



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



In the matter of:)	
)	
)	ISCR Case No. 21-00999
)	
)	
Applicant for Security Clearance)	

Appearances

For Government:
Tara Karoian, Esquire, Department Counsel

For Applicant:
Brittany Forrester, Esq.
The Edmunds Law Firm

January 31, 2023

Decision

ROSS, Wilford H., Administrative Judge:

Statement of the Case

Applicant submitted his most recent Electronic Questionnaires for Investigations Processing (e-QIP) on September 23, 2019. (Government Exhibit 1.) On July 26, 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) on September 13, 2021, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on December 30, 2021. The case was assigned to me on May 18, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on May 24, 2022. The case was heard on June 30, 2022. DOHA received the transcript (Tr.) of the hearing on July 11, 2022.

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 O, which were also admitted without objection. He asked that the record remain open for the receipt of additional documentation. Applicant timely submitted Applicant Exhibits P through X, which were also admitted without objection, and the record closed on July 14, 2022.

Findings of Fact

Applicant is 52 years old and married to his third wife. Their marriage occurred in January 2015. She is Korean and Applicant moved with his wife to Korea in early 2015. He has six children, ranging in age from 34 to 6. The two youngest children live with him, along with his wife's two children. He is an honorably retired technical sergeant (E-6) from the United States Air Force (USAF). Applicant has been employed by a defense contractor since September 2019 and seeks to retain national security eligibility and a security clearance in connection with his employment. (Government Exhibit 1 at Sections 13A, 15, and 17; Applicant Exhibit K; Tr. 26-27, 74.)

Applicant was on active duty with the USAF from December 1991 to September 2013, when he retired. After retirement, he worked in the oil industry until March 2015, when he was laid off. He was unemployed from that time until he began work with his current employer. Applicant stated that his employment situation from 2015 to 2019 is what caused his delinquent debt issues. Since becoming employed Applicant has worked to resolve his past-due indebtedness. (Government Exhibit 1 at Sections 13A and 15; Tr. 22-24, 26-27.)

Applicant was divorced from his second wife in November 2014. The requirement to pay child support after his lay off from the oil industry also affected his ability to repay his other debts, as further described under 1.i, below. (Government Exhibit 1 at Section 17; Tr. 24.)

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 allegations 1.c, 1.h, and 1.i, under this guideline with explanations. He denied the remaining allegations.

The SOR alleged that Applicant had seven charged-off or past-due consumer debts in the total amount of approximately \$34,649. The existence and amount of several of the debts is supported by credit reports dated October 9, 2019; and February 19, 2021. They are also supported by Applicant's answers on his e-QIP, and his statements to an investigator from the Office of Personnel Management on July 1, 2020. Applicant is also alleged to have not filed his Federal tax returns for tax years 2015 through 2019, and to owe back child support of approximately \$27,918. (Government Exhibits 1, 2, 3, 4, and 5.)

The current status of the debts is as follows:

1.a. Applicant denied that he owed \$19,477 for an automobile loan that has been charged off. This automobile was repossessed in February 2015 because Applicant lost his job and could no longer afford to make payments. Applicant testified that he spoke with the creditor several times over the telephone in 2020 in an attempt to resolve this debt without success. There were also communication difficulties with the creditor due to the Corona Virus pandemic and the fact that Applicant lives in South Korea. He provided contemporaneous notes reflecting his contacts with the creditor. (Applicant Exhibit T; Tr. 21-23, 27-29, 66-68.) This debt is not resolved, but Applicant has been actively working to resolve it.

1.b. Applicant has consistently denied that he owed a past-due debt to a telephone company in the amount of \$2,062. He stated that he did not know of this debt until recently. Applicant explained that he had a prepaid phone with this company and the amount of \$45 a month was automatically withdrawn from his account. The 2021 credit report submitted by the Government shows this debt. The Government's 2019 credit report, and Applicant's credit report from the same year, do not show any debt to this creditor. Applicant has recently attempted several times to contact this creditor without success. (Government Exhibits 2 and 3; Applicant Exhibit T; Tr. 29-31, 63.) Based on the state of the record I find there is insufficient evidence to support the allegation that Applicant owes this debt.

1.c. Applicant admitted that he owed a collection account to a county government in the amount of \$341. Applicant stated in his Answer, during his July 2020 interview, and in his testimony that he paid \$70 a month on this debt until it was resolved. With regard to this allegation the Government's 2019 credit report stated, "Consumer disputes after resolution." This debt does not appear in the Government's 2021 credit report. It also does not appear in Applicant's 2019 credit report. (Government Exhibits 2, 3, and 4; Applicant Exhibit T; Tr. 31-33.) Based on the state of the record I find there is sufficient evidence to support Applicant's statements that he has resolved this debt.

1.d. Applicant admitted that he owed a charged-off debt to a finance company in the amount of \$1,855. While admitting the existence of the debt he also stated that he did not open it. Rather, Applicant has repeatedly stated his second ex-wife, without his permission, took out this loan. This debt does not appear in the Government's 2021 credit report. Applicant provided documentation supporting his statement that he has attempted to resolve this debt. (Government Exhibits 2, 3, and 4; Applicant Exhibit T; Tr. 33-34, 62.) This debt is not resolved, but Applicant has been actively working to resolve it.

