



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



In the matter of:)	
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)	ISCR Case No. 11-13999
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: Marvin I. Schlackman, Esquire¹

March 10, 2014

REMAND DECISION

ROSS, Wilford H., Administrative Judge:

The Department of Defense (DoD) declined to grant Applicant a security clearance. On March 22, 2013, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision - security concerns raised under Guideline F (Financial Considerations) of DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing in his Answer of April 18, 2013. A hearing was held on July 22, 2013. During that hearing, in addition to hearing testimony of Applicant, I admitted Government Exhibits 1 through 6. I found Government Exhibit 7 to be inadmissible. I issued a decision on August 28, 2013, granting Applicant’s request for a security clearance. Department Counsel appealed my decision pursuant to Directive ¶¶ E3.1.28 and E3.1.30. On February 3, 2014, the Appeal Board remanded the case to me with instructions to admit and consider Government Exhibit 7.² In addition, the Appeal Board stated, “The Judge’s analysis in this case did not sufficiently address circumstances that were within Applicant’s control or that impugned his good judgment.

¹Mr. Schlackman represented Applicant during his appeal, vice Lawrence Miller, Esq., Applicant’s counsel at hearing.

²ISCR Case No. 11-13999 at 7 (App. Bd. Feb. 3, 2014).

We also find persuasive Department Counsel's argument that the Judge did not establish a nexus between those conditions that were outside of his control, . . . and his financial problems."³ In accordance with those instructions, Government Exhibit 7 is hereby admitted, and has been considered along with all other evidence.

Findings of Fact

Applicant is 62 and single. 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. Those admissions are findings of fact. He also submitted additional information to support his request for a security clearance.

The SOR lists 10 delinquent debts, totaling approximately \$79,593. The existence and amount of these debts is supported by credit reports dated July 23, 2011; December 9, 2012; March 5, 2013; and July 16, 2013. (Government Exhibits 3, 4, 5, and 6.) (See *also* Interrogatories dated February 12, 2013, and Personal Subject Interview dated August 31, 2011. (Government Exhibits 2 and 7.)) The status of the debts, as of the date the record closed on August 12, 2013, is as follows:

1.a. Applicant admits that he is indebted to the Internal Revenue Service (IRS) for unpaid taxes.⁴ Until 2010 Applicant prepared his own tax returns. Due to errors committed by Applicant, he would find that he owed back taxes, as well as interest and penalties. (Tr. 92; Government Exhibit 7 at 2.) He also stated that the problems were due to his, "Lack of Focus & Prioritizing Personal Matters (Poor Budgeting of personal matters due to Family Deaths." (Government Exhibit 2 at 2.) Beginning in 2010 he uses a tax preparation service to make sure his tax returns are filed correctly.

He has had a payment arrangement with the IRS for approximately two years. The original agreement was for his 2007, 2008, and 2009 taxes. The 2007 taxes have been paid. However, the agreement has been amended to include taxes owed for 2010 and 2011, which he could not pay at the time the returns were filed. Accordingly, as of August 2013 Applicant owed the IRS \$10,012.77. He currently pays \$175 a month on this arrangement, which is an increase of \$25 over his prior payments and is acceptable

³*Id.*

⁴Applicant submitted evidence showing that he filed his tax returns in a timely fashion. (Government Exhibit 2 at 9-18.)

to the IRS. (Government Exhibit 2 at 19-24, Exhibit 7 at 2; Applicant Exhibit A at 13-15; Tr. 39-44, 92-95.) This debt is being resolved.

1.b. Applicant admits that he was indebted to his state taxing authority for unpaid taxes. He had a payment arrangement with his state to pay off his \$713 in back taxes for 2007, 2008, and 2009. He provided evidence showing that he has successfully paid all of his state back taxes. (Applicant Exhibit A at 3-8; Tr. 44-46, 95-97.) This debt is resolved.

1.c. Applicant admits that he is indebted to a creditor for a credit card debt in the amount of \$1,374. Applicant entered into an agreement with a debt resolution company in January 2013 to resolve his delinquent debts. He has been making regular monthly payments to this company since that time. Through an oversight this debt was not included in the original plan. Applicant submitted evidence showing that this debt has now been included in the program. (Government Exhibit 2 at 25-31; Applicant Exhibit A at 9-12; Tr. 46-53, 60, 62-66.) This debt is being resolved.

1.d. Applicant admits that he is indebted to a creditor for a credit card debt in the amount of \$21,880. Applicant entered into an agreement with a debt resolution company in January 2013 to resolve his delinquent debts. This debt was included in the original plan. (Government Exhibit 2 at 25-31; Applicant Exhibit A at 9-12; Tr. 53-57.) This debt is being resolved.

