



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



In the matter of:)	
)	
)	ISCR Case No. 21-01209
)	
)	
Applicant for Security Clearance)	

Appearances

For Government:
Andrew Henderson, Esquire, Department Counsel

For Applicant:
Pro se

March 31, 2022

Decision

ROSS, Wilford H., Administrative Judge:

Statement of the Case

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on January 12, 2021. (Government Exhibit 1.) On May 28, 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.

Applicant answered the SOR in writing (Answer) with an attachment (Attachment) on June 22, 2021, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on September 7, 2021. The case was assigned to me on September 16, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on September 23, 2021. The case was heard on October 28, 2021. DOHA received the transcript of the hearing on November 5, 2021.

The Government offered Government Exhibits 1 through 4, which were admitted without objection. Applicant testified on his own behalf. He asked that the record remain open for the receipt of additional documentation. No further information was provided, and the record closed on November 12, 2021.

Findings of Fact

Applicant is 39 years old and single. He has a fiancée; with whom he has two children. She has two children from a prior relationship and he has two children from a prior marriage. Five of the children, ages 4 to 16, live with Applicant and his fiancée. He has an associate's degree. Applicant served in the Navy and received an Honorable Discharge in 2006. Applicant has been offered employment by a defense contractor and seeks to obtain national security eligibility and a security clearance in connection with this prospective employment. (Government Exhibit 2 at Sections 12, 13A, and 17; Tr. 22-23, 35-37.)

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. Applicant admitted all the allegations under this guideline.

The SOR alleged that Applicant has 29 debts that are charged-off, or in collection, in the total amount of approximately \$44,588. The existence and amount of these debts is supported by his admissions to all SOR allegations in his Answer and credit reports dated February 4, 2021; and October 27, 2021, They are also confirmed by Applicant's answers on Section 26 of his e-QIP and during an interview with an investigator from the Office of Personnel Management. (Government Exhibits 1, 2, 3, and 4.)

Applicant testified that all of these debts were related to consumer spending over the past several years. The records show that many of these delinquent debts have been due and owing for at least three or four years, if not longer. Applicant testified that he is able to maintain his payments on his current indebtedness, albeit occasionally late. However, Applicant has been unable to pay or otherwise resolve any of the debts alleged in the SOR due to other commitments on his funds, primarily student loans and other

commercial accounts. Government Exhibit 3 shows that Applicant has over \$100,000 in various kinds of debt. Applicant's ultimate aim is to pay all of his past-due indebtedness. (Government Exhibits 2 and 3; Tr. 23-25, 28-36.)

Applicant testified that he went through a period of under-employment while he was going to school between 2015 and 2019. During that period, he was employed in GI Bill work-study programs that did not pay well. (Government Exhibit 1 at Section 13A; Tr. 29-30.)

Applicant was in communication with a financial advisor connected to a veteran-oriented, non-profit financial institution. The financial advisor set forth a roadmap for Applicant to follow in attempting to resolve some of his debts. Despite his best efforts, Applicant has been unable to take the financial advisor's advice. (Answer; Attachment; Tr. 24-28.)

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 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 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 has incurred over \$44,000 in past-due indebtedness over the past several years. He has not paid any of the debts alleged in the SOR, nor does he have any current plans to do so. 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
- (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.

The evidence does not establish that any of the above mitigating conditions apply to Applicant. He failed to submit any evidence that would tend to support any of them. While there is some evidence that he was underemployed at some point, there is no evidence that the behavior was involuntary, or that he has acted responsibly under the circumstances. He has consulted with a financial advisor, but has been unable to follow that person's advice in relation to paying his past-due indebtedness. There is no basis for me to find that Applicant has mitigated the security concerns arising from 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 potential 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 mitigated the concerns over his considerable past-due indebtedness. 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:

Paragraph 1, Guideline F:

AGAINST APPLICANT

Subparagraphs 1.a through 1.cc:

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