



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



In the matter of:)	
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)	ISCR Case No. 12-03600
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

March 14, 2014

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on September 9, 2011. (Government Exhibit 1.) On September 10, 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 November 13, and December 3, 2013 (Answer), and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on January 6, 2014. This case was assigned to me on January 16, 2014. DOHA issued a notice of hearing on January 24, 2014. I convened the hearing as scheduled on February 13, 2014. The Government offered Government Exhibits 1 through 9, which were admitted without objection. Applicant testified on his own behalf, and submitted Applicant Exhibits A through L, also without objection. Applicant asked that the record remain open for the receipt of additional documents.

Applicant submitted Applicant Exhibits M through Q on February 27, 2014, and they were admitted without objection. DOHA received the transcript of the hearing (Tr.) on February 25, 2014. The record closed on February 27, 2014. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant is 56 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 subparagraph 1.c in the SOR under this Paragraph. That admission is a finding of fact. He denied the remaining allegations. He also submitted additional information to support his request for a security clearance.

The SOR lists six delinquent debts, totaling approximately \$54,318. The existence and amount of the debts set forth in subparagraphs 1.a, 1.b, 1.c, 1.e, and 1.f, is supported by credit reports dated December 2, 2008; and November 22, 2011. (Government Exhibits 4, and 5.) (See *also* Interrogatories dated August 8, 2013. (Government Exhibit 2.))¹ Subparagraph 1.d states that support for the existence of the past due debt of \$825 is found in a credit report dated November 29, 2012. No credit report of that date was submitted into evidence, and none of the other credit reports in the record report such a debt.

Applicant honorably retired from the United States Marine Corps in 1995 after 20 years of service. Beginning in 1996 until 2004 Applicant worked as a security specialist with the United States Congress. At that time Applicant's wife received a job offer out of state, and they moved in order for her to take the job. Applicant indicated that his financial difficulties began in about 2007, when several different problems occurred almost simultaneously. First, the severe housing downturn affected their ability to pay for their house, further described under 1.c, below. Second, Applicant's wife was diagnosed with cancer and was off of work for 16 weeks in 2008. Third, their daughter, who is a special-needs person with a seizure disorder, was hospitalized several times with very serious medical issues. The financial squeeze that they were then under caused them not to be able to pay the medical debts described below in a timely fashion. This financial situation continued to affect them until approximately 2011. Applicant states, "To the best of my knowledge all outstanding medical bills have been

¹Credit bureau reports dated January 21, 2005; June 27, 2013; January 6, 2014; and February 12, 2014, do not show any of the debts set forth in the SOR as being owing or past due. (Government Exhibits 3, 6, 7, and 8.)

taken care of. . . . We have received no other delinquencies and all insurance issues have been resolved.” (Government Exhibit 2 at 15; Tr. 37-40.) Applicant’s current financial situation is stable. (Government Exhibit 2 at 8; Tr. 49-54.)

The current status of the debts is as follows:

1.a. Applicant denies that he owes a hospital \$252 for a past-due debt. Applicant stated that he has paid this debt, and submitted a statement from the collection agency for the hospital stating, “Your account is now settled in full.” (Applicant Exhibit I; Tr. 41-44.) This debt is resolved.

1.b. Applicant denies that he is indebted to a medical provider’s collection agency in the amount of \$235. Applicant stated that he has paid this debt, and all other debts owed to this agency, which amounted to \$1,245. He provided five paid in full letters from this collection agency, as well as a copy of an email between his wife and this collection agency concerning payments. (Answer at 1, 10-11; Applicant Exhibit J; Tr. 44.) This debt is resolved.

1.c. Applicant admits that he was indebted to a mortgage company for a second mortgage in the amount of \$52,173. This debt concerns s Applicant’s home that he bought after his family moved. The house was purchased for approximately \$325,000 in 2004 using an adjustable rate mortgage for the first. Beginning in 2007 Applicant began having difficulties paying the first mortgage because of the severe increases in the adjustable monthly payments, as well as problems with the mortgage company itself. This resulted in a three year struggle for Applicant and his wife to work out a loan modification with the first mortgagor, or a short sale. During this time the value of the house was reduced to approximately \$121,000 while their monthly mortgage payments rose from \$1,889 a month to over \$4,000 a month. During this time Applicant retained counsel to assist them in dealing with the first mortgage company. (Applicant Exhibit E.) Despite their best efforts, the house was foreclosed on by the first mortgage holder in February 2011. (Government Exhibit 9; Applicant Exhibit L.)² The second mortgage holder was paid all during this process, and was notified of the foreclosure activity. After the foreclosure Applicant did not receive any further communication from the second mortgage holder, and Applicant assumed that their interest had been resolved. (Applicant Exhibit A at 1-5; Tr. 55-65.) Subsequent to the hearing Applicant contacted the second mortgage holder, who indicated they had no records from the first mortgage holder stating that the house had been foreclosed on. In accordance with a request from the second mortgage holder, Applicant has forwarded an old credit report showing the house foreclosure so that this creditor can do their due diligence and reduce or forgive the Applicant’s debt. (Applicant Exhibits M, P, and Q.) This debt is being resolved.

