



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



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| In the matter of: |) | |
| ----- |) | |
| |) | ISCR Case No. 20-00949 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government:
Jeff Nagel, Esquire, Department Counsel

For Applicant:
Pro se

October 1, 2021

Decision

ROSS, Wilford H., Administrative Judge:

Statement of the Case

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on March 6, 2018. (Government Exhibit 1.) On September 10, 2020, 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 October 30, 2020, with attachments, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on February 28, 2021. The case was assigned to me on March 16, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on April 9, 2021. The case was heard by video teleconference on April 28, 2021. DOHA received the transcript (Tr.) of the hearing on May 14, 2021.

The Government offered Government Exhibits 1 through 5, which were admitted without objection. Applicant testified on his own behalf. He asked that the record remain open for the receipt of additional documentation. Applicant submitted Applicant Exhibit A in a timely fashion and it was admitted without objection. The record closed on May 21, 2021.

Findings of Fact

Applicant is 51 years old and divorced, with three children. He currently has a cohabitant. He has a Bachelor of Science degree. Applicant retired from the Marine Corps as a lieutenant colonel (O-5) in 2016. Applicant has been employed by a defense contractor as a senior principal training specialist since 2016. He is seeking to retain national security eligibility and a security clearance in connection with his employment. (Government Exhibit 1 at Sections 12, 13A, and 17; Applicant Exhibit A at 2-3; Tr. 17-21.)

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 had three past-due or charged-off debts, including a past-due mortgage. The total amount of the past-due indebtedness was approximately \$78,118 as of the date of the SOR. Applicant admitted all three allegations in the SOR with explanations. The existence and amount of indebtedness is supported by credit reports in the record dated May 18, 2018; February 19, 2020; and February 28, 2021. (Government Exhibits 4, 3, and 2.)

Applicant's financial issues had their genesis in the year 2016. Applicant and his wife divorced in October of that year. His ex-wife and children live in the United States in the family home. The divorce decree is found at Applicant Exhibit A on pages 6 through 26. The divorce resulted in continuing child support payments that Applicant was obligated to meet. In addition, there were other expenses connected to his children and his ex-wife that he has continued to cover to the present. (Tr. 46, 51, 57-58.)

As stated, Applicant was a lieutenant colonel in the Marine Corps. At the time he retired in June 2016 he was stationed in a foreign country (FC). Applicant elected to stay in FC after he retired because he was in a relationship. He had difficulties finding a job and was unemployed for several months. Applicant began working with his current employer in December 2016. (Tr. 24.)

Applicant has been living with a cohabitant in FC since approximately August 2016. In the beginning she would pay the expenses for their living arrangements because she made more money than Applicant. At some point his partner began making less money than he did and Applicant chose to take over paying the majority of expenses for their living arrangement. (Tr. 29-31, 55-57.)

The current status of the debts alleged in the SOR is as follows:

1.a. Applicant admitted owing a mortgage lender approximately \$51,842 for a past-due mortgage. Applicant purchased this house in 2013 when he was stationed in the United States. As stated, Applicant and his wife divorced in 2016. She and Applicant's three children continue to live in the house, though they hope to move soon. The divorce decree states that Applicant and his wife agreed that he would pay the mortgage on the marital house for three years after the divorce was final in lieu of alimony. Applicant's Answer and testimony are wrong on this point. At that time the property would be listed for sale if both parties agreed. Until such time as the property was sold Applicant was responsible for the mortgage. Applicant was not able to fulfill the terms of this agreement. He stopped paying the mortgage in 2018. As of the date of the most recent credit report in the record, February 28, 2021, the delinquency had risen to \$88,735. The mortgage company had also started foreclosure proceedings. Applicant has not made any recent payments on this debt, and has no plans to make payments on this debt. It is not resolved. (Government Exhibit 2 at 3; Applicant Exhibit A at 12, 18-20; Tr. 25-29, 31-38.)

1.b. Applicant admitted owing approximately \$18,969 for a delinquent credit card. Applicant used this card to pay bills immediately after he left the Marine Corps. Applicant has not made any recent payments on this debt and has no plans to make payments on this debt. It is not resolved. (Government Exhibit 2 at 4; Tr. 40. 44-47.)

1.c. Applicant admitted owing approximately \$7,307 for a separate delinquent credit card. The most recent credit report in the record indicates that Applicant appears to have two accounts with this bank. One, account number 44171219, has a charged-off balance of \$7,307. The second, account number 42668415, is not past due, but is being paid under a partial payment arrangement. (Government Exhibit 2 at 4-5.)

Applicant's evidence was confusing about this particular charged-off debt. He maintained that he had paid this particular debt off and was surprised to find out that he still owed money on it. Applicant further stated that he talked to his spouse about this debt, but she did not "respond definitively" as to whether or not she used the card.

Applicant submitted documentation from his bank showing that he is making payments to credit cards with this bank since October 2020. He has made fifteen payments in amounts ranging from \$94 to \$188. However, the records do not show how the payments are being applied. Based on the state of the record, I cannot find that this debt is being resolved. (Answer; Applicant Exhibit A at 28; Tr. 39-44, 51-54.)

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 was alleged to owe approximately \$78,000 in past-due and charged-off commercial debts, including an unpaid mortgage debt, as of the date 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 three 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; and

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

Applicant is an earnest person, who had a successful military career. However, at the present time he is not eligible for a security clearance. His past-due indebtedness is large, recent, and he has no plans to pay any of it off in the foreseeable future. While Applicant's divorce obviously had an impact on his ability to pay his debts, he did not show that he has acted responsibly to attempt to resolve that situation. The actions, or inactions, of his ex-wife are partially to blame with regard to the mortgage. However, Applicant continues to make payments to his ex-wife that are not his legal responsibility. When and if the house sells Applicant may be able to pay his debts. That would not be a sufficiently good-faith effort to pay his creditors, even if he had initiated such action. None of the stated mitigating conditions have application in this case. This allegation is found against Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for 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 not successfully mitigated the concerns regarding his financial situation. This is particularly true in terms

of his large, past-due mortgage debt. He has not demonstrated rehabilitation and the potential for pressure, coercion, or duress remains undiminished. Overall, the record evidence creates 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:

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| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 1.a through 1.c: | 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