



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



In the matter of:)
)
 -----) ISCR Case No. 14-01450
)
 Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: Craig E. Dwyer, Esquire

July 29, 2015

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on September 9, 2013. (Government Exhibit 1.) On August 18, 2014, 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 September 3, 2014 (Answer), and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on February 3, 2015. This case was assigned to me on March 2, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 11, 2015. I convened the hearing as scheduled on June 17, 2015. The Government offered Government Exhibits 1 through 5, which were admitted without objection. Applicant testified on his own behalf, and submitted Applicant Exhibits A through I, also without objection. Applicant asked that the record remain open for the receipt of additional

documents. Applicant submitted Applicant Exhibit J on June 24, 2015; and Applicant Exhibit K on June 29, 2015. Both exhibits were admitted without objection. DOHA received the transcript of the hearing (Tr.) on June 25, 2015. The record closed on June 29, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant is 58, and married to his second wife. Applicant retired in 2012 after a very distinguished 32 years of military service. (Applicant Exhibit I; Tr. 35-38.) 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 four of the allegations in the SOR. He also submitted additional information to support his request for a security clearance.

Applicant was married to his first wife for about 14 years while he was in the military and often deployed. During the time Applicant was deployed his ex-wife would incur debts without his knowledge or consent. This was a major cause of Applicant's financial issues. He filed for divorce in July 2011. (Tr. 17-19, 47-48.)

Applicant began working to settle his past-due debts in February 2011. At that time Applicant retained counsel, who also represented him at this hearing, to resolve the debts in the SOR. (Applicant Exhibit J; Tr. 19-21, 48-50.)

The SOR lists four delinquent debts, totaling approximately \$56,790. The existence and amount of the debts is supported by credit reports dated August 3, 2011; November 21, 2013; January 26, 2015; and June 10, 2015. (Government Exhibits 2, 3, 4, and 5.)

The current status of the debts is as follows:

1.a. Applicant denies that he currently owes \$16,314 for a past-due credit card debt. Applicant paid that debt on May 22, 2015, as evidenced by a letter from Applicant's counsel to the creditor, a check from Applicant to creditor, and a letter from the creditor stating that the debt has been settled. (Applicant Exhibits A, B, and C; Tr. 21-25.) This debt is resolved.

1.b. Applicant denies that he currently owes \$8,704 for a past-due credit card debt for an account with the last four digits 3968. Government Exhibits 3 and 4 show this as being a charged-off account. However, Applicant's counsel received a letter from

the creditor dated July 29, 2014, and a check to Applicant for \$3,723.13. The bank letter states, "We want you to know that we appreciate your commitment to our country and pride ourselves on serving you. Based on a recent review of your account we may not have provided you the level of service you deserve and are providing you this check. There is nothing you need to do other than cash your check." Applicant has not been contacted by anyone connected with this bank since this letter. (Applicant Exhibits D, and E; Tr. 25-30.) Based on all available evidence, I find this debt is resolved.

1.c. Applicant denies that he currently owes \$2,781 for a past-due credit card debt. He testified that his lawyer had not been able to contact this creditor. On December 11, 2011, Applicant prepared a letter to this creditor stating that his attorney could contact the creditor for him. On December 12, 2011, Applicant's counsel sent a letter to the creditor confirming his representation and stating, "I am currently investigating [Applicant's] financial problems and possible creditor settlement alternatives." Applicant's attorney also submitted a declaration stating that he had called the creditor in both January and February 2012. There was no response to either the letter or telephone calls. Subsequent to the hearing Applicant's attorney successfully contacted the bank, who stated that the debt had been cancelled in 2012 and that an IRS Form 1099 had been sent to Applicant. Applicant stated he had never received it. A copy of the Form 1099 was subsequently sent to Applicant's counsel, indicating that the debt had been cancelled on October 27, 2012. (Applicant Exhibits J and K; Tr. 29-30, 40-43.) This debt is resolved.

1.d. Applicant denies that he currently owes \$29,000 for a past-due loan. Applicant paid that debt on January 16, 2012, as evidenced by a letter from Applicant's counsel to the creditor, a check from Applicant's father to the creditor, and a letter from the creditor stating that the debt has been settled. (Applicant Exhibits F, G, and H; Tr. 30-34.) This debt is resolved.

Applicant's current financial situation is stable. He is able to pay his monthly debts. (Tr. 43-46.)

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. 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.”

The evidence shows that both of the above mitigating conditions apply to Applicant. It appears that the majority of this debt was incurred as a result of actions by his ex-wife. Applicant did not try to avoid this situation, but has worked hard to resolve it. As stated, he retained counsel even before he retired from the military to attempt to pay these debts off. Two have been paid, on one debt he received money from the creditor, and the last debt was forgiven by that creditor in 2012. Based on the particular facts of this case, I find that he has “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” as required by AG ¶ 20(d).

Applicant has not received financial counseling. However, as found above, Applicant engaged legal counsel to assist him in resolving the delinquencies, and 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 situation. As the DOHA Appeal Board has 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.”¹ All of these mitigating conditions apply to the facts of this case.

¹ISCR 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)).

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 has had financial problems in the past, they 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.d.: 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