



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



In the matter of:)	
)	
-----)	ISCR Case No. 12-04467
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: *Pro se*

May 7, 2014

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his most recent Electronic Questionnaire for Investigations Processing (e-QIP), on December 22, 2011. (Government Exhibit 4.) On December 18, 2013, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F (Financial Considerations) concerning Applicant. 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 (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on January 13, 2014, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on February 14, 2014. This case was assigned to me on February 25, 2014. DOHA issued a notice of hearing on February 26, 2014. I convened the hearing as scheduled on March 13, 2014. The Government offered Government Exhibits 1 through 9, which were admitted without objection. Applicant submitted Applicant Exhibits A through C, which were admitted without objection, and testified on his own behalf. Applicant asked that the record remain open for the receipt of additional documents. DOHA received the

transcript of the hearing (Tr.) on March 21, 2014. Applicant submitted Applicant Exhibits D through G in a timely fashion, which were all admitted without objection. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant is 51 and a widower. He is employed by a defense contractor and seeks to retain a security clearance in connection with his employment.

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 denied, or his answers were viewed as denials, allegations 1.a, 1.b, 1.d, 1.j, 1k, and 1.o. He admitted the remaining allegations in the SOR under this Paragraph. He also submitted additional information to support his request for a security clearance.

The SOR lists 16 delinquent debts, totaling approximately \$142,303. The existence and amount of these debts is supported by credit reports dated January 10, 2012; August 13, 2013; September 20, 2013; and March 6, 2014. (Government Exhibits 5, 6, 7 at 13-55, and 9.) (See *also* Interrogatories dated October 1, 2013. (Government Exhibit 7 at 1-12.))

Applicant's financial difficulties began on August 26, 2009, when his wife passed away after a lingering illness. (Government Exhibit 4 at Section 17; Tr. 49.)¹ She did not have life insurance, and there were problems with her health insurance, because of her condition, which impacted his ability to pay bills. (Tr. 57- 58.) She also was the person in their marriage who handled the finances. "She was very good managing the money and I had to kind of pick up all the loose ends and make sense of it." (Tr. 50.) It has taken Applicant several years to fully recover from the loss of his wife. He is now attending therapy to help him reach a better emotional state, which will help him in taking control of the financial aspects of his life. He is also obtaining financial counseling through his employer's employee assistance program. (Tr. 65.)

He was just beginning to recover from this event when Applicant suffered a heart attack in December 2009. He had to have open-heart surgery, followed by other medical procedures. (Tr. 40-41.) He was laid off in October 2010, and was unemployed until September 2011. He had difficulty with his medical insurance, which with the drop in income from his unemployment, affected his ability to pay his bills. He used up his savings, as well as a substantial amount of his 401(k) account, to make ends meet

¹A full data credit report dated April 7, 2009, before his wife's death, showed no delinquent debt at that time. (Government Exhibit 3.)

during his time of unemployment. (Government Exhibit 7 at 6; Tr. 41-43.) The use of his 401(k) funds resulted in tax consequences.

Applicant had contemplated filing for bankruptcy relief, but had been led to believe by co-workers that such an action would result in automatic revocation of his security clearance. He further testified that he had been discussing filing for Chapter 7 relief with two bankruptcy attorneys. (Tr. 70-72.) Applicant retained counsel and filed for Chapter 7 relief on April 15, 2014. (Applicant Exhibit F.) Applicant's bankruptcy counsel submitted the schedules for Applicant's bankruptcy. (Applicant Exhibit G.)

The current status of the debts is as follows:

1.a. Applicant admits that he is indebted for past-due student loans in the amount of \$111,483. This is Applicant's largest creditor. Applicant has made a payment arrangement with this creditor and has been paying \$500 a month on this account for approximately six months. (Applicant Exhibit E at 4-5, 9, 16, 22; Tr. 27-33.) This debt is listed as an unsecured priority claim in Applicant's bankruptcy, which he will continue to pay after the bankruptcy is completed. (Applicant Exhibit G at 13.) It is being resolved.

1.b. Applicant denied that he was indebted for a past-due telephone account in the amount of \$228. At the hearing Applicant stated that he had confirmed the account as his debt. (Tr. 33-34.) This debt was not included in the Applicant's schedules. However, an email from Applicant's bankruptcy lawyer states that not all debts were listed because of a lack of information. She indicated that additional creditors would be added to the schedules in a timely fashion. (Applicant's Exhibit G at 2.) This debt will be resolved.

