



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



In the matter of:)
)
-----) ISCR Case No. 14-03412
)
Applicant for Security Clearance)

Appearances

For Government: Robert J. Kilmartin, Esquire, Department Counsel
For Applicant: *Pro se*

September 30, 2015

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on March 12, 2014. (Item 5.) On October 10, 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 December 6, 2014, and requested a decision by an administrative judge without a hearing. (Item 1.) Department Counsel submitted the Government's written case (FORM) to Applicant on April 15, 2015. Applicant acknowledged receipt of the FORM May 1, 2015. He was given 30 days from receipt of the FORM to submit any additional documentation. Applicant submitted additional information in the form of an undated statement. This statement is admitted

into evidence without objection as Applicant Exhibit A.¹ The case was assigned to me on June 29, 2015. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant is 56, and separated from his second wife.² He is employed by a defense contractor and seeks to obtain 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 all the allegations in the SOR under this paragraph, with the exception of 1.e, in which he admits the existence of the debt, but denies he owes it. Those admissions are findings of fact. He also submitted additional evidence to support his continued holding of a security clearance.

The SOR lists five delinquent debts. (Subparagraphs 1.a through 1.e.) Subparagraphs 1.a, 1.b, 1.c, and 1.e are consumer debts, which total \$19,314. Subparagraph 1.d is a mortgage debt. The existence and amount of all the debts is supported by a credit report dated March 22, 2014. (Item 4.) The current status of the debts is as follows:

1.a. Applicant admitted owing this past-due debt for a vehicle lease in the amount of \$723. He stated in his Answer that he had successfully paid off the lease but the vehicle was repossessed anyway. No further information was provided. This debt is not resolved.

1.b. Applicant admitted owing this past-due credit card debt in the amount of \$2,800. He stated in his Answer that he reported to the credit card company that some charges on the account were not his. He stated, “[The credit card company] refused to acknowledge this and continued billing me for this.” No further information was provided. This debt is not resolved.

¹Department Counsel submitted four Items in support of the SOR allegations. Item 3 is the summary of an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management on April 23, 2014. Applicant discusses the content and conduct of this interview in Applicant Exhibit A. Accordingly, under the particular circumstances of this case, Item 3 is admissible and will be considered.

²Item 2 at Section 17.

1.c. Applicant admitted owing a past-due debt to a creditor in the amount of \$14,350. He stated in his Answer, "This debt was to be included in my refi on my home mortgage." No further information was provided. This debt is not resolved.

1.d. Applicant admitted to having a past-due mortgage. He states in his Answer, "At the time I was two months behind on my payments. I had mailed them a payment that would have got me at two months behind. They returned my check to me with a notice of foreclosure. They took possession of the home and have since resold the property." Applicant states in Item 3 that the foreclosure took place in 2008, after his adjustable rate loan payment increased from \$1,300 a month to \$1,700 a month, and that he has no further financial responsibility for the house. The loan balance was \$199,943. The credit report in the record states Applicant was delinquent in the amount of \$13,582. The credit report in the record (Item 4) does not show a completed foreclosure. Based on the available record, current status of this debt is unclear.

1.e. Applicant admitted that a "bank claims I owe this money. I deny that I [do] due to the fact of how it occurred." He stated that the bank credit card was duplicating charges from his bank debit card. He further stated that his local branch bank agreed with him, but further stated they could do nothing about it. The amount of the debt is approximately \$1,441. It is not resolved

The evidence shows that Applicant was unemployed from June 2013 to March 2014. Applicant has been gainfully employed by his current employer since March 2014. (Item 2, Section 13A.) Applicant submitted no evidence that he has received any financial counseling. He did not submit a budget, or any other information concerning his income and expenses.

Applicant provided no 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

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 the 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 has over \$19,000 in past-due debts, which have 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 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." Applicant's financial difficulties have been in existence for several years. There is no evidence that he has paid his debts, which continue to date. This mitigating condition does not have application in this case.

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." Applicant was unemployed for several months during 2013 and 2014, before starting his current employment. He did not submit any evidence, however, that shows he acted responsibly once he obtained employment a year ago. This mitigating condition does not have application in this case.

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." Applicant has not submitted any evidence to show that he has made successful payment arrangements with, or made payments to, the creditors listed in the SOR. Even assuming that Applicant owes nothing on his foreclosed mortgage, it remains a significant part of his history of not meeting financial obligations, and he has the remaining debts to resolve. This mitigating condition does not have application in this case.

Applicant states that there were issues between him and several of his creditors as to whether he owed them money, and how much money he owed. However, he submitted no evidence that he had taken any action to actually contest any of the debts in the SOR, or that he has a valid basis to do so. Accordingly, AG ¶ 20(e) does not apply. It requires that "the individual [have] 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." (Emphasis supplied.)

In conclusion, looking at Applicant's entire financial situation at the present time, I cannot find 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 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. Applicant has had financial problems for several years, which he has not yet resolved. He has a long history of not paying his debts. Applicant's conduct with regard to his finances was not mitigated.

Under AG ¶ 2(a)(3), his conduct is recent and continuing. I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I also cannot find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); or that there is no likelihood of continuation or recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with questions and 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 financial situation. Accordingly, the evidence supports denying 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:

AGAINST APPLICANT

Subparagraphs 1.a through 1.e:

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