



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



In the matter of:)	
)	
-----)	ISCR Case No. 14-04210
)	
Applicant for Security Clearance)	

Appearances

For Government: Adrienne Strzelczyk, Esquire, Department Counsel
For Applicant: *Pro se*

July 21, 2015

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on March 13, 2013. (Item 2.) On December 24, 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 January 19, 2015, 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 May 7, 2015.¹

¹Department Counsel submitted five Items in support of the SOR allegations. Item 3 is inadmissible and will not be considered or cited as evidence in this case. It is the summary of an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management on March 26, 2013. It was never adopted by Applicant as his own statement, or otherwise certified by him to be accurate. Under Directive ¶

Applicant acknowledged receipt of the FORM June 9, 2015. He was given 30 days from receipt of the FORM to submit any additional documentation. Applicant submitted additional information consisting of an updated statement dated June 16, 2015 (Statement), and ten numbered attachments (Attachments 1-10). The case was assigned to me on July 6, 2015. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is granted.

Findings of Fact

Applicant is 52, married, and has three children aged 26, 22, and 21. 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, b, c, d, e, i, j, k, and l in the SOR under this paragraph. He also states that 1.a, c, and e are duplicates of 1.i, j, and k. Those admissions are findings of fact. He denied allegations 1.f, g, and h.

The SOR lists 12 delinquent debts, totaling approximately \$20,398.² (Subparagraphs 1.a through 1.l.) The existence and amount of all the debts, except 1.l, is supported by credit reports dated March 19, 2013; and April 10, 2014. (Items 4, and 5.) Allegation 1.l is supported by admissions of Applicant in his Answer and his e-QIP (Item 1; Item 2 at Section 26.) The current status of the debts is as follows:

1.a. Applicant admits owing this past-due debt for a credit card in the amount of \$3,461. He further submits that this debt was sold to another lender, and that it is a duplicate of allegation 1.i. Item 4 confirms that this debt was sold. The current status of this debt will be discussed under allegation 1.i, below.

1.b. Applicant admits owing this past-due debt in the amount of \$1,099. He submitted evidence showing that he paid this debt in full to the successor in interest in January 2015. (Statement; Attachments 1, 4, and 5.) This debt is resolved.

1.c. Applicant admits owing this past-due debt for a credit card in the amount of \$1,116. He further submits that this debt was sold to another lender, and that it is a duplicate of allegation 1.j. Item 4 confirms that this debt was sold. The current status of this debt will be discussed under allegation 1.j, below.

E3.1.20, this Report of Investigation summary is inadmissible in the absence of an authenticating witness. It is also cumulative.

²This figure is for all the alleged debts, including those Applicant states are duplicates.

1.d. Applicant admits owing this past-due debt in the amount of \$4,010. He submitted evidence showing that he paid this debt in full to the successor in interest in September 2014. (Statement; Attachments 1, and 8.) This debt is resolved.

1.e. Applicant admits owing this past-due debt in the amount of \$1,216. He further submits that this debt was sold to another lender, and that it is a duplicate of allegation 1.k. Item 4 confirms that this debt was sold. The current status of this debt will be discussed under allegation 1.k, below.

1.f. Applicant denies owing a past-due medical bill in the amount of \$100. In his Statement he says:

I refute or find no record in the Equifax Credit Report or my personal documentation of a Medical Debt . . . in the amount of \$100.00. If any record of this debt was available to me currently I would quickly and simply rectify any owed account balance, my latest Equifax Credit Report dtd 06/14/15, attachment 1, does not show evidence that this debt remains in collections.

A review of Attachment 1 confirms Applicant's statement. This debt is unpaid, but is in dispute.

1.g. Applicant denies owing a past-due medical bill in the amount of \$100. In his Statement he says:

I refute or find no record in the Equifax Credit Report or my personal documentation of a Medical Debt . . . in the amount of \$100.00. If any record of this debt was available to me currently I would quickly and simply rectify any owed account balance, my latest Equifax Credit Report dtd 06/14/15, attachment 1, does not show evidence that this debt remains in collections.

