



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



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| In the matter of: |) | |
| ----- |) | |
| |) | ISCR Case No. 14-01365 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Pamela Benson, Esquire, Department Counsel
For Applicant: *Pro se*

January 28, 2016

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on September 16, 2013. (Item 2.) On October 10, 2014, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F (Financial Considerations) regarding 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, with supporting documentation, on November 10, 2014, and requested a decision by an administrative judge without a hearing. (Answer.) Department Counsel submitted the Government’s written case (FORM) to Applicant on June 15, 2015.¹ Applicant acknowledged receipt of the FORM June 30, 2015. He was given 30 days from receipt of the FORM to submit any

¹Department Counsel submitted four Items in support of the SOR allegations.

additional documentation. Applicant submitted additional information on July 13, 2015. Department Counsel had no objection to my considering the documents, and they are admitted collectively as Applicant Exhibit A. The case was assigned to me on August 11, 2015. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is granted.

Findings of Fact

Applicant is 54, and married to his second wife. As further discussed below, he and his wife have custody of four minor grandchildren. 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 admitted allegations 1.a through 1.d, and 1.f, in the SOR. He denied the remaining allegation (1.e) because he did not recognize the debt. He also submitted additional information to support his request for a security clearance.

Applicant states that his financial situation was stable until the time he divorced his first wife in 2010. As part of the 2010 divorce decree he took responsibility for paying most of the marital debts until 2014. (Applicant Exhibit A at 7-31.) Applicant remarried in 2011, and the expenses of that marriage also provided a strain to his finances. (Answer at 1.) However, the major strain to his finances occurred in June 2012. In May 2012 Applicant's two-year-old grandson accidentally drowned. The other four grandchildren were going into foster care when Applicant stepped in and took custody of them. The ages of the grandchildren are currently 8, 7, 6, and 4. (Answer at 1-2; Applicant Exhibit A at 2-3, 32-35.)

The SOR lists five delinquent debts (1.a through 1.e), totaling approximately \$28,245. The existence and amount of the debts is supported by credit reports dated September 27, 2013; and May 26, 2015. (Items 3 and 4.) The SOR also alleges that Applicant did not file his 2012 Federal income tax return (1.f).

The current status of the debts, and tax return, is as follows:

1.a. Applicant admitted that he owed the Internal Revenue Service (IRS) \$11,352 in back taxes for the 2010 tax year. A tax lien was filed for this year. Part of his income tax refund for 2013 was used to pay this debt in full and the IRS released the lien, as shown in documentation provided by Applicant. (Answer at 7-8.) This debt is resolved.

1.b. Applicant admitted that he owed the Internal Revenue Service (IRS) \$13,180 in back taxes for the 2011 tax year. A tax lien was filed for this year. Parts of

his income tax refunds for 2012, 2013, and 2014 were used to pay this debt in full and the IRS released the lien, as shown in documentation provided by Applicant. (Answer at 8; Applicant Exhibit A at 4-5, 51.) This debt is resolved.

1.c. Applicant admitted that he was indebted for a department store credit card in the amount of \$1,276. Applicant showed proof of payment of this debt in December 2014. This debt is resolved. (Applicant Exhibit A at 41.)

1.d. Applicant admitted that he was indebted for a delinquent telephone bill in the amount of \$1,411. Applicant showed proof of payment of this debt in December 2014. This debt is resolved. (Applicant Exhibit A at 40.)

1.e. Applicant denied owing \$1,026 for a delinquent medical bill. In his Answer Applicant stated he did not recognize the bill, which was merely identified by an account number and a statement it was medically related. Through research, Applicant was able to identify the particular medical provider and the date of the alleged service. Applicant has filed a dispute with the credit reporting agencies. (Applicant Exhibit A at 43.) This debt is in dispute.

1.f. Applicant admitted not filing his 2012 Federal income tax return in a timely fashion. He stated in his Answer that this was an error. He timely mailed the return and believed it had been received by the IRS. He did not know until receiving the SOR that it had not been received. He has since successfully filed that return, as shown in documentation from the IRS. (Applicant Exhibit A at 51.) This allegation is resolved.

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 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 four delinquent accounts that he formerly could not resolve.² The evidence is sufficient to raise these potentially disqualifying conditions. In addition, AG ¶ 19(g) also applies, “failure to file annual Federal, state, or local income tax returns as required or fraudulent filing of the same.”

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.”

The evidence shows that both of the above mitigating conditions apply to Applicant. The tax debts and the two consumer debts were the result of the financial strains of his divorce, as well as he and his wife suddenly, and tragically, taking on responsibility for four minor children. As shown above, the debts set forth in subparagraphs 1.a through 1.d have all been resolved.³ The 2012 tax return has been successfully refiled, mitigating subparagraph 1.f.

Based on the particular facts of this case, I also find that Applicant has “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” as required by AG ¶ 20(d). I find that “there are clear indications that the problem is being resolved or is under control,” as required by AG ¶ 20(c). Finally, with regard to the medical debt (1.e), “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,” as required by AG ¶ 20(e).

Applicant has acted in a way that shows good judgment, making the best he could out of a very difficult situation. All of these mitigating conditions apply to the facts of this case. Guideline F is found for 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 relevant circumstances. Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense

²As stated, Applicant does not admit that the debt in subparagraph 1.e is his.

³Regarding subparagraph 1.e, Applicant states in his Answer that he is willing and able to pay this debt if further research shows that it is his, obviating any possible security concerns regarding this minor debt.

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 has had financial problems in the past, they were primarily the result of circumstances beyond his control, have been resolved, and he has the knowledge and ability to avoid such problems in the future.

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.

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

WILFORD H. ROSS
Administrative Judge