



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



In the matter of:)	
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)	ISCR Case No. 11-03253
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: *Pro se*

February 7, 2013

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on August 31, 2010. (Government Exhibit 1.) On April 4, 2012, 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 4, 2012, and requested a decision without a hearing (Answer). On August 19, 2012, Applicant requested a hearing before an administrative judge. Department Counsel was prepared to proceed on August 20, 2012. This case was assigned to me on August 29, 2012. DOHA issued a notice of hearing on September 4, 2012. I convened the hearing as scheduled on October 9, 2012. The Government offered Government Exhibits 1 through 8, which were received without objection. Applicant testified on his own behalf, and submitted Applicant Exhibits A through F. Applicant asked that the record remain open for the receipt of additional

documents. The Applicant submitted Applicant Exhibits G and H on October 26, 2012, and they were admitted without objection. DOHA received the transcript of the hearing on October 18, 2012. The record closed on October 26, 2012. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

Applicant is 37 and married. 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 all the allegations in the SOR under this Paragraph, except for 1.j, and 1.r. Those admissions are findings of fact. He also submitted additional information to support his request for a security clearance.

Applicant stated that his debt problems were brought about by several events. First, he was divorced in 2001 and his ex-wife left him in a bad state financially. Second, he was unemployed from March to August 2009. Third, once he did find employment, for which he was stationed overseas making a considerable salary, he made some financial decisions regarding his current wife that did not help him. This included running two households for several months until his wife and family could join him where he currently lives. (Government Exhibit 1, Section 13; Tr. 38, 75-80.)

The SOR lists 20 delinquent debts, totaling approximately \$42,921. The existence and amount of these debts is supported by credit reports dated September 9, 2010; October 3, 2011; March 19, 2012; July 16, 2012; and October 4, 2012. (Government Exhibits 2, 3, 5, 6 and 8.) (See *also* Interrogatory dated November 28, 2011. (Government Exhibit 4.)) The current status of the debts is as follows:

1.a. Applicant admits that he is indebted to a creditor for a repossessed automobile in the amount of \$14,103. He has attempted to work out a payment plan with this creditor, but has been unsuccessful. (Tr. 38.) This debt is not resolved.

1.b. Applicant admits that he was indebted to a creditor on a past-due debt in the amount of \$129. He states that he paid this bill to the successor creditor in October 2011. (Tr. 38-47.) Applicant submitted bank statements and receipts supporting the payment. (Applicant Exhibits D and F.) Applicant filed a dispute with the credit reporting agencies regarding this debt. (Government Exhibits 5 and 6.) The most recent credit report in evidence does not show this debt. (Government Exhibit 8.) I find that this debt has been resolved.

1.c. Applicant admits that he was indebted to a creditor on a past-due debt in the amount of \$415. He originally stated that the debt had been paid. (Answer.) However, during the hearing, it became clear that this debt had not yet been paid. (Tr. 47.) This debt is not resolved.

1.d. Applicant admits that he was indebted to a creditor on a past-due debt in the amount of \$96. He submitted evidence showing this debt was paid in October 2011. (Applicant Exhibit A; Tr. 50-51.) This debt is resolved.

1.e. Applicant admits that he was indebted to a creditor on a past-due debt in the amount of \$2,722 for an automobile repossession. The creditor offered Applicant a deal where he could buy a car from them and the remaining debt would be rolled into the new car payment. Instead of that deal, Applicant put \$8,000 down on a vehicle for his wife. He has no current plans to pay this debt, and it is not resolved. (Tr. 55-57, 75-76.)

1.f. Applicant admits that he is indebted to a creditor for a repossessed automobile in the amount of \$15,000. He stated, "I haven't done anything to take care of that one." The most recent credit report in the file states, "Consumer disputes after resolution. Charged off account." It also states that the past-due amount is \$17,078. (Tr. 57-58.) This debt is not resolved.

1.g. Applicant admits that he was indebted to a creditor on a past-due debt in the amount of \$775. The credit reports in the file show Applicant has disputed this debt. He stated he disputed the debt "because they [collection agency] couldn't verify who the original creditor was." (Government Exhibit 8 at 2; Tr. 58-59.) This debt is not resolved, but has been disputed.

1.h. Applicant admits that he was indebted to the same creditor as 1.g on a separate past-due debt in the amount of \$1,254. The most recent credit report in the file show Applicant has disputed this debt. He stated he disputed the debt because the original debt was for \$300 and he did not want to pay for six years of interest. He had no current plans to pay this debt, and admitted he had not made a payment for several years or been in contact with this creditor in over a year. (Government Exhibit 8 at 2; Tr. 60.) Under the particular facts of this debt, I find the dispute to be without foundation. This debt is not resolved.

1.i. Applicant admits that he was indebted to a creditor on a past-due loan debt in the amount of \$3,000. He has not made any payments on this debt, and had no plans to pay this debt. (Tr. 61-62.) This debt is not resolved.

1.j. Applicant denied owing a past-due debt to the Department of Veteran's Affairs in the amount of \$344. This debt was paid by means of an offset from his Federal tax return. (Government Exhibit 8 at 3; Tr. 62-63.) This debt is resolved.

1.k. Applicant admits that he was indebted to a creditor on a past-due debt in the amount of \$473. However, Applicant testified that this debt concerns his mobile

telephone, and he is current on the account. (Tr. 63-64.) The July 2012 credit report in the record shows that Applicant is disputing the account information. (Government Exhibit 6.) The most recent credit report in the file does not show this debt. (Government Exhibit 8) This debt is under dispute.

