government Exhibits 1 through 6, which were admitted without objection. Applicant offered Applicant Exhibits A through Y at the hearing, which were admitted without objection, and testified on his own behalf. He asked that the record remain open for submission of additional documentation. On October 28, 2020, Applicant submitted Applicant Exhibits Z through DD, which were admitted without objection. DOHA received the transcript of this hearing on October 30, 2020. The record then closed.

Findings of Fact

Applicant is 34 years old and has been employed by a defense contractor as a jet engine mechanic since March 2019. He is engaged to the mother of two of his three children. He has two former wives. Applicant is attending school to obtain a Bachelor of Arts degree. Applicant is seeking to obtain national security eligibility and a security clearance in connection with his employment. (Government Exhibit 1 at Section 13A, 17; Tr. 7-9.)

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 \$44,633 in past-due indebtedness to various creditors. Applicant admitted allegations 1.a, 1.b, 1.c, 1.d, 1.l, and 1.q. He denied the remaining allegations, stating those accounts were no longer delinquent. The existence and amount of the debts is supported by admissions of Applicant, and credit reports submitted by the Government dated April 6, 2019; August 19, 2019; and March 17, 2020. (Government Exhibits 2, 4, 5, and 6.)

Applicant has a five-year-old daughter who has severe medical issues. She was born in April 2015 at 25-and-a-half-weeks gestation and weighing 2.5 pounds. Children that are born before 28 weeks and under 3.5 pounds are known as a “micro-premie.” The child spent seven months in the neo-natal intensive care center at a nationally-known children’s hospital. Applicant and his now-fiancée spent almost every waking hour with their daughter. The medical bills for her care amounted to \$3.7 million. Fortunately, most of that was covered by insurance and grants. However, Applicant had to pay

approximately \$17,000 of the medical debts, and has been successfully doing so. His daughter still requires constant medical supervision, as well as speech therapy and physical therapy. Many of Applicant's financial issues arose because of his daughter's medical condition and the resulting financial decisions he had to make. (Applicant Exhibits M and DD; Tr. 36-43.)

Applicant began his current employment in March 2019 and his income dramatically increased. Since that time he has been able to begin making payments on his formerly past-due indebtedness while maintaining his current payments. Applicant's current financial condition is stable. (Government Exhibit 3 at 16; Applicant Exhibit A; Tr. 63-64, 66.)

The current status of the debts is as follows:

1.a. Applicant admitted that he owed approximately \$17,624 for a charged-off automobile loan. He was unable to come to an arrangement with the creditor to pay the debt. The holder of the debt obtained a judgment and has been collecting \$376 from each of Applicant's paychecks since approximately April 2020. Applicant had paid \$8,126 of this debt as of September 20, 2020. This debt is being resolved. (Applicant Exhibit A; Tr. 27-32.)

1.b. Applicant admitted that he owed \$13,030 for a second charged-off vehicle loan. He made payments for several years but fell behind because of issues with his daughter in 2015. He has not been able to reach a payment agreement with this creditor. Applicant intends to pay this debt after he pays off his smaller debts, using a technique called a "debt snowball." This debt is not resolved. (Tr. 33-35.)

1.c. Applicant admitted that he owed \$4,475 for a charged-off loan. This was in relation to his second marriage in 2012. He made payments for several years but fell behind because of the issues with his daughter in 2015. Applicant intends to pay this debt after he pays off his smaller debts, using a technique called a "debt snowball." This debt is not resolved. (Tr. 35-36.)

1.d. Applicant admitted that he owed \$2,275 to a wireless telephone company for a delinquent debt. Applicant testified that he was going to receive a bonus from work soon after the hearing and would use it to pay off this debt. He made a payment arrangement with the creditor and paid this debt on October 22, 2020, as shown by documentation from the creditor. This debt is resolved. (Applicant Exhibit AA; Tr. 43-45, 58-59.)

1.e. Applicant denied that he owed \$1,136 for a charged-off debt, stating he had been making agreed payments. He submitted documentary evidence showing that he paid this debt in full in April 2020. It has been resolved. (Government Exhibit 4; Applicant Exhibit B; Tr. 46-50.)

1.f. Applicant denied that he owed \$635 for a delinquent debt to a bank. He submitted documentary evidence showing that he paid this debt in full in 2019. It has been resolved. (Applicant Exhibit C; Tr. 51.)

1.g. Applicant denied that he owed \$572 for a charged-off debt owed to a university. He submitted documentary evidence showing that he paid this debt in full in 2018. It has been resolved. (Applicant Exhibit D; Tr. 51.)