1.e. Applicant admits that he was indebted to a creditor for a credit card debt in the amount of \$9,905. Applicant entered into an agreement with a debt resolution company in January 2013 to resolve his delinquent debts. This debt was included in the original plan. Applicant submitted evidence showing that a payment arrangement has been made reducing this debt to \$4,398. (Government Exhibit 2 at 25-31; Applicant Exhibit A at 9-12; Tr. 57-59.) This debt is being resolved.

1.f. Applicant admits that he was indebted to a creditor for a credit card debt in the amount of \$15,382. Applicant entered into an agreement with a debt resolution company in January 2013 to resolve his delinquent debts. This debt was included in the original plan. Applicant submitted evidence showing that a payment arrangement has been made reducing this debt to \$6,125. (Government Exhibit 2 at 25-31; Applicant Exhibit A at 9-12; Tr. 59.) This debt is being resolved.

1.g. Applicant admits that he is indebted to a creditor for a credit card debt in the amount of \$8,187. Applicant entered into an agreement with a debt resolution company in January 2013 to resolve his delinquent debts. This debt was included in the original plan. (Government Exhibit 2 at 25-31; Applicant Exhibit A at 9-12; Tr. 60.) This debt is being resolved.

1.h. Applicant admits that he is indebted to a creditor for a credit card debt in the amount of \$14,070. Applicant entered into an agreement with a debt resolution company in January 2013 to resolve his delinquent debts. Through an oversight this debt was not included in the original plan. Applicant submitted evidence showing that

this debt has now been included in the program. (Government Exhibit 2 at 25-31; Applicant Exhibit A at 9-12; Tr.60-62.) This debt is being resolved.

1.i. Applicant admits that he is indebted to a creditor for a credit card debt in the amount of \$2,946. Applicant entered into an agreement with a debt resolution company in January 2013 to resolve his delinquent debts. This debt was included in the original plan.(Government Exhibit 2 at 25-31; Applicant Exhibit A at 9-12; Tr. 62.) This debt is being resolved.

1.j. Applicant admits that he was indebted for a cell phone bill in the amount of \$82. Applicant is still a customer of this phone company. He submitted his most recent bill showing that he is making regular payments. Applicant has attempted to resolve this debt with the creditor, which appears to concern a closed account, without success. (Applicant Exhibit A at 16-17; Tr. 66-70.)

Applicant testified that his financial problems began when he had a bad breakup with his live-in girlfriend of six years in approximately 2005. They had been sharing expenses until she lost her job prior to the breakup. At that point he took on all the expenses of the relationship, including taking care of her mother's medical expenses, and eventually her mother's funeral expenses. (Tr. 70-73.) Applicant also has had some unexpected dental expenses, which further increased his debt. (Tr. 97-98.)

He acknowledged that, in the past, he might have allowed himself to help family and friends financially. However, he now realizes that such conduct is not in his best interest going forward, stating, "You can basically support people but you shouldn't have to go out of your way." (Tr. 85.)

Applicant discussed how he attempted to resolve his debt situation with his creditors himself, before it got out of hand. He was unable to get satisfactory results this way, so he did research on debt resolution companies and found one that does not get paid until all the debts are resolved and paid off. That is the company that he is currently using. He pays the company \$1,030 a month. The plan is to resolve and pay off his delinquent debts within three years. (Tr. 60-68, 98-103.)

Applicant lives very frugally and showed that he has the financial ability to both pay his current indebtedness, as well as pay his past-due indebtedness through the facilities of the debt resolution program. (Government Exhibit 2 at 7-8, 22-23; Tr. 74-85.)

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, by his own admission, and supported by the documentary evidence, had ten delinquent accounts that he had not resolved when the SOR was issued. 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. It appears that the majority of this debt was incurred as a result of the breakup with his girlfriend, tax preparation issues, attending several funerals out of state, and some medical debts. Applicant has not tried to avoid this situation, but after being unable to resolve it himself he has successfully turned to a professional debt resolution company. In fact, it is to his credit that he signed with this company before he was issued the SOR. He has been making regular payments to this company, and they have already reached payment arrangements with two of his creditors. In addition, on his own he negotiated with his state taxing authority and the IRS. He has paid off his state tax debt and is reducing his Federal tax liability in a manner acceptable to the IRS. Under the particular facts of this case I find his conduct to be responsible. 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 not received financial counseling. However, as found 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).

Finally, Applicant has been proactive in contacting the remaining creditor, the cell phone bill for \$82, and attempting to resolve that debt. This action brings him under the orbit of AG ¶ 20(e), “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 acted in a way that shows good judgment, making the best he could out of a difficult situation. In particular, he realizes that he can no longer provide generous financial assistance to others at the expense of his own ability to meet his own obligations.” 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.”⁵ The Applicant’s actions are in keeping with the Appeal Board’s discussion. All of these mitigating conditions apply to the facts of this case.

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 for several years, he is well on the road to having them resolved. He is knowledgeable of

⁵ISCR 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)).

