



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 12-11660

Appearances

For Government: David F. Hayes, Esquire, Department Counsel

For Applicant: *Pro se*

May 14, 2014

Decision

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on November 28, 2011. (Item 5.) On March 5, 2013, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the 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 (AG) effective within the Department of Defense on September 1, 2006.

Applicant submitted an Answer (Item 4) to the SOR in March 2013, and requested a decision be made without a hearing. Department Counsel submitted a File of Relevant Material (FORM) to Applicant on May 3, 2013. Applicant received the FORM on May 10, 2013, and was given 30 days to submit any additional information. Applicant submitted additional information in a timely fashion, which is admitted without objection by Department Counsel as Applicant Exhibit A. The case was assigned to me on March 10, 2014. I issued an Order reopening the record on April 24, 2014. Both

parties submitted responses to that Order. Department Counsel submitted Item 10, a credit report dated April 25, 2014. Applicant submitted six pages of an undated credit report on April 25, 2014. (Applicant Exhibit B.) Both new exhibits were admitted without objection. I issued an Order re-closing the record on April 29, 2014. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant is 31, and single. 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 all the allegations in the SOR, stating he has paid or resolved all of his debts. He also submitted additional information to support his request for a security clearance, including his responses to questions in a set of Interrogatories propounded by the DoD CAF. (Item 6.)

According to Applicant, "Like I stated before the reason why I was behind my bills was because I had to help my family and I told all my creditors that I will try to make payment arrangements so I get [to] be in good standings [sic]." He also stated that he had retained a law firm, which specializes in representing people with credit problems, to help him. (Applicant Exhibit A at 2.) Applicant did not submit any documentation from this law firm setting forth their scope of work, or what they have accomplished for him. According to Applicant, he had to help his family with their financial problems beginning in 2006. (Item 6 at 13.)

The SOR lists 14 delinquent debts, totaling approximately \$40,085. The existence and amount of these debts is supported by credit reports dated December 3, 2011; November 20, 2012; April 4, 2013; and April 25, 2014. (Items 7, 8, 9, and 10.)

The current status of the SOR-listed debts is as follows:

1.a. Applicant denies that he is indebted to a financial services company for a judgment filed against him in 2008 in the amount of \$1,566. He states that he paid a successor creditor to this company in 2009. This judgment concerns case number 060100051152008. Item 10 states that the judgment in this case is "Pending" as of November 2013. Applicant submitted satisfaction of judgments for two other cases in

the same court, but having different case numbers. (Item 4 at 5-6.)¹ The credit reports in the record confirm the judgment being satisfied in those two cases. Based on the current state of the record, this particular debt is not resolved.

1.b. Applicant denies that he owes his home state \$2,536 for a tax lien. He states in Item 4 that his 2012 tax return resolved the situation. Item 10 confirms that this lien has been released. Based on the current state of the record, this debt is resolved.

1.c. Applicant denies that he owes a past-due medical account in the amount of \$182. He states in Item 4 that he paid this debt in December 2012. The credit report dated April 2013 (Item 9), states this debt is unpaid but also reports, "Consumer disputes after resolution." Based on the current state of the record, this debt is in dispute.

1.d. Applicant denies that he owes a past-due medical account in the amount of \$308. He states in Item 4 that he paid this debt in December 2012. Item 10 confirms that this debt is paid. Based on the current state of the record, this debt is resolved.

1.e. Applicant denies that he owes a past-due student loan in the amount of \$10,733. He states in Item 4 that he made a payment arrangement with this entity in March 2013. Item 10 and Applicant Exhibit B show that all of Applicant's student loans are paid, current, or otherwise resolved. Based on the current state of the record, this debt is resolved.

1.f. Applicant denies that he owes a past-due credit card debt in the amount of \$1,925. He states in Item 4 that he made payments on this debt starting in April 2013. Item 10 states that this debt was paid for less than full balance. Based on the current state of the record, this debt is resolved.

1.g. Applicant denies that he owes a past-due debt in the amount of \$12,637. He states in Item 4 that he has been paying this debt and it has been reduced to \$3,645. The most recent credit report in the file, dated April 2014 (Item 10), states, "Consumer disputes after resolution. Charged off account," with a past-due balance of \$12,350. Based on the current state of the record, this debt is in dispute.

1.h. Applicant denies that he owes a past-due debt in the amount of \$617. He states in Item 4 that this was a medical bill his insurance should have paid. He submitted nothing more. Based on the current state of the record, this debt is not resolved.

1.i. Applicant denies that he owes a past-due debt in the amount of \$420. He states in Item 4 that he paid this debt in full in approximately 2011. The most recent

¹Applicant submitted with his Answer a satisfaction of judgment for a third case, which is from a different court, concerns a separate case, and is not referred to in the SOR or any of the credit reports in the record. (Item 4 at 8.)

credit report in the file, dated April 2014 (Item 10), does not show this debt at all. However, it is the Applicant's burden to show that the debt has been resolved and his mere statement of fact as to that is insufficient. Based on the current state of the record, this debt is not resolved.

