



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



In the matter of: ----- Applicant for Security Clearance)))))))	ISCR Case No. 20-02851
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Appearances

For Government:
Andrew Henderson, Esquire, Department Counsel

For Applicant:
Pro se

January 20, 2022

Decision

ROSS, Wilford H., Administrative Judge:

Statement of the Case

Applicant submitted his most recent Electronic Questionnaire for Investigations Processing (e-QIP) on September 9, 2019. (Government Exhibit 1.) On April 14, 2021, 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 Adjudicative Guidelines effective within the Department of Defense after June 8, 2017.

Applicant answered the SOR in writing with attachments (Answer) on June 2, 2021, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on July 21, 2021. The case was assigned to me on August 2, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on August 24, 2021. The case was heard on September 20, 2021. DOHA received the transcript of the hearing on September 29, 2021.

The Government offered Government Exhibits 1 through 5, which were admitted without objection. Applicant testified on his own behalf and submitted Applicant Exhibits A through E, which were also admitted without objection. He asked that the record remain open for the receipt of additional documentation. Applicant timely submitted Applicant Exhibits 2A through 2F, which were also admitted without objection and the record closed on October 8, 2021.

Findings of Fact

Applicant is 36 years old and married with one child. He is currently separated from his wife pending a divorce. He has a high school education. Applicant is employed by a defense contractor as a Completion Supervisor and is trying to obtain a security clearance in relation to his employment. Applicant served on active duty with the Air Force from 2002 to 2009. He was in the Air Force Reserves on full-time active duty from 2009 to 2013. (Tr. 7, 21-23; Government Exhibit 1 at Sections 12, 13A, 15, and 17.)

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 ten past-due debts, including three automobile repossessions, totaling \$41,900 (SOR 1.a through 1.j). Applicant admitted all the allegations except allegation 1.h, which he denied. The existence and amounts of these debts is supported by credit reports dated October 16, 2019; October 7, 2020; and July 21, 2021. (Government Exhibits 3, 4, and 5.)

Applicant's wife has lived in a different state for six years. Applicant has been paying many of her living expenses during the entire period. Applicant has custody of their child. Applicant alleged that the majority of his financial issues are due to this situation as well as medical issues for Applicant and his wife. (Tr. 37-38, 41, 50, 58-60.)

The current status of the allegations in the SOR is as follows:

1.a. Applicant admitted having an automobile repossessed in approximately 2013. He stated that this vehicle was purchased for his wife at a time when she was his girlfriend because she was pregnant with their child. She had medical issues, and he had to leave the Reserves to take care of her. He was unemployed for much of 2013 and 2014 and therefore unable to pay all of his debts, which contributed to the repossession. Applicant has reached out to the credit holder but has heard nothing further. He had no further information as to the current status of that debt. This debt has not been resolved. (Tr. 36-37, 46; Government Exhibit 1 at Section 13A.)

1.b through 1.g. Applicant admitted owing six medical debts totaling approximately \$2,914. These debts are in relation to a serious medical condition of his wife in 2019. Applicant is working with a collection agency to resolve all of these debts. He has been making timely payments to the agency pursuant to a payment arrangement and has reduced the debts to \$1,290, as shown by documents from the agency. These debts are being resolved. (Tr. 37-42, 53, 55-56; Applicant Exhibits 2D and 2E.)

1.h. Applicant admitted owing a creditor \$334 for an account placed for collection. Applicant made a payment arrangement with a collection agency starting in December 2019. He made consistent monthly payments and repaid the debt in February 2020. This debt has been resolved. (Tr. 42-43; Answer attachment; Applicant Exhibit D.)

1.i. Applicant admitted having a vehicle repossessed in approximately 2015. Once again Applicant had bought this vehicle for the use of his wife, who was living in another state. She refused to make payments, and the vehicle was repossessed. Applicant was uncertain of the status of this debt. He submitted a recent credit report dated September 19, 2021. (Applicant Exhibit 2A.) That credit report indicates this debt is a "Paid charge-off." The report further indicates, "Account paid for less than full balance." (Applicant Exhibit 2A at 4-6.) Given the state of the record, this allegation is found for Applicant due to lack of current evidence that it is still owing. (Tr. 43-45, 52.)

1.j. Applicant admitted having a vehicle repossessed in approximately 2018 or 2019. Applicant testified that he attempted to resolve this repossession before the automobile was sold, but he was unsuccessful. Applicant does not feel that he should be responsible for this account, since he was able and willing to resolve it when the finance company sold the car. This debt is not resolved. (Tr. 34, 44-46.)

