



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 20-03147
)
)
Applicant for Security Clearance)

Appearances

For Government:
Aubrey De Angelis, Esquire, Department Counsel

For Applicant:
Pro se

May 27, 2022

Decision

ROSS, Wilford H., Administrative Judge:

Statement of the Case

Applicant submitted his most recent Electronic Questionnaires for Investigations Processing (e-QIP) on February 10, 2020. (Government Exhibit 1.) On December 18, 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 February 26, 2021, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on May 26, 2021. The case was assigned to me on June 15, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on January 11, 2022. The case was heard on January 24, 2022. DOHA received the transcript (Tr.) of the hearing on January 31, 2022.

The Government offered Government Exhibits 1 through 7, which were admitted without objection. Applicant testified on his own behalf and submitted Applicant Exhibits A through G, which were also admitted without objection. He asked that the record remain open for the receipt of additional documentation. Applicant timely submitted Applicant Exhibit H, which was also admitted without objection, and the record closed on February 25, 2022.

Findings of Fact

Applicant is 29 years old and single. He has bachelor's degree from the United States Merchant Marine Academy. Applicant has been employed by a defense contractor since February 2020 and seeks to retain national security eligibility and a security clearance in connection with his employment. (Government Exhibit 1 at Sections 12, 13A, and 17.)

Applicant was on active duty with the United States Coast Guard from June 2016 to December 2017, when he resigned his commission due to an injury. He was unemployed or underemployed from that time until he began work with his current employer. Applicant stated that his employment situation in 2018 and 2019 is what caused his delinquent debt issues. Since becoming employed Applicant has worked to resolve all of his past-due indebtedness. (Government Exhibit 1 at Section 13A and Exhibit 2; Applicant Exhibit C; Tr. 20-21, 28, 34.)

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 had five charged-off or past-due consumer debts, and one state tax lien, in the total amount of approximately \$40,342. The existence and amount of this debt is supported by credit reports dated March 24, 2020; October 20, 2020; May 18, 2021; and January 23, 2022. They are also supported by Applicant's answers on his e-QIP, and his statement to an investigator from the Office of Personnel Management. (Government Exhibits 1, 2, 4, 5, 6, and 7.)

The current status of the debts is as follows:

1.a. Applicant admitted that he owed his state of residence \$2,616 in back taxes and that a tax lien had been filed against him. He paid this tax debt in full and the state released the lien on February 16, 2021. (Applicant Exhibits C and E; Tr. 21-23.) This debt has been resolved.

1.b. Applicant admitted that he owed a past-due debt to a cable company in the amount of \$153. Documentation provided by the Government showed that this debt was paid on or about June 18, 2021. (Government Exhibit 3 and Exhibit 7 at 3; Tr. 23-25.) This debt is resolved.

1.c. Applicant admitted that he owed a charged-off debt to a bank in the amount of \$16,634. Applicant made a payment arrangement with the collection agency that purchased the debt. He resolved the debt on March 6, 2021, as shown by documentation from the collection agency. The credit reports in the record that appear to show Applicant still owed a debt to the original creditor are incorrect since the debt was transferred or sold to the collection agency. (Government Exhibit 7; Applicant Exhibits A and H; Tr. 25-28, 35.) This debt is resolved.

1.d. Applicant admitted that he owed a charged-off debt to a bank in the amount of \$14,886. Applicant made a payment arrangement with the bank and resolved the debt in February 2021. (Government Exhibit 7; Applicant Exhibit H; Tr. 29-31.) This debt is resolved.

1.e. Applicant admitted that he owed a bank \$1,464 for a charged-off debt. He paid this debt in full on June 21, 2021. (Government Exhibit 7; Applicant Exhibit F; Tr. 31.) This debt is resolved.

1.f. Applicant admitted that he owed a bank \$4,589 for a charged-off debt. He resolved this debt with the bank and paid the agreed amount in March 2021. (Applicant Exhibits C and H; Tr. 31-32.) This debt is resolved.

Applicant submitted documentation that showed he resolved an additional credit card debt that was not alleged in the SOR. (Applicant Exhibit B; Tr. 32-33.)

Applicant's current financial status is stable. Other than the accounts described above he has no other delinquent debt. He is approved for a mortgage and is buying a house. He is able to pay his current debts without difficulty. (Government Exhibit 7; Applicant Exhibits G and H; Tr. 33-34.)

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 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 five past-due or charged-off debts and one tax lien at the time 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;

(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's financial situation occurred because he had difficulties finding a job in his field after leaving the Coast Guard due to an injury. Once he was employed and built up sufficient savings he paid all of his debts, including his tax debt. Some he paid in full, others he paid for a lesser, agreed amount. All of the debts in the SOR were resolved in 2021. All of the mitigating conditions apply. Paragraph 1 is found for 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 mitigated the concerns regarding his past-due indebtedness that he has resolved. 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.f:	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