A review of Attachment 1 confirms Applicant's statement. This debt is unpaid, but is in dispute.

1.h. Applicant denies owing a past-due medical bill in the amount of \$100. In his Statement he says:

I refute or find no record in the Equifax Credit Report or my personal documentation of a Medical Debt . . . in the amount of \$100.00. If any record of this debt was available to me currently I would quickly and simply rectify any owed account balance, my latest Equifax Credit Report dtd 06/14/15, attachment 1, does not show evidence that this debt remains in collections.

A review of Attachment 1 confirms Applicant's statement. This debt is unpaid, but is in dispute.

1.i. As stated, Applicant admits owing this past-due debt in the amount of \$4,400, which is a duplicate of allegation 1.a. He submitted evidence showing that he satisfied this debt in full to the successor in interest in January 2015. (Statement; Attachments 1, 2, and 3.) This debt is resolved.

1.j. As stated, Applicant admits owing this past-due debt in the amount of \$2,693, which is a duplicate of allegation 1.c. He submitted evidence showing that he satisfied this debt in full to the successor in interest in January 2015. (Statement; Attachments 1, 6, and 7.) This debt is resolved.

1.k. As stated, Applicant admits owing this past-due debt in the amount of \$1,553, which is a duplicate of allegation 1.e. He submitted evidence showing that he satisfied this debt in full to the successor in interest in January 2015. (Statement; Attachments 1, 9, and 10.) This debt is resolved.

1.l. Applicant admitted that he had an unpaid Federal tax debt for tax year 2011. In his e-QIP Applicant stated that he owed the Government approximately \$3,600 and was paying it off at the rate of \$288 a month.³ In his Answer and Statement Applicant states that he paid this debt off and received a tax refund for the year 2013. Based on all available evidence, I find that this debt has been resolved.

According to Applicant, this debt situation came about after he retired from the Marine Corps in 2009. At that time he found his financial situation severely affected by the market crisis of that year. In addition, Applicant and his wife found themselves paying for the advanced education of their three children for several years. Eventually, Applicant resolved these debts by obtaining a loan from his credit union in the amount of \$13,000 in January 2015. He submitted evidence from his credit union showing that he has been making the prescribed payments on this loan since that time. (Statement; Attachment 11.)

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

³The SOR states Applicant owed \$550.16 for unpaid taxes, as of December 2014. A review of the available evidence does not show where that figure came from, nor is there evidence that the debt was unpaid as of the date of the SOR. It is noted that neither of the two credit bureau reports in the record show evidence of a Federal tax lien. Attachment 1 also does not show evidence of a Federal tax lien.

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 had over \$14,000 in past-due debts, which were due and owing for several years.⁴ 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." While Applicant's financial difficulties have been in existence for several years, he has submitted evidence showing that he has paid off all but three of the formerly past-due debts in full. In addition, the three credit reports in the record show that, with the exception of the debts mentioned in the SOR, he has no other past-due debts. This mitigating condition has some 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's financial situation was affected by the 2009 market crisis. He has paid off all of his past-due debts, albeit recently. This mitigating condition also has some 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 submitted evidence showing that he has paid off six of the debts in the SOR. Three others are duplicates. He disputes and denies three medical debts, which total \$300.

⁴This figure eliminates the duplicate debts found in allegations 1.a, 1.c, and 1.e.

This is a valid dispute, especially since the most recent credit report does not show those particular debts. This mitigating condition has application to this case. AG ¶ 20(e) also applies with regards to the medical debts. 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.”

In conclusion, looking at Applicant’s entire financial situation at the present time, I 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 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 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 have been resolved. His statements show a knowledge of his financial situation, and the importance of remaining financially stable in the future in order to support retention of his security clearance.

I find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I also find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); and that there is little to no likelihood of continuation or recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me without 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.l: 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