



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-03515

Appearances

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

May 31, 2017

Decision

ROSS, Wilford H., Administrative Judge:

On May 1, 2013, Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP). (Item 3.) On November 1, 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.

Applicant answered the SOR in writing (Answer) on November 24, 2015, and requested his case be decided on the written record in lieu of a hearing. On March 3, 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 file on March 8, 2016.¹

Applicant was given 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant submitted additional information on April 1, 2016. Department Counsel had no objection and the additional material is admitted into the record as Applicant Exhibit 1. The case was assigned to me on September 13, 2016. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant is 43 and married. 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. In addition, Applicant has had income tax issues.

Applicant admitted allegations 1.d, 1.e, 1.f, 1.g, 1.h, 1.i, and 1.j in the SOR under this Paragraph. Those admissions are findings of fact. He denied the remaining allegations (1.a, 1.b, 1.c, 1.k, and 1.l).

SOR subparagraphs 1.a through 1.c concern Applicant's income tax issues:

Subparagraph 1.a alleged that Applicant had failed to file his Federal income tax return for tax year 2009. He submitted evidence with his Answer, and Applicant Exhibit 1 at Attachment C, from the Internal Revenue Service (IRS) showing that he had subsequently filed a Form 1040 for that year. This allegation is found for Applicant.

Subparagraph 1.b alleged that Applicant owed \$949 in delinquent taxes for tax year 2006. Attached to his Answer is an "Installment Agreement Activity" statement from the IRS as of July 13, 2015. That document shows Applicant had a zero balance for the 2006 tax year. This allegation is found for Applicant.

¹ 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 May 29, 2013. 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.

Subparagraph 1.c alleged that Applicant owed approximately \$9,000 in delinquent taxes for tax years 2008 through 2010. Documentation from the IRS attached to Applicant's Answer and Applicant Exhibit 1 at Attachments A and C, shows that all of his tax debts were resolved in March 2016. This allegation is found for Applicant.

Subparagraph 1.d alleged that Applicant's wages were being garnished by a finance company and that he still owed \$6,387 as of the date of the SOR. Applicant admitted this allegation in his Answer, but stated the amount owed was approximately \$2,392 and would be paid off in 2016. Applicant Exhibit 1 at Attachment B shows Applicant paid this debt off in March 2016. This allegation is found for Applicant.

Subparagraphs 1.e through 1.i are all consumer debts. The total amount of money Applicant owes on those debts is approximately \$3,005. The existence and amount of the debts is supported by credit reports dated May 10, 2013; and March 26, 2015. (Items 5 and 6.) In general, Applicant stated in his e-QIP that he could not satisfy some of his debts because, "Only one working – One income." (Item 3 at Section 26.)

1.e. Applicant admitted that he was indebted to a cable television company in the amount of \$623. He stated in his Answer, "[Cable company] will be contacted to return unused equipment or reimburse cost in an attempt to satisfy debt." Applicant Exhibit 1 does not show any further efforts to satisfy this debt other than to say in general that he is "reaching out to creditors for balance pay-offs." No further information was provided. This debt is not resolved.

1.f. Applicant admitted that he was indebted for a past-due account in the amount of \$457. Applicant Exhibit 1 does not show any efforts to satisfy this debt other than to say in general that he is "reaching out to creditors for balance pay-offs." No further information was provided. This debt is not resolved.

1.g. Applicant admitted that he was indebted to a telephone company in the amount of \$417. He stated in his Answer, "Contact will be made with [telephone company] in an effort to satisfy the balance." Applicant Exhibit 1 does not show any further efforts to satisfy this debt other than to say in general that he is "reaching out to creditors for balance pay-offs." No further information was provided. This debt is not resolved.

1.h. Applicant admitted that he was indebted to a credit union in the amount of \$250.² Applicant Exhibit 1 does not show any efforts to satisfy this debt other than to say in general that he is "reaching out to creditors for balance pay-offs." No further information was provided. This debt is not resolved.

² It is noted that in Section 26 of Item 3 Applicant states that the amount of this debt is \$25,000. However, the two credit reports in the record state the balance owed as being \$250, and that is the amount that will be used in this decision.

1.i. Applicant admitted that he owed a past-due medical debt in the amount of \$247. He stated in his Answer, "Contact will be made in an effort to satisfy the balance." Applicant Exhibit 1 does not show any further efforts to satisfy this debt other than to say in general that he is "reaching out to creditors for balance pay-offs." No further information was provided. This debt is not resolved.

1.j. Applicant admitted that he owed a past-due debt in the amount of \$464. He stated in his Answer, "Contact will be made in an effort to satisfy the balance." Applicant Exhibit 1 does not show any further efforts to satisfy this debt other than to say in general that he is "reaching out to creditors for balance pay-offs." No further information was provided. This debt is not resolved.

1.k. Applicant denied that he owed a past-due medical debt in the amount of \$352. He stated in his Answer, "A credit report has been requested. Upon receipt of the report, the charges will be disputed." Applicant Exhibit 1 does not show any evidence that Applicant took any action to dispute this debt. It is not resolved.

1.l. Applicant denied that he owed a past-due debt in the amount of \$195. He stated in his Answer, "A credit report has been requested. Upon receipt of the report, the charges will be disputed." Applicant Exhibit 1 does not show any evidence that Applicant took any action to dispute this debt. It is not resolved.

Applicant did not submit any evidence concerning the quality of his job performance. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

Policies

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 useful 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, the administrative judge applies the guidelines 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. 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.

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.

According to 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. 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 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, based on documentary evidence, had eleven delinquent accounts that he could not resolve. In addition, as of the date the SOR was issued, he had not filed his income tax return for 2009. The return was eventually filed, albeit late. 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 neither of the above mitigating conditions apply to Applicant. Applicant did resolve his tax issues, and paid off the large judgment against him. However, Applicant did not submit any information showing that he had paid, was paying, or was legitimately disputing, the debts in subparagraphs 1.e through 1.i. Even though they are relatively small debts, his failure to submit any information about them is a negative factor for security clearance purposes. It is Applicant’s responsibility to set forth his financial situation in sufficient detail to support a finding that he has “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” as required by AG ¶ 20(d). I am unable to do so in this case. Given the state of the record, I cannot find that his current financial situation is stable. I do not 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 relevant circumstances. The administrative judge should 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.

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.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. Applicant's financial irresponsibility is recent, voluntary, and occurred when he was a mature adult. Rehabilitation was not demonstrated, nor was unlikelihood of recurrence. Overall, the record evidence as described above leaves me with questions and substantial doubts as to Applicant's eligibility and suitability for a security clearance at the present time. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under the guideline for Financial Considerations.

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

Subparagraphs 1.a through 1.d:

For Applicant

Subparagraphs 1.e through 1.i:

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