



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 20-03560

Appearances

For Government:

Tovah Minster, Esquire, Department Counsel

For Applicant:

Pro se

February 16, 2022

Decision

ROSS, Wilford H., Administrative Judge:

Statement of the Case

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on May 13, 2020. (Item 3.) On March 9, 2021, 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.

The SOR alleged that Applicant was applying for a finding of eligibility to occupy an automated data processing (ADP) position. That was incorrect. In fact, Applicant is

applying for a finding of national security eligibility for access to classified information. This necessitates a change in the case number from “ADP” to “ISCR.” In all other respects there is no substantive change in the processing of this case.

Applicant answered the SOR in writing (Answer) on May 8, 2021, with explanations and allied documents, and requested his case be decided on the written record in lieu of a hearing. (Item 2.) In his Answer he admitted all the allegations in the SOR. On July 14, 2021, Department Counsel submitted the Department’s written case. A complete copy of the file of relevant material (FORM), consisting of Items 1 to 7, was provided to Applicant, who received the file on July 29, 2021.

Applicant was given 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant submitted additional information on August 16, 2021, consisting of a cover letter and allied documents. Department Counsel stated she had no objection and the additional information is marked and admitted into evidence as Applicant Exhibit A. The case was assigned to me on September 30, 2021. Based upon a review of the pleadings and exhibits, national security eligibility for access to classified information is granted.

Findings of Fact

Applicant is 34 years old and unmarried with one child. He currently lives with his girlfriend and her three children. He stated that he is their sole support. Applicant has been employed by a defense contractor since 2020 and seeks to obtain national security eligibility and a security clearance in connection with his employment. (Item 3 at Sections 13A, and 17; Item 2 at 4.)

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 12 past-due debts totaling approximately \$41,000. The existence and amounts of these debts is supported by credit reports dated May 19, 2020; November 24, 2020; and June 1, 2021. (Items 5, 6, and 7.) Applicant stated that most of his financial problems were connected to his immaturity and “not being responsible with his financial situation.” The money he makes in his current job has allowed him to change his financial circumstances for the better and get a handle on his finances. One way he did this was paying off the note on his car, which freed up money for other debts. Applicant also stated his credit score has been improving as he has been paying his debts off. Finally, Applicant is current on his child support obligations. (Item 2 at 4-5, 7-8, 10; Item 4 at 8; Applicant Exhibit A.)

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

1.a, 1.b, 1.c, and 1.d. Applicant admitted that he owed a credit union \$28,048 for four different accounts in collection. The credit union informed Applicant that he only had one charged-off account with them in the amount of \$13,219. Applicant made a payment arrangement with the credit union's 3rd party collection agency to make monthly payments of \$200 to pay off the debt. He submitted documentary evidence from the collection agency that he has been making consistent monthly payments for over a year starting in June 2020, before issuance of the SOR. These debts are being resolved. (Item 2 at 4, 6, 9; Applicant Exhibit A at 1, 3-6.)

1.e. Applicant admitted owing \$9,312 for a charged-off credit card account. Applicant attempted to resolve the debt, but has been unable to do so. He intends to pay this debt as he has the funds available. This debt is not resolved. (Applicant Exhibit A at 1.)

1.f. Applicant admitted owing \$1,724 for an account placed in collection by a telephone company. Applicant reached an agreement with the 3rd party collection agency for a reduced amount of \$1,044. He paid this amount in full on July 8, 2021, as shown by documents from the collection agency. This debt is resolved. (Applicant Exhibit A at 1, 7-8.)

1.g and 1.h. Applicant admitted that he owed two debts to this 3rd party collection agency in the amount of \$1,396. Applicant paid both of these debts in full, along with an additional debt not alleged in the SOR, in the total amount of \$1,851 on July 9, 2021. These debts have been resolved. (Applicant Exhibit A at 1, 9-10.)

1.i. Applicant admitted owing \$949 for a past-due telephone bill. Applicant reached an agreement with the 3rd party collection agency for a reduced amount of \$574. He paid this amount in full on July 14, 2021, as shown by documents from the collection agency. This debt is resolved. (Applicant Exhibit A at 1, 11-12.)

1.j. Applicant admitted owing \$530 for an account placed in collection by an apartment complex. Applicant paid the full balance plus fees and interest in the amount of \$574 on July 11, 2021, as shown by documents from the 3rd party collection agency. This debt is resolved. (Applicant Exhibit A at 1, 13-14.)

1.k. Applicant admitted owing \$400 for an account placed in collection by an apartment complex. Applicant paid the full balance on July 9, 2021, as shown by documents from the 3rd party collection agency. This debt is resolved. (Applicant Exhibit A at 1, 15-16.)

1.l. Applicant admitted owing \$254 for a past-due cable bill. He paid the full balance on July 9, 2021, as shown by documents from the collection agency. This debt is resolved. (Applicant Exhibit A at 1, 17-18.)

Regarding his debts Applicant stated, "I have lowered the amount owed from \$41,000.00 to \$22,531.00. I will continue to pay on my accounts until they have been paid in full." (Applicant Exhibit A at 1-2.)

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 12 past-due debts in the amount of approximately \$41,000 as of the date of the SOR. These facts establish *prima facie* support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes two 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; and

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

In the summer of 2020 Applicant began his new job. The record shows that he reached out to his largest creditor (SOR 1.a through 1.d) and began making consistent monthly payments of \$200 starting in June 2020, soon after starting his current employment. As of July 2022 he had paid over \$4,000 on that debt. With the exception of the debt set forth in 1.e, Applicant has resolved all the other debts alleged in the SOR. Applicant stated, he has resolved approximately half of his past-due indebtedness and evinces a credible intent to resolve the remaining half. I find that his conduct amounts to a good-faith effort to resolve these debts in a responsible manner consistent with someone who wants to receive and deserves national security eligibility.

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. (Internal citations and quotation marks omitted.)

Given his resources, Applicant has initiated a pragmatic approach to the repayment of his debts and has taken significant steps to resolve all of his indebtedness. Applicant has the knowledge and ability that will allow him to resolve his other debts and 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 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 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.l:

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