²The first mortgage holder was one of the mortgage companies involved in the Independent Foreclosure Review process involving the Office of Comptroller of the Currency and the Board of Governors of the Federal Reserve System. Applicant received a monetary payment “in connection with an enforcement action related to deficient mortgage servicing and foreclosure processes.” (Applicant Exhibit G.) (See Independent Foreclosure Review, <https://independentforeclosurereview.com> (accessed March 11, 2014).)

1.d. Applicant denies that he is indebted to a medical creditor in the amount of \$825. As stated, the credit report the Government refers to in the SOR is not part of the record. A review of the available credit reports, and the Applicant's Interrogatories, also failed to show a debt in this amount. Applicant states in his Answer at page 2, "The SOR stated that these [SOR 1.d, 1.e, and 1.f] are Medical Bills appearing on my Credit Report. I pulled my recent Credit Report and they are not showing. These may be old accounts that were paid off when we paid . . . old medical bills that had not cleared through our insurance." (See Tr. 44-45.) Based on all of the available information, I find this debt is resolved, if it ever existed.

1.e. Applicant denies that he is indebted to a medical creditor in the amount of \$522. Applicant states in his Answer at page 2, "The SOR stated that these [SOR 1.d, 1.e, and 1.f] are Medical Bills appearing on my Credit Report. I pulled my recent Credit Report and they are not showing. These may be old accounts that were paid off when we paid . . . old medical bills that had not cleared through our insurance."

Applicant testified:

I don't recall that one at all. As a matter of fact, we have a letter at home that is stating that similar amount that just came the other day requesting \$522, and we have no idea what it's for. . . . So, we've asked them to provide us with more information; and, when we get that information . . . If it's a legitimate debt, it will be paid."

(Tr. 45-46, 71-73; Applicant Exhibit N.)³ Based on all of the available information, I find that this debt is either resolved, or is being resolved.

1.f. Applicant denies that he is indebted to a medical creditor in the amount of \$311. Applicant states in his Answer at page 2, "The SOR stated that these [SOR 1.d, 1.e, and 1.f] are Medical Bills appearing on my Credit Report. I pulled my recent Credit Report and they are not showing. These may be old accounts that were paid off when we paid . . . old medical bills that had not cleared through our insurance." Applicant further stated that he was unsure about this particular debt. However, he also stated, "All of the medical bills are paid, sir." (Tr. 46.)⁴ Based on all of the available information, I find that this debt is resolved.

Mitigation

Applicant submitted documentation showing that he is a highly respected person. Applicant Exhibit D consists of seven letters of recommendation from co-workers, a former supervisor and people in the community. Two of the letter are from retired

³Applicant Exhibit H is a letter from a collection agency dated January 22, 2013, concerning the same original creditor as that set forth in Applicant Exhibit N. It states that the "account is closed in our office."

⁴It is noted that the collection agency for this debt is the same as that set forth in Applicant Exhibit H, which states that the Applicant's account at that collection agency was closed.

service members. Applicant is described as someone whose “integrity is beyond reproach.” He is further described as someone who “always holds himself accountable for his actions and is eager to help other employees do the same.”

Applicant has rented a house since February 2011. Applicant’s current landlord submitted a letter stating, “[Applicant] and his family have been ideal tenants from the beginning. Rent has always been paid on time without hesitation and we have not had any delinquent charges on his account since it was opened.” (Applicant Exhibit C.)

Applicant submitted two credit reports dated February 27, 2014. With the exception of the debt described in 1.e, above, all of his accounts are current. (Applicant Exhibits N and O.)

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 five delinquent accounts that he formerly could not resolve. As noted above, there is considerable doubt as to the existence of the debt set forth in subparagraph 1.d. 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 downturn in the real estate market, and some medical debts. Applicant has not tried to avoid this situation, but has worked hard to resolve it. He and his wife, who also holds a security clearance, have paid off all of the past-due medical debt. They fell prey to what can be viewed as sharp practices by their first mortgage holder, which resulted in their receiving a financial settlement related to their foreclosure process. 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 second mortgage holder, and attempting to resolve that debt. His belief that this debt had been resolved by the foreclosure, especially given the problems he had with the mortgage companies, is reasonable. 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. 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 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

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)).

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.

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