1.l. Applicant admits that he was indebted to a creditor on a past-due debt in the amount of \$491. While he has not formally disputed this debt, Applicant testified that he is concerned the most recent credit report in the file shows that he has three accounts with this creditor. He stated that he only has one, and he is trying to find out what the actual debt is. (Government Exhibit 8; Tr. 50-51.) This debt is not resolved.

1.m. Applicant admits that he was indebted to a bank on a past-due debt in the amount of \$1,294. Applicant stated this is an unpaid voucher in connection with military training in 2003. He has not paid this debt, and has no current plans to pay this debt. (Tr. 66-67, 70-71.) This debt is not resolved.

1.n. Applicant admits that he was indebted to a creditor on a past-due debt in the amount of \$928. He has not made any payments on this debt. (Tr. 72.) This debt is not resolved.

1.o. Applicant admits that he was indebted to a creditor on a past-due debt in the amount of \$100. He has not made any payments on this debt. (Tr. 72.) This debt is not resolved.

1.p. Applicant admits that he was indebted to a creditor on a past-due debt in the amount of \$765. He has not made any payments on this debt. (Tr. 72.) This debt is not resolved.

1.q. Applicant admits that he was indebted to a creditor on a past-due debt in the amount of \$198. He has not made any payments on this debt. (Tr. 72.) This debt is not resolved.

1.r. Applicant denied that he was indebted to a creditor on a past-due debt to an insurance company in the amount of \$101. He submitted bank records showing the debt was paid on October 27, 2011. (Applicant Exhibit D at 3; Tr. 64.) This debt is resolved.

1.s. Applicant admits that he was indebted to a creditor on a past-due debt in the amount of \$200. He has not made any payments on this debt. (Tr. 72.) This debt is not resolved.

1.t. Applicant admits that he was indebted to a creditor on a past-due medical debt in the amount of \$533. He has not made any payments on this debt. (Tr. 72.) This debt is not resolved.

Applicant has paid off several of his debts, including some debts not alleged in the SOR. (Applicant Exhibit C; Tr. 47-49, 51-52.) However, he was unable to always

specify which debts have been paid off. His testimony was often confusing concerning his financial picture. (See Tr. 49-50, 59-62.) To help him with figuring out his financial situation, Applicant stated he had recently signed up with a credit consulting firm. After the hearing, Applicant reported he felt that the service would be a waste of his time and money, and had paid a retainer to a lawyer to represent him in filing a bankruptcy. (Applicant Exhibits G and H; Tr. 48, 65.)

Mitigation

Applicant submitted four letters of recommendation from past co-workers and managers. (Applicant Exhibit E.) They all worked with Applicant overseas, where he directly supported US troops. He is described as someone who is “an individual with integrity that can be trusted to do the right thing, even when there is pressure to take short cuts.” All of the correspondents made a point of talking about Applicant’s professionalism. The writers of the letters on pages 1 and 2 of Applicant Exhibit E specifically recommend that Applicant retain his security clearance.

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 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. The Applicant had approximately \$42,921 in past due debts, all of which had 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 condition 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 arose beginning in about 2004 and, since he has not resolved all of the debts which caused the problems, 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 divorced in 2004, and unemployed for several months in 2009. However, after that he was deployed overseas and made a considerable amount of money, which was used to maintain his family and not take care of his debt. While these acts may have had an impact on his financial situation at the time, he did not show that he has a reasonable plan to resolve his debts. Also of concern is Applicant’s choice to spend \$8,000 on a new car, when a creditor was willing and able to help Applicant resolve another debt while purchasing an automobile. This mitigating condition has no 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 begun to make a good-faith effort to pay off his creditors. He has reduced his past-due indebtedness to \$41,003. Applicant has also begun the process of retaining a lawyer to file a bankruptcy for him. However, as of the date the record closed he had not filed for bankruptcy relief. Applicant has made steps towards resolving his debts, but his confusion about what he debts he has paid, combined with the large amount of delinquent debt he still owes, make it impossible to apply this mitigating condition in whole.

Applicant appears to have a reasonable basis to dispute the debts set forth in subparagraphs 1.g and 1.k. AG ¶ 20(e) applies to those two debts, “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.”

However, looking at his 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 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 have not been completely resolved. There are several troubling factors about this case. First is Applicant's lack of knowledge about his current financial situation. Second, as he testified himself, he made some very poor financial choices. Applicant is obviously an intelligent and talented employee who several people went out of their way to support by means of letters of recommendation. However, his conduct with regards to his finances was not shown to be mitigated.

Under AG ¶ 2(a)(3), his conduct is recent. 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 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	For Applicant
Subparagraph 1.c.:	Against Applicant
Subparagraph 1.d.:	For Applicant
Subparagraph 1.e.:	Against Applicant
Subparagraph 1.f.:	Against Applicant
Subparagraph 1.g.:	For Applicant
Subparagraph 1.h.:	Against Applicant
Subparagraph 1.i.:	Against Applicant

Subparagraph 1.j.:	For Applicant
Subparagraph 1.k.:	For Applicant
Subparagraph 1.l.:	Against Applicant
Subparagraph 1.m.:	Against Applicant
Subparagraph 1.n.:	Against Applicant
Subparagraph 1.o.:	Against Applicant
Subparagraph 1.p.:	Against Applicant
Subparagraph 1.q.:	Against Applicant
Subparagraph 1.r.:	For Applicant
Subparagraph 1.s.:	Against Applicant
Subparagraph 1.t.:	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