



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-05567

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel

For Applicant: *Pro se*

March 30, 2016

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on June 14, 2012. (Government Exhibit 1.) On March 26, 2015, 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 May 5, 2015 (Answer), and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on July 6, 2015. This case was assigned to me on July 16, 2015. The Defense Office of Hearings and Appeals (DOHA) issued notices of hearing on July 22, and August 6, 2015. I convened the hearing as scheduled on September 4, 2015. The Government offered Government Exhibits 1 through 8, which were admitted without objection. Applicant testified on his own behalf, and submitted Applicant Exhibits A through E, also without objection. Applicant asked that the record remain open until September 18,

2015, for the receipt of additional documents. Applicant submitted Applicant Exhibit F on September 11, 2015, which was admitted without objection. DOHA received the transcript of the hearing (Tr.) on September 14, 2015. The record closed on September 18, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant is 31, and married with one child. 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 six of the allegations in the SOR. He also submitted additional information to support his request for a security clearance.

Applicant married his wife in February 2011. She became pregnant soon after their marriage, and left her full-time employment to take care of their child starting in 2012 for approximately a year and a half. This caused many of his financial problems. (Tr. 23-25.)

Applicant began working to settle his past-due debts in February 2015. At that time, which was before issuance of the SOR, Applicant contacted a debt reduction service (DRS). He made an agreement with them where he would pay DRS \$592 per month, and they would disburse funds to his largest creditors. As of the date the record closed Applicant had made seven monthly payments to DRS totaling \$4,209. (Applicant Exhibits D, E, F at 10-14; Tr. 30-32, 45-46.)

The SOR lists six delinquent debts, totaling approximately \$14,612. The existence and amount of the debts is supported by credit reports dated May 23, 2007; June 19, 2012; November 8, 2013; September 12, 2014; July 6, 2015; and September 3, 2015. (Government Exhibits 3, 4, 5, 6, 7, and 8.)

The current status of the debts is as follows:

1.a. Applicant has consistently denied that he currently owes \$609 to a bank for a past-due credit card debt. When he was interviewed by an investigator from the Office of Personnel Management in 2012 he stated that he had previously had an account with this bank, but had paid this debt in 2008. He made the same argument in his Answer to the SOR. Applicant testified that he called the subject bank several times and they were not able to identify any debt in his name. The most recent credit reports in the record do not show this debt. Government Exhibit 5, the November 8, 2013 credit report, states

that this debt was, "Purchased by another lender." (Government Exhibits 2 at 4-5; Exhibits 3, 4, 5 ; Tr. 26-27.) This debt is in dispute.

1.b. Applicant denied that he currently owes \$10,798 for a repossessed automobile. He presented evidence showing that this debt is being resolved through DRS. As of the date the record closed seven monthly payments of \$300 had been made to this creditor, for a total of \$2,100. (Applicant Exhibits B, F at 13-14; Tr. 27-29, 32-33.) This debt is being resolved.

1.c. Applicant denied that he currently owes \$2,127 for a past-due medical debt. He presented evidence showing that this debt is being resolved through DRS. As of the date the record closed seven monthly payments of \$110 had been made to this creditor, for a total of \$770. (Applicant Exhibit F at 13-14; Tr. 38-39.) This debt is being resolved.

1.d. Applicant denied that he owed \$560 to an apartment complex. Government Exhibit 8 at page 1 shows this debt was paid in full in April 2015. (Tr. 39-40, 46.) This debt is resolved.

1.e. Applicant denied that he owed \$411 to an apartment complex. A paid receipt from the collection agent, and Government Exhibit 8 at page 1, show this debt was paid in full in March 2015. (Applicant Exhibit A; Tr. 40, 46.) This debt is resolved.

1.f. Applicant denied that he owed \$107 for a past-due telephone service bill. Applicant presented evidence showing he paid this debt in January 2015. (Applicant Exhibit C; Tr. 40-41.) This debt is resolved.

Applicant's current financial situation is stable. His wife is again working. He is able to pay his monthly debts, and resolve his past-due indebtedness. (Applicant Exhibit F at 5-9; Tr. 41-44.)

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, based on documentary and testimonial evidence, had five delinquent accounts that he formerly could not resolve. He has consistently denied the existence of the debt in allegation 1.a. 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. Applicant’s financial problems began when he and his newlywed wife started a family before they were ready financially. Once he was financially able to resolve the debts, he paid three of them off and began using DRS to resolve the other two. He has consistently been making substantial payments to DRS for several months. 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 consistently denied the existence of the \$609 debt set forth in allegation 1.a. The Government’s evidence indicates that the account was sold by the original creditor, but the record is silent as to who the purchaser was, or the current status of the debt. Applicant credibly testified that he has attempted several times to resolve the debt, with no success. Under the particular circumstances of this case I find that AG ¶ 20(e) applies to this de minimis debt; “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.”

Applicant has not received financial counseling. However, as shown above, 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, beginning work before issuance of the SOR to resolve his financial 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 Applicant has done that. All of these mitigating conditions apply to the facts of this case. 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. 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.

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)).

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