



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



In the matter of:)	
)	
-----)	ISCR Case No. 23-00852
)	
Applicant for Security Clearance)	

Appearances

For Government:
Tara Karoian, Esquire, Department Counsel

For Applicant:
Pro se

03/29/2024

Decision

ROSS, Wilford H., Administrative Judge:

Statement of the Case

Applicant submitted his initial Electronic Questionnaires for Investigations Processing (e-QIP) on February 23, 2023. (Government Exhibit 1.) On June 9, 2023, 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 June 13, 2023, and requested a hearing before an administrative judge. He also attached two documents to his Answer, hereafter identified as Applicant Exhibits A through C. Department Counsel was prepared to proceed on July 12, 2023. The case was assigned to me on July 14, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on July 19, 2023. The case was heard on September 12, 2023. DOHA received the transcript (Tr.) of the hearing on September 21, 2023.

The Government offered Government Exhibits 1 through 6, which were admitted without objection. Applicant testified on his own behalf. He asked that the record remain open for the receipt of additional documentation. Applicant timely submitted Applicant Exhibits D through J, which were also admitted without objection, and the record closed on September 25, 2023.

Findings of Fact

Applicant is 32 years old and engaged. He has an ex-wife, with whom he had a minor child. Records show he is current on his child-support obligations. He is a high school graduate and has training as a truck driver. He has been employed by his current defense contractor employer since March 2022 and seeks to obtain national security eligibility and a security clearance in connection with his employment. He had previously been granted an interim security clearance that was revoked because of the pendency of this proceeding. This is his first position with the defense industry. (Government Exhibit 1 at Sections 13A, and 17; Government Exhibit 3 at 4; Applicant Exhibit G; Tr. 7, 17-18.)

Applicant has been working as a truck driver for various companies for about eight years. His salary had been steadily increasing as he took new jobs. He was earning approximately \$72,000 annually at his current employer when he held an interim clearance. His salary has decreased now that he no longer has an interim clearance, though he is still employed. (Government Exhibit 1 at Section 13A; Tr. 17-22.)

Starting in March 2022, when he obtained his current employment and began making more money, he began paying the debts one at a time. This includes at least ten past-due or delinquent debts that were not included in the SOR. (Government Exhibit 2 at 13-15; Government Exhibit 3 at 10, 16; Government Exhibit 4 at 4-5; Tr. 31, 47, 75-76.)

Applicant also retained a credit repair company to assist him with resolving his past-due debts. It appears the company succeeded in having several debts removed from his credit report, but they did not otherwise negotiate with the creditors to resolve his debts. (Applicant Exhibits B and E; Tr. 31-32, 37-41, 56-61.)

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 with explanations.

The SOR alleged that Applicant had eight charged-off or past-due consumer debts in the total amount of approximately \$49,226. The existence and amount of the debts is supported by credit reports dated March 9, 2022; December 8, 2022; and July 12, 2023. They are also supported by Applicant's statements to an investigator from the Office of Personnel Management on March 28, 2022; and his responses to interrogatories issued to him by the DoD CAF on September 27, 2022, which included a credit report also dated September 27, 2022. (Government Exhibits 2, 3, 4, 5; and 6.)

The current status of the debts is as follows:

1.a. Applicant admitted that he owed \$39,111 for a collection account connected to a medical bill. This is Applicant's largest debt. This debt was incurred due to a five-day hospitalization of Applicant in approximately May 2021. (Applicant testified that he believed this hospitalization was in 2020, but documentary evidence in the record shows it to have been in 2021.) He had just started with a new employer and his insurance had not yet begun when he was hospitalized on an emergency basis for COVID. He was in the hospital five days and discharged himself against medical advice once he was told by the hospital that he would have to cover all the cost himself. He was not eligible for Medicaid because he was employed and made too much money. He has tried to find programs that will assist him, but he finds the online forms too confusing for him to fill out on his own. He also contacted a lawyer whose advice was provided through his employment. Finally, in his post-hearing submission he stated that he has reached out to the creditor and is attempting to settle the debt. (Applicant Exhibit D; Tr. 47-69, 77-79.) This debt is not resolved, but I find Applicant is making a good-faith attempt to resolve it.