1.h. Applicant denied that he owed \$542 for a charged-off debt he owed to a bank. He submitted documentary evidence showing that he paid this debt in full in March 2020. It has been resolved. (Government Exhibit 4; Applicant Exhibit E; Tr. 46-50.)

1.i. Applicant denied that he owed a credit union \$452 for a charged-off debt. He submitted documentary evidence showing that he paid this debt in full. It has been resolved. (Government Exhibit 5 at 10; Applicant Exhibits Z and BB; Tr. 52-55.)

1.j. Applicant denied that he owed \$443 for a delinquent debt. He submitted documentary evidence showing that he paid this debt in full in June 2019. It has been resolved. (Applicant Exhibit F; Tr. 50.)

1.k. Applicant denied that he owed a bank \$293 for a delinquent debt. He submitted documentary evidence showing that he paid this debt in full in March 2019. It has been resolved. (Applicant Exhibit G; Tr. 57.)

1.l. Applicant admitted owing a delinquent mobile telephone bill in the amount of \$2,293. Applicant has not paid this debt, but stated it is next in line for payment now that the debt set forth in 1.d has been resolved. This is part of his "debt snowball" plan. (Tr. 57-58.)

1.m. Applicant denied that he owed \$315 for a delinquent insurance debt. He submitted documentary evidence showing that he paid this debt in full. It has been resolved. (Applicant Exhibit H; Tr. 59.)

1.n. Applicant denied that he owed \$283 for a charged-off debt. He submitted documentary evidence showing that he paid this debt in full in June 2019. It has been resolved. (Applicant Exhibit I; Tr. 59.)

1.o. Applicant denied that he owed \$163 for a delinquent cable television debt. He submitted documentary evidence showing that he paid this debt in full in May 2019. It has been resolved. (Applicant Exhibit J; Tr. 59-60.)

1.p. Applicant denied that he owed \$102 for a delinquent insurance debt. He submitted documentary evidence showing that he paid this debt in full in April 2019. It has been resolved. (Applicant Exhibit K; Tr. 60.)

1.q. Applicant admitted that he had not filed his 2016 Federal income tax return in a timely fashion. He testified that he and his now-fiancée had broken up after the birth of their daughter in 2016. In 2017 he moved and had emotional difficulties because of his daughter's fragile health, which impacted his ability to file. Applicant has since filed this tax return, which indicated he was to receive a refund. He has filed all of his other tax returns on a timely basis, which is confirmed by IRS documentation. (Government Exhibit 3; Applicant Exhibit L; Tr. 60-63.)

In addition to the debts discussed above, Applicant submitted evidence showing that he had paid off other delinquent debts before issuance of the SOR. (Government Exhibit 5 at 8; Applicant Exhibit CC; Tr. 52-55.)

Mitigation

Applicant provided five letters of recommendation from people who know him in the defense industry, including supervisors. He is described as a man of character, a person who is trustworthy, and a respected and valued contributor. They all recommend him for a position of trust. (Applicant Exhibits N through R.)

Applicant served in the Marine Corps from 2006 to 2011. He had an excellent career, as shown in various letters of commendation that he received. He received an Honorable Discharge at the end of his military service. (Government Exhibit 1 at Section 15; Applicant Exhibits S through Y; Tr. 64-66.)

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

- (a) inability to satisfy debts;
- (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 annual Federal, state, or local income tax as required.

Applicant had approximately \$44,633 in past-due debts that he had not paid or resolved as of the time the SOR was issued. He also had not filed his 2016 Federal income tax return. 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
- (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.

Applicant has paid or otherwise resolved the majority of the debts in the SOR. As of the date of the hearing he had reduced his indebtedness to approximately \$29,000. His financial difficulties were almost entirely due to his daughter's health condition, which had and continues to have a major impact on his life. Applicant's current employment has increased his income, allowing him to pay his old debts in accordance with a carefully-thought-out plan of paying smaller debts first. His current financial status is stable, and he evinces a credible intent and ability to maintain that stability into the future.

Applicant has filed his 2016 Federal income tax return. He submitted evidence showing that he had timely filed returns both before and after that tax year, showing it to be an aberration in connection with his daughter's medical issues, and not part of a pattern of malfeasance. This situation has no continuing security significance.

In support of these findings, I cite the Appeal Board's decision in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) for the proposition that the adjudicative guidelines do not require that an applicant be debt-free. The Board's guidance for adjudications in cases such as this is the following:

. . . an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payments of such debts one at a time.

ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted). When considering the entirety of Applicant's financial situation, I view Applicant's corrective action to be responsible and reasonable. Given his resources, he has initiated a pragmatic approach to the repayment of his SOR debts and has taken significant steps to resolve those debts. 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 has 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.q:	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