



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-02866

Appearances

For Government: Candace L. Garcia, Esquire, Department Counsel
For Applicant: *Pro se*

August 7, 2017

Decision

ROSS, Wilford H., Administrative Judge:

On July 18, 2014, Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP). (Item 3.) On November 24, 2015, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). 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, 2006.¹

¹ I considered the previous Adjudicative Guidelines, effective September 1, 2006, as well as the new Adjudicative Guidelines, effective June 8, 2017. My decision would be the same if the case was considered under the previous Adjudicative Guidelines.

Applicant answered the SOR in writing on December 22, 2015, and requested his case be decided on the written record in lieu of a hearing. (Item 2) On April 14, 2016, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM), consisting of Items 1 to 7, was provided to Applicant, who received the FORM on April 21, 2016.²

Included in the FORM was a proposed "Amendment to the SOR" concerning allegations 1.b and 1.c. Applicant accepted the proposed amendments and admitted the underlying allegations. The amended allegations 1.b and 1.c, as set forth in the FORM, are hereby substituted for the original allegations in the SOR by reference.

Applicant was given 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He submitted additional information. Department Counsel had no objection and the documentation is admitted into evidence as Applicant Exhibit A. The case was assigned to me on December 13, 2016. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is granted.

Findings of Fact

Applicant is 53 and separated. He is employed by a defense contractor and seeks to obtain a security clearance in connection with his employment.

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 allegations 1.a, 1.d, 1.e, and 1.f. As stated, he admitted the amended allegations 1.b and 1.c. Applicant also submitted additional information to support his request for national security eligibility.

1.a. Applicant denied that he was indebted to the Internal Revenue Service (IRS) for unpaid taxes for tax years, 2009, 2010, 2011, and 2012 in the approximate amount of \$2,536. Applicant stated in Item 2 at page 4, "I do not owe any back taxes to the IRS. All back taxes were paid in full in May 2015." Applicant stated that he owed back taxes because of periods of unemployment, paying child support for his children, and having

² Department Counsel submitted seven Items in support of the SOR allegations. Item 4 is inadmissible. It will not be considered or cited as evidence in this case. It is the summary of an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management on October 7, 2014. Applicant did not adopt the summary as his own statement, or otherwise certify it to be accurate. Under Directive ¶ E3.1.20, this Report of Investigation summary is inadmissible in the absence of an authenticating witness. In light of Applicant's admissions, it is also cumulative.

to pay his daily expenses. Applicant submitted a document from the IRS dated December 15, 2015, confirming the fact that he no longer owed any taxes for those tax years. (Applicant Exhibit A at 4.) This debt is resolved.

1.b. Applicant admitted that he had failed to file his 2012 tax return in State A as required. He stated that this was due to oversight because he had to move several times for work within a short period of time due to the BRAC. (Item 3 at Section 26; Applicant Exhibit A at 2.) Applicant has since filed the applicable tax return, and submitted a "Letter of Good Standing for [State A] Personal Income Tax Returns." The letter confirms that Applicant's account with State A is current. This allegation is resolved. (Applicant Exhibit A at 5.)

1.c. Applicant admitted that he had failed to file his 2011 tax return in State B as required. He stated that this was due to oversight because he had to move several times for work within a short period of time due to the BRAC. (Item 3 at Section 26; Applicant Exhibit A at 2.) Applicant has since filed the applicable tax return, and submitted a letter from State B dated December 28, 2015. The letter confirms that Applicant has "no outstanding bill and your account has a zero balance at this time." This allegation is resolved. (Applicant Exhibit A at 6.)

1.d. Applicant denied owing a creditor for a past-due debt in the amount of \$32. Applicant stated, "This had been a medical bill for one of my kids that my ex-wife did not pay or inform me about it. Once I was aware of this, I paid the bill." Applicant submitted his credit report, dated December 21, 2015, which shows this debt as being "closed." (Applicant Exhibit A at 1; Item 2 at 7.) This allegation is resolved.

1.e. Applicant denied owing a creditor for a past-due debt in the amount of \$13. Applicant stated that this was also a medical bill for one of his children that his ex-wife did not resolve. Applicant stated that he had also paid this bill, and the same credit report confirms it as being "closed." (Applicant Exhibit A at 1; Item 2 at 7.) This allegation is resolved.

1.f. Applicant denied owing a judgment for a past-due medical debt in the amount of \$1,145. He stated that this judgment was also related to a medical bill for one of his children. He submitted documentation from the court showing the judgment was satisfied on December 18, 2015. (Item 2 at 4-6; Applicant Exhibit A at 2.) This allegation is resolved.

Applicant states that his current financial condition is stable. "There is nothing derogatory in all three credit reports and I have paid all my bills on time." The complete credit report in the record, dated March 6, 2016, confirms that statement with the exception of the debts discussed here. (Item 6; Applicant Exhibit A at 2.)

Mitigation

Applicant submitted two letters of recommendation from people who have known him in the workplace for eight to ten years. Each of the writers describe him as a man of “good moral character.” (Applicant Exhibit A at 7-8.)

Policies

When evaluating an applicant’s suitability for national security eligibility for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s national security eligibility.

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 overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires, “Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk 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 or

sensitive 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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline F: Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personal security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

The guideline at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. From these nine conditions, three conditions apply to the facts found in this case:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant admitted that he formerly owed Federal back taxes for several years, and that he had failed to file 2011 and 2012 state tax returns in his states of residence. In addition, there were several past-due debts that appeared on his credit report.

The guideline in AG ¶ 20 contains seven conditions that could mitigate security concerns arising from financial difficulties. Four of them have applicability to the facts of this case:

(a) 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;

(b) 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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant submitted evidence that he has paid all of his past-due taxes, and filed the subject state tax returns. In addition, he submitted evidence that the three medical debts alleged in the SOR, which total less than \$1,200, have been resolved. All four of the mitigating conditions apply to 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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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.

Under AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant has mitigated the concerns regarding his financial situation. Overall, the record evidence does not create substantial doubt as to Applicant's present suitability for national security eligibility, and 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 national security eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS
Administrative Judge