1.b. Applicant admitted that he owed \$4,373 for a charged-off account with a credit card company. He is unable to resolve this debt due to his loss of income, but he intends to pay it as soon as possible. (Tr. 31, 70-71.) This debt is not resolved, but I find Applicant is making a good-faith attempt to resolve it.

1.c. Applicant admitted that he owed \$2,082 for a charged-off account with a credit card company. He is unable to resolve this debt due to his loss of income, but he intends to pay it as soon as possible. (Tr. 31, 70-71.) This debt is not resolved, but I find Applicant is making a good-faith attempt to resolve it.

1.d. Applicant admitted that he owed a charged-off debt to a bank in the amount of \$1,490. He is unable to resolve this debt due to his loss of income, but he intends to

pay it as soon as possible. (Tr. 36, 70-71.) This debt is not resolved, but I find Applicant is making a good-faith attempt to resolve it.

1.e. Applicant admitted that he owed a past-due debt for a mobile telephone bill in the amount of \$656. He reached a payment arrangement with the creditor and paid the debt off in May 2023, as shown in documentation from the collection agency. (Applicant Exhibit A; Tr. 29-31.) This debt is resolved.

1.f. Applicant admitted that he owed \$655 for a collection account with a credit card company. He testified that he had paid the debt. In his post-hearing submissions he stated that he was incorrect. However, he contacted the creditor and made an arrangement to pay a lesser amount over several months. He also submitted documentation showing that he had made an initial payment in accordance with his agreement. (Applicant Exhibits D and E; Tr. 33.) This debt is being resolved.

1.g. Applicant admitted that he owed \$542 for a charged-off account with a department store. He is unable to resolve this debt due to his loss of income, but he intends to pay it as soon as possible. (Tr. 31, 70-71.) This debt is not resolved, but I find Applicant is making a good-faith attempt to resolve it.

1.h. Applicant admitted that he owed a past-due medical debt in the amount of \$317. Applicant stated in his Answer that this debt was paid. This was not correct. He intends to pay this debt as soon as possible. (Tr. 30-31, 70-71.) This debt is not resolved, but I find that Applicant is making a good faith attempt to resolve it.

Applicant's current financial status is stable. Other than the accounts described above he has no delinquent debt. He is able to pay his current debts without difficulty. (Tr. 69-70.)

Mitigation

Three of Applicant's supervisors provided statements on Applicant's behalf. His manager stated, "[Applicant] has an exceptional performance record and works well with his peers and customers." (Applicant Exhibit G.) His associate manager stated, "In [Applicant's] 1.5 years of service I have never questioned his integrity." (Applicant Exhibit H.) Finally, his planner supervisor stated, "[Applicant] has upheld all his duties in the strongest reliable way possible, he has operated within the confines of the laws of our state & country." (Applicant Exhibit J.)

A friend of Applicant's stated, "From work to his personal life, he [Applicant] is always willing to help whoever is in need. He is honest, trustworthy, and an overall great person." (Applicant Exhibit I.)

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 eight past-due or charged-off debts 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.

Applicant's financial situation deteriorated severely in 2021 when he was hospitalized for COVID. This was during a period when he did not have health insurance because he was a new hire. Unfortunately for him the insurance began two weeks after his discharge. In fact, to reduce the amount of debt he was incurring he left the hospital against medical advice. As set forth at length above he has been attempting to find a way to resolve this debt without success.

However, with regard to other debts, once Applicant reached a point of financial stability with his defense contractor employer, he began to pay his debts. He submitted sufficient documentation to support his written statements and testimony that he had paid at least eleven debts before issuance of the SOR. He has acted responsibly in settling these debts and evinces a credible intent to resolve all of his debts in a reasonable and responsible manner. His current employment provides sufficient means for him to do it.

In reviewing the available evidence, I find that all of the mitigating conditions cited here apply. Paragraph 1 (Financial Considerations) 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 regarding his past-due indebtedness. He has minimized both the potential for pressure or duress, and the likelihood of continuing or recurring financial issues. 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.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