



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



In the matter of:)	
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)	ISCR Case No. 11-13395
)	
Applicant for Security Clearance)	

Appearances

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

December 12, 2013

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on July 19, 2011. (Government Exhibit 1.) On March 18, 2013, 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 April 15, 2013, and requested a decision without a hearing. Applicant subsequently requested a hearing before an administrative judge. Department Counsel was prepared to proceed on July 9, 2013. This case was assigned to me on August 1, 2013. DOHA issued a notice of hearing on August 19, 2013. I convened the hearing as scheduled on September 10, 2013. The Government offered Government Exhibits 1 through 7, which were received without objection. Applicant testified on his own behalf, and submitted Applicant Exhibits A through P, which were also admitted without objection. Applicant asked that the record

remain open for the receipt of additional documents. The Applicant submitted Applicant Exhibits Q through V in a timely manner, and they were admitted without objection. DOHA received the transcript of the hearing (Tr.) on September 17, 2013. The record closed on October 2, 2013. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

Applicant is 65 and single. 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. Those admissions are findings of fact. He also submitted additional information to support his request for a security clearance.

Applicant states that his financial difficulties began around 2006, with the beginning of the global financial crisis. In addition to his personal residence, Applicant owned a rental property. At this time, he was having issues with his renter, and eventually found it difficult to pay the mortgages on both houses, as well as his other debt.

1.a. Applicant admits that he is indebted to a creditor for a credit card debt in the amount of approximately \$17,000. This debt has been delinquent since around 2008. According to Applicant, he last made a payment on this account in approximately June 2008. Applicant was upset by the response of the credit card company after he made a partial payment on this debt, and has not made any payments since that time. (Government Exhibit 4 at 61-63; Tr. 34-38, 43-45.) After the hearing Applicant made contact with this debtor in an attempt to resolve the debt. (Applicant Exhibit R.) Applicant also had some health issues that occurred after the hearing, which affected his ability to work with the creditor. Notwithstanding, he has not yet reached any payment arrangement with this creditor. (Applicant Exhibits Q, S, T, U, and V.) This debt is not resolved.

1.b. Applicant admits that he was indebted to a mortgage company in the amount of \$324,000 for a first mortgage. This rental property was foreclosed upon in 2010 and sold. According to Applicant, he began having problems making his mortgage payments on this property in 2006 or 2007, when he began having issues getting a reliable tenant. He spent approximately two years and \$24,000 trying to save this property, and his personal residence, by using a company that was supposed to be expert in helping people like Applicant (Company A). Eventually, Applicant figured out this company was a scam, but it was too late to save this property. He has been in

contact with several governmental organizations at the local and state level regarding the conduct of Company A. (Government Exhibit 4 at 7-16, 64, 68-72; Applicant Exhibits A, B, C, D, E, F, G, H, I, J, L; Tr. 30-34.) The debt was resolved by the mortgagor taking back the property.

1.c. Applicant admits that he was indebted to a mortgage company in the amount of \$150,000 for a second mortgage on the rental house, which is also the subject of 1.b, above. This debt was forgiven by the mortgage company and Applicant received a Form 1099, "Cancellation of Debt," in September 2011. (Applicant Exhibit N; Tr. 40.) The amount of debt cancelled is \$119,407.53. This debt has been cancelled.

1.d. Applicant admits that he filed bankruptcy under Chapter 13 of the Bankruptcy Code on May 21, 2010. He received the required credit counseling. (Applicant Exhibit K.) Applicant failed to appear for a mandatory §3421(a) meeting of creditors on July 6, 2010. The case was dismissed on July 9, 2010, and Applicant was barred from refile for 180 days from that date. (Applicant Exhibit M.)

Applicant testified that he filed this bankruptcy at the behest of the head of Company A. He stated, "I should say the bankruptcy was a part of the scam as well, as it was explained to me. What [the head of Company A] was attempting to do was to stall for time so that he could continue with negotiating [on the mortgages] although, obviously, it was not true. But that was the reason for it - - for the bankruptcy." (Tr. 34.) Applicant also described the bankruptcy filing as a "stall tactic." (Government Exhibit 4 at 9.)

About a year after filing for bankruptcy and having it dismissed, Applicant filled out his e-QIP. (Government Exhibit 1.) Question 26.a. of the questionnaire asks whether Applicant has filed a petition under any chapter of the bankruptcy code within the last seven years. Applicant answered that question, "No." When questioned by me as to why he made this obviously false answer, Applicant replied, "I have no reason to - - there is no way to justify that. All I can say is that it could have been that I was under the impression that it wasn't - - I don't know - - it wasn't bankruptcy. I mean I know that sounds ridiculous. Actually, I have no answer other than it's false." (Tr. 41-43.)

Mitigation

Other than the credit card debt described in 1.a, above, Applicant has no other credit card debt. According to a personal financial statement Applicant completed in September 2013 he is in fine shape financially. He has approximately \$70,000 in assets, not including his house, and a monthly net remainder of over \$2,400. Applicant was able to enter into a loan modification with the mortgage holder of his primary residence. (Government Exhibit 4 at 17-28, 31; Applicant Exhibit P; Tr. 31-32, 46-47.)

Applicant submitted a letter of recommendation from his manager. (Applicant Exhibit O.) The letter, which is undated, states that Applicant is a person with a high work ethic. His manager recommends Applicant without reservation.

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, the adjudicative process. The administrative judge's overarching 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 has a past-due debt of over \$17,000, which has been due and owing for several years. In addition Applicant had a house foreclosed upon, which had mortgages of approximately \$475,000. Finally, Applicant filed for Chapter 13 bankruptcy in an attempt to “stall” the foreclosure. This bankruptcy was dismissed as Applicant failed to appear at the meeting of creditors. 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), a 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 have been in existence since at least 2008. He has not made any effective attempts to resolve the seriously delinquent credit card debt, despite the fact that he has the financial ability to do so. In addition, he has known of the Government’s interest in his financial situation, and this debt in particular, for a considerable period of time. 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.” It appears that Applicant’s financial problems were started by his having a bad renter in his house. However, for two years he paid Company A about \$24,000 in return for their doing nothing for him. What is also disturbing is Applicant’s misuse of bankruptcy to forestall the foreclosure, then his failure to tell the

Government of the filing. 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.” The two mortgage debts were resolved by the property being foreclosed upon and sold, and the additional debt being cancelled. He has not paid, or made any good faith steps to pay, the credit card debt. This mitigating condition does not have application in this case.

Applicant did not allege that AG ¶ 20(e) has any application in this case.

Applicant received the credit counseling required by the Bankruptcy Court. 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 also required for mitigation under 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 resolved. He made some very poor financial choices, and has a long history of not paying his debts. Applicant’s conduct with regards to his finances was not mitigated. Also of concern in determining whether Applicant meets the adjudicative process factors is the situation regarding his false answer to the question regarding bankruptcy. While not a determining factor against granting him a clearance, it must be considered when deciding whether Applicant has mitigated the allegations.

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 recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with substantial 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
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	Against Applicant
Subparagraph 1.c.:	Against Applicant
Subparagraph 1.d.:	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