



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



In the matter of:)	
)	
)	ISCR Case No. 22-01873
)	
)	
Applicant for Security Clearance)	

Appearances

For Government:
Aubrey M. De Angelis, Esquire, Department Counsel

For Applicant:
Pro se

02/08/2024

Decision

ROSS, Wilford H., Administrative Judge:

Statement of the Case

Applicant submitted his most recent Electronic Questionnaires for Investigations Processing (e-QIP) on December 3, 2020. (Government Exhibit 1.) On April 17, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) 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 May 12, 2023, with one attachment. (Credit report dated May 11, 2023. Answer Attachment). He also requested a hearing before an administrative judge. Department Counsel was prepared to proceed on June 26, 2023. The case was assigned to me on June 29, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on July 10, 2023. The case was heard on August 28, 2023. DOHA received the transcript (Tr.) of the hearing on September 8, 2023.

The Government offered Government Exhibits 1 through 7, which were admitted without objection. Applicant testified on his own behalf and submitted Applicant Exhibits A and B, which were also admitted without objection. He asked that the record remain open for the receipt of additional documentation. Applicant submitted three exhibits on September 7, 2023, which identified as Applicant Exhibits A, B, and C. For ease of discussion they are hereby lettered Applicant Exhibits C, D, and E, respectively. Applicant submitted an additional exhibit on September 29, 2023, which he again identified as Applicant Exhibit A. For ease of discussion it is hereby lettered Applicant Exhibit F. All the documents were admitted without objection, and the record closed on September 29, 2023.

Findings of Fact

Applicant is 38 years old, married to his second wife, and has two minor children with his first wife. He served in the United States Army from 2004 to 2010, receiving an honorable discharge. He has a master's degree. He has been employed by a defense contractor since July 2020, and seeks to retain national security eligibility and a security clearance in connection with his employment. (Government Exhibit 1 at Sections 12, 13A, 15, 17, and 18; Applicant Exhibit B.)

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 six debts that were past due, charged off, or in collection, in the total amount of approximately \$56,041. In his Answer he admitted allegations 1.a, 1.b, and 1.c, with explanations. He denied allegations 1.d, 1.e, and 1.f, stating he had resolved those debts. The existence and amount of these debts is supported by his admissions to three SOR allegations in his Answer and by credit reports dated June 25, 2020; January 7, 2021; January 19, 2022; and May 11, 2023. (Government Exhibits 4, 5, and 6; Answer Attachment.) 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 January 21, 2021. (Government Exhibit 3.) In

addition, they were confirmed by Applicant's responses to DCSA CAS interrogatories, dated March 28, 2022. (Government Exhibit 2.)

Applicant testified that most of his financial difficulties resulted from his first marriage and eventual divorce. While they were married, he was able to maintain payments on all their debts. When they were divorced, he assumed all their marital debt and a large child-support payment. The delinquent debt situation came to a head in approximately 2020. (Tr. 21-24.)

Starting in 2020 and continuing to present Applicant has been paying many of his delinquent debts. This is reflected in the most recent of the credit reports in the record. He stated, "I tried to just do one [debt] at a time, just knock them out. . . . So, really just chipping away a little bit at a time, I think that really helped me close out the majority of these debts. (Government Exhibit 6; Answer Attachment; Tr. 27.)

The current status of the debts is as follows:

1.a. Applicant admitted owing \$17,339 for a charged-off debt. He testified that, at the time of the hearing this debt, and the one set out in allegation 1.b, below, were the only delinquent debts he still had outstanding. He further stated that after completing payments on 1.b, which he has now successfully done, he would work diligently to resolve this debt as well. However, as of the time the record closed, this debt had not been resolved. (Tr. 28-29.)

1.b. Applicant admitted owing \$13,523 for a charged-off credit card debt. He testified that he had been working with the creditor to resolve the debt. Subsequent to the hearing he supplied a document from the creditor dated September 29, 2023, stating the debt had been "successfully settled." (Applicant Exhibit F; Tr. 29-30.) This debt has been resolved.

1.c. Applicant admitted owing a charged-off debt to a creditor in the amount of \$10,199. He testified and supplied documentation showing that he had resolved the debt before the hearing. (Applicant Exhibit A; Tr. 31.) This debt has been resolved.

1.d. Applicant denied owing a creditor \$6,483 for a charged-off account. He stated that he had paid this debt and knew of no reason why it still appeared on his 2020 credit report. (Government Exhibit 4; Tr. 32-34.) This debt does not appear on any of the more recent credit reports in the record. (Government Exhibits 5 and 6; Answer Attachment.) As set forth elsewhere in this decision, Applicant's statements about payments to other creditors are supported by documentation. That fact, along with evidence showing he had successfully paid additional past-due debts not alleged in the SOR, provide 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.e. Applicant denied owing \$5,455 for a past-due debt. He stated that he had successfully paid this debt. Subsequent to the hearing he submitted a document from the creditor confirming that he had resolved this debt. (Applicant Exhibit C; Tr. 35.) This debt has been resolved.

1.f. Applicant denied owing \$3,042 for a past-due debt. He stated that he had successfully paid this debt. Subsequent to the hearing he submitted a document from the creditor confirming that he had resolved the debt. (Applicant Exhibit D; Tr. 35.) This debt has been resolved.

Mitigation

Applicant supplied a letter of recommendation from the vice president of operations at his employer. The writer stated that during the time Applicant has worked for him, “[Applicant] has consistently been evaluated above his peers and exceeded expectations.” (Applicant Exhibit E.)

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 \$56,000 in past-due indebtedness over the last several years. The debts were unresolved 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 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 divorce had a deleterious impact on his finances, but he has worked hard to resolve the resulting issues. He has paid five of the six past-due debts that are of concern to the Government. One debt, 1.a, remained unresolved. 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 eliminated. 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.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