1.j. Applicant denies that he owes a past-due debt in the amount of \$1,591. He states in Item 4 that this debt has been, "Fully Paid every penny." The creditor is the same one as alleged in SOR 1.a, which concerns a judgment in the amount of \$1,591. There are also two other cases involving this creditor. (Item 10 at 2.) Based on the state of the record it is not possible to determine with any certainty whether this debt has been paid. It is not resolved.

1.k. Applicant denies that he owes a past-due debt in the amount of \$55. He states in Item 4 that he paid this debt in January 2013. The most recent credit report in the file, dated April 2014 (Item 10), does not show this debt at all. It is the Applicant's burden to show that the debt has been resolved, and his mere statement of fact as to that is insufficient. Based on the current state of the record, this debt is not resolved.

1.l. Applicant denies that he owes a past-due debt in the amount of \$125. He states in Item 4 that he paid this debt in January 2013. The most recent credit report in the file, dated April 2014 (Item 10), does not show this debt at all. It is the Applicant's burden to show that the debt has been resolved and his mere statement of fact as to that is insufficient. Based on the current state of the record, this debt is not resolved.

1.m. Applicant denies that he is indebted to a creditor for an automobile debt in the amount of \$16,196. According to Applicant he was the subject of a fraud perpetrated on him by the automobile dealership. He states that there was a court case concerning the automobile dealership and he was found not to be liable for the car debt. (Item 6 at 11-12.) The credit reports do not show any record of this dispute, and Applicant did not submit any documents supporting his story. It is the Applicant's burden to show that the debt has been resolved and his mere statement of fact as to that is insufficient. Based on the current state of the record, this debt is not resolved.²

1.n. Applicant denies that he owes a past-due telephone debt in the amount of \$442. He states in Item 4 that he paid this debt in full in approximately 2011. The most recent credit report in the file, dated April 2014 (Item 10), does not show this debt at all. However, it is the Applicant's burden to show that the debt has been resolved and his mere statement of fact as to that is insufficient. Based on the current state of the record, this debt is not resolved.

Applicant, by his own figures, is financially well off. He lives with his family, and has a monthly net remainder of \$3,816. (Item 6 at 3.) It is also worth noting that the Interrogatory filled out by Applicant specifically states the types of documentation that

²It is noted that two of the credit reports in the record (Items 8 and 9) state, "Account transferred or sold." That statement, standing alone, is insufficient to support Applicant's version of events.

would show he had made payments on his debts, **“If you have either paid or are making payments on the debts cited below, please provide documentary proof, such as copies of cancelled checks, copies of money orders, recent invoices or statements reflecting a current balance and a recent payment, and/or other correspondence received from either the collection agency or the original creditors.”** (Item 6 at 2.) (Emphasis in original.) Applicant submitted three satisfaction of judgment documents, none of which apply to the allegations in the SOR. He also submitted a credit report.

Applicant provided two certificates, one from 2007 and the other from 2009, showing that he had successfully completed a “Securing Classified Material Training” course, and a “Cybersecurity Awareness” course. (Item 6 at 19, 24.) He provided no other evidence concerning the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

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 overarching 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 unfavorable, in making a decision. In addition, the administrative judge may also rely on his or her own common sense, as well as his or her 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 “[a]ny 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 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

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the applicant's circumstances and the granting or continued holding of a security clearance. If such a case has been established, the burden then shifts to the applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government's case. The applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

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 had over \$40,000 in debt, which has been due and owing for several years. 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), the disqualifying condition 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.” AG ¶ 20(b) states that the 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.” Also, AG ¶ 20(d) states it can be mitigating where, “the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Finally, AG ¶ 20(e) states it can be mitigating where “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.”

Applicant’s financial difficulties have been in existence since at least 2006. He states that beginning in 2012 he began to take action to resolve these debts. However, as shown above, Applicant did not provide documentation supporting all his statements that he has made payments to his creditors, despite being informed in writing of what specific evidence the Government was looking for. In addition, he did not explain why it took him approximately six years to begin to pay the debts, when he has been gainfully employed at a good salary for the entire time. Applicant resolved the debts in allegations 1.b, 1.d, 1.e, and 1.f. Those allegations are found for Applicant. Two debts are the subject of unresolved disputes (1.c, and 1.g). Those debts are also found for Applicant. Even so, Applicant continues to have at least \$21,112 in unresolved indebtedness.

In conclusion, looking at Applicant’s entire financial situation at the present time, the evidence does not support a finding that “there are clear indications that the problem is being resolved or is under control,” as is required by AG ¶ 20(c). Paragraph 1 is found against Applicant

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 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 should 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 facts and circumstances surrounding this case. My Guideline F analysis is applicable to the whole-person analysis as well. Based on that analysis, I find that there remains serious "potential for pressure, coercion, exploitation, or duress" as set forth in AG ¶ 2(a)(8). Using the whole-person standard, Applicant has not mitigated the security significance of his financial situation concerning past-due debts. He is not eligible for a security clearance at this time.

On balance, it is concluded that Applicant has not successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding against Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant

Subparagraph 1.m:
Subparagraph 1.n:

Against Applicant
Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

WILFORD H. ROSS
Administrative Judge