1.c. Applicant admits that he is indebted for a past-due telephone account in the amount of \$286. However, Applicant had issues with the company and filed a dispute with the credit reporting agencies. (Tr. 34-38.) This debt has been included in Applicant's bankruptcy petition. (Applicant Exhibit G at 17.) It is being resolved.

1.d. Applicant denies that he is indebted for a past-due cable television account in the amount of \$205. Applicant filed a dispute with the credit reporting agencies. (Tr. 38-39.) This debt has been included in Applicant's bankruptcy petition. (Applicant Exhibit G at 16.) It is being resolved.

1.e. Applicant admits that he is indebted for a past-due medical bill in the amount of \$349. (Tr. 39-40.) This debt has been included in Applicant's bankruptcy petition. (Applicant Exhibit G at 16.) It is being resolved.

1.f. Applicant admits that he is indebted for a past-due medical bill in the amount of \$54. (Tr. 47-48.) This debt has been included in Applicant's bankruptcy petition. (Applicant Exhibit G at 18.) It is being resolved.

1.g. Applicant admits that he is indebted for a past-due medical bill in the amount of \$1,135. (Tr. 50-51.) This debt has been included in Applicant's bankruptcy petition. (Applicant Exhibit G at 15.) It is being resolved.

1.h. Applicant admits that he is indebted for a past-due medical bill in the amount of \$156. (Tr. 51.) This debt has been included in Applicant's bankruptcy petition. (Applicant Exhibit G at 17.) It is being resolved.

1.i. Applicant admits that he is indebted for a past-due medical bill in the amount of \$2,021. (Tr. 51.) This debt has been included in Applicant's bankruptcy petition. (Applicant Exhibit G at 17.) It is being resolved.

1.j. Applicant could not confirm or deny that he is indebted for a past-due medical bill in the amount of \$255. (Tr. 52-53.) This debt has been included in Applicant's bankruptcy petition. (Applicant Exhibit G at 18.) It is being resolved.

1.k. Applicant denied that he is indebted for a past-due department store bill in the amount of \$532, stating he had made payments on this debt. (Tr. 53-55.) This debt has been included in Applicant's bankruptcy petition. (Applicant Exhibit G at 16.) It is being resolved.

1.l. Applicant admits that he is indebted for a past-due credit card bill of his late wife in the amount of \$10,078.(Tr. 55-57.) This debt has been included in Applicant's bankruptcy petition. (Applicant Exhibit G at 17.) It is being resolved.

1.m. Applicant admits that he is indebted for a past-due revolving line of credit in the amount of \$7,693. (Tr. 59.) This debt has been included in Applicant's bankruptcy petition. (Applicant Exhibit G at 15.) It is being resolved.

1.n. Applicant admits that he is indebted for a past-due telephone bill in the amount of \$391. He further stated that the account is in dispute because of bad service. (Tr. 59-61.) This debt was not included in the Applicant's schedules. However, an email from Applicant's bankruptcy lawyer states that not all debts were listed because of a lack of information. She indicated that additional creditors would be added to the schedules in a timely fashion. (Applicant's Exhibit G at 2.) This debt will be resolved.

1.o. Applicant admits that he is indebted for a past-due medical bill in the amount of \$1,250. He further stated that the account is in dispute because of issues concerning health insurance. (Tr. 61-62.) Many medical debts are included in the bankruptcy, but it is not clear that this debt was included in Applicant's schedules. However, an email from Applicant's bankruptcy lawyer states that not all debts were listed because of a lack of information. She indicated that additional creditors would be added to the schedules in a timely fashion. (Applicant's Exhibit G at 2.) This debt will be resolved.

1.p. Applicant denied that he is indebted to the Internal Revenue Service in the amount of \$6,187. Applicant submits that he has a payment arrangement with the IRS

and has been making monthly payments of \$255 on this tax debt since 2010. (Tr. 62-64.) He submitted evidence that he has been consistently making these payments. (Applicant Exhibits D, E at 7, 19.) This debt has been included in Applicant's bankruptcy petition, and will continue to be paid after completion of the bankruptcy. (Applicant Exhibit G at 13, 16.) It is being resolved.²

Applicant's current financial situation is stable, as shown by his Personal Financial Statement of April 13, 2014. (Applicant Exhibit B.) He is able to pay his normal monthly debts, as well as the student loan and tax debts that are not dischargeable in bankruptcy.