1.e. Applicant has consistently denied that he owed a collection agency for a charged-off debt for a bank credit card in the amount of \$580. He stated that he has never had a credit card with this bank. With regard to this allegation the Government's 2019 credit report stated, "Account information disputed by consumer." The Report of Investigation (ROI) from his interview with a Government investigator contains a read out of telephone calls Applicant made to the alleged originating bank regarding this credit card. The bank's representatives and Applicant were unable to confirm this particular debt. (Government Exhibits 2 and 4; Applicant Exhibit T; Tr. 35-37.) This debt is in dispute.

1.f. Applicant has consistently denied that he owed a finance company for a charged-off debt in the amount of \$9,819. He stated that he has never had an account with this particular creditor. Applicant stated he contacted the creditor but they were unable to find any information on him. This debt is found in the Government's 2019 credit report but is not found in the 2021 credit report. (Government Exhibits 2 and 3; Tr. 37-38, 63.) Based on the state of the record I find there is insufficient evidence to support the allegation that Applicant owes this debt.

1.g. Applicant has consistently denied that he owed a finance company for a charged-off debt in the amount of \$515. He stated that he has never had an account with this particular creditor and believes this account was opened fraudulently by his ex-wife. He reported this to the creditor's fraud department in 2020. The creditor investigated the claim and came to the conclusion, "we were unable to find evidence of unauthorized activity." Applicant stated that he has a second dispute filed with this creditor since he believes they made a mistake with the original one. (Government Exhibit 4; Applicant Exhibit U; Tr. 34-35.) This debt is not resolved, but Applicant has been actively working to resolve it.

1.h. Applicant admitted that he had not filed his tax returns in a timely manner for tax years 2015 through 2019. As stated earlier, Applicant was unemployed the majority of those years, living in Korea, and only receiving his military retirement pay. He has consistently stated that a financial adviser attached to the Air Force told Applicant in 2015 that he did not have to file tax returns if his only income was his retirement pay. After issuance of the SOR Applicant worked with a tax preparer to file all of his past-due returns. The tax preparer confirmed this fact in writing. In addition, it appears that Applicant's income would have fallen under the statutory minimum required for filing a tax return. For example, Applicant provided documentation showing he made approximately \$15,000 in retirement pay in 2015. The statutory minimum for that year, as described by the IRS, for

a married taxpayer filing jointly was \$20,600. (Department of the Treasury, Internal Revenue Service, *Publication 501, Exemptions, Standard Deduction, and Filing Information*, Page 2, Table 1: *2015 Filing Requirements Chart for Most Taxpayers*, <https://www.irs.gov/pub/irs-prior/p501--2015.pdf>.) (Applicant Exhibits E, G, H, I, and P; Tr. 38-45, 56-62.)

1.i. Applicant admitted owing a state child support arrears. The arrearage occurred after Applicant lost his job in 2015. However, he has provided documentation from the state attorney general's office showing that the amount has been reduced from \$27,918 when the SOR was issued to \$17,208 at the time of the hearing. The documentation further shows that Applicant has been making consistent payments of \$1,700 monthly to cover current child support and reduce his arrears. (Government Exhibits 4 and 5; Applicant Exhibits C, D, E, and Q; Tr. 46, 64-66, 69-70.) This debt is being resolved.

Applicant's current financial status is stable. Other than the accounts described above he has no other delinquent debt. He is able to pay his current debts without difficulty. The primary debt he is resolving is his child support arrearage, which is being paid every month as described above. (Tr. 46, 49-50, 71.)

Applicant submitted evidence that he has been unable to access his credit report online, due to the fact he lives overseas. He stated that this has impacted his ability to resolve the alleged past-due indebtedness. (Applicant Exhibit F; Tr. 71-73.)

Mitigation

Applicant submitted documentation showing that he is knowledgeable about his security responsibilities. (Applicant Exhibits L and M; Tr. 51-54.)

Applicant had a successful military career, as shown in his DD-214. He has also received laudatory reviews in his current job, including a recent pay increase. (Applicant Exhibits K, W, and X; Tr. 54-55.)

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 seven past-due or charged-off debts, past-due child support, and had not filed several years of taxes 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 five 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;
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; 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 several life-changing events in the 2015 time frame that affected his financial well-being. He got divorced, took on child support of the children of that marriage, was laid off from his lucrative position, and moved to Korea with his new wife. His income was substantially reduced almost overnight. Once in Korea it took Applicant several years to find employment that would allow him to begin to resolve his debts. He has been paying his regular child support and arrears at a steady monthly rate of \$1,700 a month for several years. The arrearage has been substantially reduced.

Based on the available record, I found several debts to be unsupported by substantial evidence. Applicant has legitimate, documented, and ongoing disputes with several others. He has attempted to resolve without success the repossessed automobile loan for \$19,477. As set forth in the record Applicant has consistently made good-faith efforts to resolve these debts. His lack of success does not indicate a lack of desire or effort on the part of the Applicant to resolve them.

Turning to the tax returns. All of the subject returns have been filed, according to Applicant's tax preparer. In addition, there is evidence that Applicant was not statutorily required to file tax returns for those years. In either event, he has mitigated that SOR subparagraph as well.

In reviewing the available evidence, I find that all of the mitigating conditions cited here apply. Paragraph 1 is found for Applicant.

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).

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. He has also resolved the concerns over his unfiled tax returns. 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.i:

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