Applicant stated that his current financial situation is stable. He is able to pay his debts, support his daughter, and continue to support his wife. He has received financial counseling and created a budget. As stated, he submitted a credit report dated September 19, 2021. It states on page 30 of Applicant Exhibit 2A, "Clean slate! As of Sept. 19, 2021, you have no collection accounts on your credit report." (Tr. 46-51, 60-62; Applicant Exhibit 2F.)

Paragraph 2 (Guideline E, Personal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has falsified material facts during the clearance screening process. Applicant denied the single allegation under this paragraph.

Applicant was interviewed by an authorized investigator for the Department of Defense in April 2019. The investigator prepared a detailed Report of Investigation (ROI). (Government Exhibit 2 at 4-13.) The interview was extensive, and the investigator covered with Applicant all the debts set forth in Paragraph 1, above. The interview also covered debts that had a zero balance. Applicant stated in his Answer, "In my previous investigations I admitted to the debt. My previous investigations accounted for my financial matters."

Applicant filled out an e-QIP on September 9, 2019. (Government Exhibit 1.) Section 26 asked various questions about Applicant's financial status. He admitted the debt set forth in SOR 1.a. He then answered, "No," to having any other delinquencies. This was a false answer to a relevant question about Applicant's financial condition. In his Answer Applicant stated, "All of these discrepancies have been addressed previously in my interview for renewing my secret clearance several years back, as well as my interview for my initial TS in 2017. Reading through my entire SI [Subject Interview], all of these discrepancies are listed, along with the explanations I have provided here." He also stated a concern that the credit report he had at the time of the interview did not show several of the debts referred to by the investigator. (See Tr. 24-27, 29-35.)

Applicant also testified extensively about his thought processes while filling out the e-QIP. He repeatedly stated he was confused about what debts needed to be listed, since he had previously been interviewed. The following testimony is indicative:

"Honestly, I'm still confused by it [the e-QIP]. It's hard - - I get lost in the weeds - - I guess I could say - - filling these out, and I'm still not sure if I covered these in an investigation if they are also outside the seven-year window if I have to go back and read them because they are outside the window as well as already covered in the investigation. I'm still confused on what I'm supposed to put in there. (Tr. 28.)

Mitigation

Applicant is a well-respected employee. Supervisors and coworkers identify Applicant as a successful, respected, and honest employee and person. One coworker, who is also a friend, stated the following, "[Applicant] is a loyal, thoughtful, friend, a good father to his daughter, a proven leader, proficient in his chosen vocation, and I'm proud that he is my close friend." (Applicant Exhibits A through C.)

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 owed approximately \$41,900 for seven past-due debts and three automobile repossessions 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 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;

(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.

Applicant's current financial situation is stable. He is paying everyday debts and making timely payments on his consolidated medical bills in accordance with an agreement with the collection agency. One debt, 1.h, was resolved in full before issuance of the SOR.

All of the financial issues set forth in the SOR are related to Applicant's marriage in one way or another. His wife chose to live in a different state than Applicant, requiring him to support two households. His wife had serious and tragic medical issues in relation to her second pregnancy. This resulted in the medical debts and at least one of the repossessions. Applicant at first indicated a reluctance to resolve the repossessions, if resolution is possible. However, he now evinces a credible intent to attempt to reach an agreement with the creditors. Applicant has behaved responsibly in resolving his debts.

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).

Given his resources, Applicant has initiated a pragmatic approach to the repayment of his past-due SOR debts and has taken significant steps to resolve the debts. Applicant has the knowledge and ability that will allow him to stay on a proper financial footing. He has fully mitigated all the financial concern allegations in the SOR. Paragraph 1 is found for Applicant.

Paragraph 2 (Guideline E, Personal Conduct)

The security concerns relating to the guideline for personal conduct are set out in AG ¶ 15, which states:

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.

AG ¶ 16 describes one condition that could raise security concerns and may be disqualifying 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 had delinquent debts. He did not fully report these facts on his e-QIP. The above disqualifying condition has application to this case.

The guideline includes two conditions in AG ¶ 17 that could mitigate the security concerns arising from Applicant's alleged falsification:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant was interviewed by an investigator from the Defense Department several months before filling out the e-QIP at issue. During that interview all of the debts set forth under Paragraph 1, and referred to in Paragraph 2, were discussed in detail. The testimony elicited from Applicant showed that he was confused by the form and by his responsibility to be forthcoming on the e-QIP, since the government already had knowledge of the debts based on prior interviews with him. Applicant's interpretation of what he was supposed to describe was wrong, but was not a willful falsification. Based on the available evidence, I find that Applicant did not have the requisite intent to deceive when he filled out the e-QIP. Paragraph 2 is found for 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 mitigated the concerns regarding his financial situation and personal conduct. The situation regarding his debts is being resolved in a responsible manner, and does not evince poor judgment or unreliability. Applicant's misstatements on the e-QIP do not arise to willful falsification. 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.j:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	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