



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 22-01199

Appearances

For Government:

Nicole A. Smith, Esquire, Department Counsel

For Applicant:

Pro se

01/17/2024

Decision

ROSS, Wilford H., Administrative Judge:

Statement of the Case

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on August 25, 2021. (Item 3.) On September 7, 2022, the Defense Counterintelligence and Security Agency Central Adjudication Services, formerly known as Department of Defense Consolidated Adjudications Facility, issued a Statement of Reasons (SOR) to him, detailing security concerns under Guideline F (Financial Considerations). (Item 1.) 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 November 21, 2022. (Item 2.) In his Answer he admitted allegations 1.b, 1.d, and 1.h in the SOR with explanations. He denied the remaining allegations, also with explanations.

On page 2 of his written Answer Applicant stated, "If this matter is not resolved by the additional information in this Response, I respectfully request a hearing before an Administrative Judge." However, attached to his Response is a pre-printed election sheet, also dated November 21, 2022. Applicant signed the sheet and initialed the box that states he is requesting:

A decision based on the administrative (written) record, without a hearing before an Administrative Judge. This will include a memo prepared by DoD Department Counsel. You will have an opportunity to respond to the memo and to provide documents or other evidence before the record is submitted to the Administrative Judge for decision. (Emphasis in original.)

In order to resolve this conflict Department Counsel contacted Applicant on December 6, 2023, asking that he, "Please clarify how you would like your case to be reviewed." Applicant replied to Department Counsel's request on January 2, 2024, stating, "I feel that I have made significant progress and that I do not require a hearing. I elect not to attend a hearing." Accordingly, this case will be decided based on the written record. The email communication between Department Counsel and Applicant is included in the record as Hearing Exhibit I.

Based on Applicant's earlier request, Department Counsel submitted the Department's written case to him on March 7, 2023. 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 March 13, 2023.

Applicant was given 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He did not submit any additional information. The case was assigned to me on July 21, 2023. Based upon a review of the pleadings and exhibits, national security eligibility for access to classified information is granted.

Findings of Fact

Applicant is 57 years old, divorced from his third wife, and has one adult child and one adult stepchild. He served in the United States Navy from 1992 to 2017, retiring as a senior chief petty officer (E-8). He has been employed by a defense contractor since January 2018 and seeks to retain national security eligibility and a security clearance in connection with his employment. (Item 3 at Sections 13A, 15, 17, and 18.)

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleged 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 stated that Applicant had seven debts that were past due, charged-off, or in collection, in the total amount of approximately \$80,323. He also had one foreclosure of a time share. The existence and amount of these debts is supported by his admissions to three SOR allegations in his Answer and by credit reports dated April 14, 2022; August 22, 2022; and March 6, 2023. They are also confirmed by Applicant's answers during an interview with an investigator from the Office of Personnel Management (OPM) that was held on December 6, 2021. (Items 4, 5, 6, and 7.)

Applicant stated in his Answer, "The condition which resulted in my financial hardship as alleged in the Statement of Reasons were [sic] largely beyond my control, as it resulted from my separation and subsequent divorce. I have acted responsibly under the circumstances and worked to ensure all outstanding financial problems are resolved." (Item 2 at 4.)

The current status of the debts is as follows:

1.a. Applicant denied owing \$11,777 for a judgment to a creditor. He stated in his Answer that he had paid the creditor \$12,072 on November 14, 2022. No documentary proof of this payment was provided by him. This debt appears on the April 14, 2022 (Item 5 at 4); and August 22, 2022 (Item 6 at 2-3) credit reports. The debt does not appear on the most recent credit report in the record, dated March 6, 2023 (Item 7). As set forth below, Applicant's statements about payments to other creditors are supported by documentation. That fact provides support for his statement that he paid this debt as well. Based on the state of the record, I find by a preponderance of the evidence Applicant resolved this former debt.

1.b. Applicant admitted owing \$16,566 for a delinquent credit card debt. He further stated that he has been making \$388 monthly payments towards this debt since October 2020. Support for this statement is found in the March 6, 2023 credit report. That report shows a reduced balance for the debt and that the last payment was in March 2023. (Item 7 at 8.) This debt is being resolved by mutually agreed payments.

1.c. Applicant denied owing a charged-off debt to a creditor in the amount of \$9,855. The latest credit report in the record states, "Account paid for less than full balance, paid charge off." (Item 7 at 12.) This debt has been resolved.

1.d. Applicant admitted owing a creditor \$21,068 for a charged-off account. In his Answer he stated that a third party now held the account. He further stated, "At this time

I am in current contact to resolve this debt.” No further information was provided. This debt is not resolved.

1.e. Applicant denied owing \$3,265 for a charged-off debt. He stated in his Answer that he had reached a payment arrangement with this creditor and had paid the debt in November 2022. The latest credit report in the record states, “Account paid for less than full balance, paid charge off.” (Item 7 at 11,) This debt has been resolved.

1.f. Applicant denied owing \$10,103 for a charged-off debt. He stated in his Answer that he had reached a payment arrangement with this creditor and had paid the debt in November 2022. The latest credit report in the record states, “Account paid for less than full balance, paid charge off.” (Item 7 at 11,) This debt has been resolved.

1.g. Applicant denied owing \$7,689 for a charged-off debt. He stated in his Answer that he had reached a payment arrangement with this creditor and had paid the debt in November 2022. The latest credit report in the record states, “Account paid for less than full balance, paid charge off.” (Item 7 at 10,) This debt has been resolved.

1.h. Applicant admitted that he had a timeshare foreclosed on in 2022 for failure to make monthly payments.

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 had incurred approximately \$80,000 in past-due indebtedness over the last several years. The debts were unresolved at the time the SOR was issued. He also recently had a foreclosure of a timeshare. 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
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

The evidence establishes that all the above mitigating conditions apply to Applicant's debt situation. His recent divorce had a deleterious impact on his finances, including the timeshare foreclosure, but he has worked hard to resolve the resulting issues. He has paid or otherwise resolved six of the seven past-due debts that are of concern to the Government. One debt, 1.d, remained unresolved as of the date he answered the SOR. However, Applicant showed a sustained track record of making payments towards his other past-due debts in fulfillment of payment arrangements. Under the circumstances of this case, that evidence supports a finding that Applicant can be relied upon to resolve the remaining debt, if he has not already done so. 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. (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 over his past-due indebtedness. The potential for pressure, exploitation, or duress has been vitiated. Overall, the record evidence does not create substantial doubt as to his 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.h:

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