Mitigation

Applicant is a successful employee, and a respected person. Applicant Exhibit A at 1 is a letter from his program manager stating that Applicant is "a wonderful [asset] to this team. He is a very dedicated and hard worker." The letter also includes excerpts from emails sent to the program manager from other people commenting favorably about Applicant. (See Applicant Exhibit A at 3-5.)

Applicant Exhibit A at 2 is a letter from the bishop of Applicant's church. Applicant is a deacon of his church, and the bishop states Applicant has a "sense of responsibility, honesty and tireless dedication to work."

Applicant Exhibit C consists of various certificates of training earned by Applicant. He has completed training in such topics as ethics, privacy and information assurance awareness.

Policies

Security clearance decisions are not made in a vacuum. When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used as appropriate in evaluating an applicant's eligibility for access to classified information.

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 over-arching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny 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

²Applicant is also making regular monthly payments to his state taxing authority for back taxes. This debt is not alleged in the SOR. (Applicant Exhibit E at 2, 8, 16, 22.)

unfavorable, in making a decision. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must 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 access to classified information. Security clearance decisions include, by necessity, consideration of the possible risk that 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 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Paragraph 1 (Guideline F, Financial Considerations)

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant, by his own admission, and supported by the documentary evidence, had delinquent accounts that he could not resolve. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), disqualifying conditions may be mitigated where “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.” In addition, AG ¶ 20(b) states that disqualifying conditions may be mitigated where “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), and the individual acted responsibly under the circumstances.”

Both of the above mitigating conditions apply to Applicant. Evidence shows that Applicant’s financial situation was stable before his wife’s death in 2009. Her passing was quickly followed by Applicant’s own serious health problems, then with his being laid-off for almost a year. There is no underestimating the emotional and financial burdens of these hammer blows, exacerbated by health and life insurance issues. It is obvious that Applicant has had great difficulty coming to terms with his wife’s death. That had an impact on his ability to organize his thoughts, and take care of his bills, for several years.

Applicant had taken concrete steps to arrange payments with regards to his student loans and tax debts before the hearing. He contemplated filing for bankruptcy relief, but did not follow through before the hearing because he had received bad advice from well-meaning friends. He has retained a lawyer, who submitted proof that a petition has been filed and all Applicant’s debt has been or will be included in the schedules.³ Based on the particular facts of this case, I find that he has also “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” as required by AG ¶ 20(d).

Applicant has received financial counselling. In addition, as found above, his current financial situation is stable. I find that “there are clear indications that the problem is being resolved or is under control,” as required by AG ¶ 20(c).

Applicant has acted in a way that shows good judgment, making the best he could out of a difficult and very painful personal situation. The DOHA Appeal Board has stated, “A security clearance adjudication is not a proceeding aimed at collecting an applicant’s personal debts. Rather, it is a proceeding aimed at evaluating an applicant’s

³Three of the debts in the SOR are not included in the schedules provided by Applicant’s counsel. (1.b, 1.n, and 1.o.) The total of these debts is less than \$2,000.

judgment, reliability, and trustworthiness.”⁴ As the DOHA Appeal Board has also said, “An applicant is not required to show that [he] has completely paid off [his] indebtedness, only that [he] has established a reasonable plan to resolve [his] debts and has taken significant actions to implement that plan.”⁵ The stated mitigating conditions apply to the facts of this case.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of the applicant’s conduct and all the relevant circumstances. Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. The administrative judge must consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. The discussion under Guideline F, above, applies here as well. While Applicant had financial problems in the past, they have been or are being resolved. He is knowledgeable about his finances, and evinces a credible intent not to allow his finances to reach this point again.

Under AG ¶ 2(a)(2), I have considered the facts of Applicant’s debt history. Based on the record, I find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); and that there is a low likelihood of recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with no questions or doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his financial situation. Accordingly, the evidence supports granting his request for a security clearance.

⁴ISCR Case No. 07-09966 at 3 (App. Bd. June 27, 2008).

⁵ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006)).

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.p: 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 Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS
Administrative Judge