



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



In the matter of:)
)
) ISCR Case No. 14-00818
)
Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Esquire, Department Counsel
For Applicant: *Pro se*

07/30/2014

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings and exhibits, Applicant's eligibility for access to classified information is denied.

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on October 1, 2013. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on April 11, 2014, 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines For Determining Eligibility for Access to Classified Information* (AG), implemented on September 1, 2006.

Applicant received the SOR, and he submitted a notarized, written response to the SOR allegations. He requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a file of relevant material (FORM) and mailed Applicant a complete copy on June 12, 2014. Applicant received the FORM on June 25, 2014. He had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He submitted an undated response. DOHA assigned this case to me on July 28, 2014. The Government submitted seven exhibits, which have been marked as Items 1-7 and admitted into the record. Applicant's response to the SOR has been marked and admitted as Item 4, and the SOR has been marked as Item 1. His written response to the FORM is admitted into the record as Applicant Exhibit A (AE A).

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a - 1.f of the SOR. His admissions are incorporated herein as findings of fact. He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 46 years old, works as a senior logistics specialist for a DOD contractor. He began his current employment in July 2011. Prior to this employment, Applicant served on active duty in the United States Army from February 1989 until February 1993, when he received an honorable discharge. He returned to active duty in January 1994 and retired from the Army in July 2011 as a master sergeant (E-7). The record lacks any evidence of disciplinary actions while in the Army or in his current position.¹

Applicant graduated from high school in 1987. He and his wife married in December 1994, and they divorced in January 2014. Applicant has a 19-year-old son.²

Applicant served his last tour of duty away from his family because the assignment came shortly before he planned to retire. During the less than two years he worked in this assignment, his wife and son continued to live in the family home at his previous duty station. Applicant arranged for funds from his pay to be deposited in the household bank account for payment of bills, such as the mortgage and credit cards, because the monthly statements were sent to his wife at the home address. After he retired and began his current employment, he learned that his wife had not paid many bills, using the funds for personal matters.³

¹Item 5; Item 7.

²Item 5.

³Item 4; Item 7.

The failure of Applicant's wife to pay the household bills caused the mortgage company to foreclose on the marital home. Applicant's mortgage debt is fully resolved and not an issue. Applicant directed that his monthly payment on his 2009 truck be withdrawn from his checking account. Payments were missed when his wife began taking the money for her personal matters, and the truck was repossessed in early 2013. On the day the truck was repossessed, Applicant contacted the creditor and paid up the account delinquencies. His truck was returned the next day, and this account has remained current. The payments on his wife's 2006 vehicle became delinquent in 2012. He refinanced the vehicle loan, and the debt remains in good standing.⁴

The November 2013 credit report reflects that Applicant legally paid two debts (\$571 and \$1,870) for less than the full balance. These two debts are resolved. The creditor for one credit card garnished his wages in August 2013 in the amount of \$336 a month until the \$3,000 debt was paid. The November 2013 credit report indicates that this account is current. The same credit report shows two credit card accounts with the same bank and different account numbers that became past-due. The first account is listed in SOR allegation 1.a as a charged-off account in the amount of \$6,767 which is still open with the creditor. The second account is listed as a closed charged-off account with a high credit of \$4,300 and a balance of zero because it had been purchased by another lender. The creditor in SOR allegation 1.e (\$4,616) most likely is the purchaser and has added charges to this account. SOR allegations 1.a and 1.e are two different accounts.⁵

The SOR identifies four additional debts totaling \$22,201. The largest debt of \$19,176 relates to a home equity loan taken in 2006. The foreclosure on his home did not resolve the home equity loan. Applicant advised the Office of Personnel Management that he would resolve his remaining debts once his divorce was final, and the debts from his marriage divided between him and his wife. In his response to the SOR, Applicant stated he would be in contact with his creditors.⁶

Applicant contacted a credit management company. He reached an agreement with the company to resolve his unpaid debts. He signed a contract on June 30, 2014. He agreed to pay the company a first work fee of \$299 for debt resolution on June 30, 2014 and \$59 a month in service fees to be automatically withdrawn from his pay. Based on the contract terms, the work fee will vary each month and is dependent upon the work performed as the company does not charge in advance. The contract does not list any creditors identified in the SOR as contacts for payment nor does it list the creditors to be contacted.⁷

⁴Item 7.

⁵Item 6.

⁶Item 1; Item 4; Item 7.

⁷AE A.

Applicant did not provide a budget showing his monthly income and expenses. He did not provide a copy of his earnings statement nor did he provide a copy of his bank statement reflecting his first payment to the credit management company. In his response to the SOR, he indicated that he had sufficient income to resolve his past-due debts.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used 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 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.

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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." An applicant has the ultimate burden of persuasion for obtaining a favorable security 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. Decisions include, by necessity, consideration of the possible risk an 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.

Section 7 of Executive Order 10865 provides that decisions shall be “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

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.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant developed significant financial problems when he lived away from his family while completing his last tour of duty. During this time, his wife decided not to pay household expenses with the income provided her each month. The debts have not been resolved. These two disqualifying conditions apply.

The Financial Considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through ¶ 20(f), and the following are potentially applicable:

- (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), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's debts arose when his wife decided to use the household funds for personal matters rather than pay the household bills. When he realized what happened and learned about her personal conduct, they separated and are now divorced. These circumstances were beyond Applicant's control. While the record contains some evidence of debt resolution in the past and Applicant has retained a credit management company to help with the resolution of his debt, AG ¶ 20(b) is only partially applicable because he has only recently begun to take control of his debts.

In the past, Applicant paid his past-due payments on two vehicles and has remained current on these debts. He also paid two small debts. None of these debts are raised in the SOR. He, however, is given some credit for his good faith efforts to resolve these debts under AG ¶ 20(d). In the last month, he signed an agreement with a credit management company which will help him resolve his debts. At this time, the record lacks sufficient evidence to establish that he has control over his debts and current expenses. AG ¶ 20(c) is partially applicable.

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 an applicant's conduct and all relevant circumstances. 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.

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 decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In assessing whether an Applicant has established mitigation under Guideline F, the Appeal Board provided the following guidance in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

In evaluating Guideline F cases, the Board has previously noted that the concept of “‘meaningful track record’ necessarily includes evidence of actual debt reduction through payment of debts.” See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). However, 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. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). 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.” See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). 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. See Directive ¶ E2.2(a) (“Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”) 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 payment of such debts one at a time. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant served his last tour of duty unaccompanied. While away, he directed funds for payment of household expenses to his wife who remained in the family home. Applicant’s financial problems began when his wife decided to use these household funds for personal matters instead of paying the household expenses. He learned about the problem after he retired from the Army. He and his wife separated shortly after his retirement and are now divorced. During this process, he paid some of his debts. He incurred expenses related to his divorce. Applicant has indicated a willingness to resolve his debts, but has been slow to take action. Although he resolved some debts in the past, he has not provided sufficient evidence to establish mitigation. His current income and expenses are unknown, making it impossible to evaluate his overall financial stability. He recently retained a credit management company to help with debt resolution, but his documentation does not reflect which debts are going to be resolved with this company. Without this information, his overall financial stability cannot be evaluated as it is unclear what debts are involved in his debt payment plan. His past conduct reflects that he can pay his debts, but he has not yet established a track record for resolution of his larger debts identified in the SOR. His unpaid debts remain a concern about his fitness to hold a security clearance.

Overall, the record evidence leaves me with questions or doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude

Applicant has not mitigated the security concerns arising from his finances under Guideline F.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: AGAINST APPLICANT

Subparagraphs 1.a-1.f: 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.

MARY E. HENRY
Administrative Judge