



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



In the matter of:)
)
-----) ISCR Case No. 15-03548
)
Applicant for Security Clearance)

Appearances

For Government: Mary M. Foreman, Esquire, Department Counsel
For Applicant: *Pro se*

January 9, 2017

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on April 17, 2013. (Item 4.) On October 25, 2015, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F (Financial Considerations) regarding 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, with supporting documentation, on November 9, 2015, and requested a decision by an administrative judge without a hearing. (Item 2.) Department Counsel submitted the Government's written case

(FORM) to Applicant on January 21, 2016.¹ Applicant acknowledged receipt of the FORM on January 30, 2016. He was given 30 days from receipt of the FORM to submit any additional documentation. Applicant submitted additional information on February 5, 2016. Department Counsel had no objection to my considering the documents, and they are admitted collectively as Applicant Exhibit A. The case was assigned to me on April 26, 2016. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is granted.

Findings of Fact

Applicant is 36, and recently married to his second wife. 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 SOR allegations 1.a, 1.b, and 1.d. He denied 1.c. He also submitted additional information to support his request for a security clearance.

The SOR lists four delinquent debts (1.a through 1.d), totaling approximately \$42,537. The existence and amount of the debts is supported by admissions in Item 2 and its attachments, including a credit report dated October 30, 2015; Item 3 at Section 26; or by credit reports dated April 24, 2013; March 25, 2015; and October 5, 2015. (Items 5, 6, and 7.)

The current status of the debts is as follows:

1.a. Applicant admitted that he owed a collection agent \$9,056 for a past-due account with the original creditor account number starting 5422. He submitted evidence that he had reached a payment arrangement with this creditor on November 9, 2015. (Item 2 at 1, 3.) This debt is being resolved.

1.b. Applicant admitted that he owed a past-due debt on a repossessed automobile in the amount of \$22,336. He submitted documentation with his answer showing that the creditor cancelled the debt, and issued Applicant a Form 1099. (Item 2 at 2, 4-7.) Applicant also submitted documentation showing that he properly listed the

¹Department Counsel submitted seven Items in support of the SOR allegations. Item 4 is inadmissible, and will not be considered 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 2, 2013. It was never adopted by Applicant as his own statement, or otherwise certified by him to be accurate. Under Directive ¶ E3.1.20, this Report of Investigation summary is inadmissible in the absence of an authenticating witness. Given Applicant's admissions, it is also cumulative.

debt forgiveness as income on his 2013 Federal taxes. He established an installment agreement with the IRS and has paid these taxes in full. (Item 2 at 3-4, 14.) After receiving the FORM, Applicant decided that cancellation of this debt, and payment of taxes concerning it, was insufficient to show DoD that he was financially responsible. Accordingly, "I [Applicant] have reached a settlement agreement for the amount of \$10,051. I will be making monthly payments in the amount of \$837.58 for 11 months to satisfy this debt completely. I made my first payment on February 4, 2016." (Applicant Exhibit A at 2.) This debt is resolved.

1.c. Applicant denied that he owed this past-due debt to a credit union. He stated that it is the same account as that set forth in allegation 1.a, above. The credit report dated October 30, 2015, shows this debt with the same account number starting 5422. (Item 2.) Applicant has submitted sufficient evidence to show that this debt is the same as the debt set forth in 1.a, which is being resolved.

1.d. Applicant admitted that he owed a past-due credit card debt in the amount of \$2,817. He submitted documentation with his answer showing that the creditor cancelled the debt, and issued Applicant a Form 1099. Applicant also submitted documentation showing that he properly listed the debt forgiveness as income on his 2014 Federal taxes. (Item 2 at 2, 8-10.) After receiving the FORM, Applicant decided that cancellation of this debt, and properly listing it as income on his income tax return, was insufficient to show DoD that he was financially responsible. Accordingly, he has been in contact with the successor creditor to see what else they may want him to do to resolve this debt. (Applicant Exhibit A at 3-4.) This debt is resolved.

Applicant's financial problems were the result of several issues. First, while serving in the Navy, he got divorced from his first wife in 2008 and assumed many of the debts from the marriage. Second, after being honorably discharged in May 2008, he was laid off from civilian work twice - the first time from February to April 2009, then from July 2009 to September 2010. In September 2010, in order to find a permanent job, he moved across the country, but was required to repay his employer an \$8,000 relocation allowance. Deductions from his pay lasted until January 2012. Third, though he filed his tax returns on time, he owed additional taxes for tax years 2008, 2011, and 2013.² He has successfully repaid all of his tax debts. (Applicant Exhibit A.)

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.

²The 2013 tax issue was due to the additional income from the cancellation of debt discussed under 1.b, above.

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 three delinquent accounts that he formerly could not resolve. 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. AG ¶ 20(a) states that it may be mitigating 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." AG ¶ 20(b) states that it can be mitigating when, "the conditions that resulted in the financial problem were largely beyond the person's control (e.g, loss of employment, . . . , or a death, divorce, or separation), and the individual acted responsibly under the circumstances." Applicant went through several years of financial difficulty, brought about by his inability to find permanent work, his divorce, and the impact of the debt in 1.b being cancelled by the creditor in 2013, with tax implications for Applicant.

The record shows that Applicant has not ignored any of his financial obligations. He has worked diligently to resolve them over several years, to the extent his finances allow. This includes approaching the creditor in 1.b to attempt to resolve the debt after receiving the FORM, even though that debt had been cancelled, Applicant appropriately applied the amount of the cancellation to his taxes as income, and paid taxes on that amount. Regarding 1.a, he has made a payment arrangement with the creditor. I find that Applicant has "initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," as required by AG ¶ 20(d). I also find that "there are clear indications that the problem is being resolved or is under control," as required by AG ¶ 20(c).

Applicant has acted in a way that shows good judgment, beginning work long before issuance of the SOR to resolve his financial 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.”³ In addition, “There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.”⁴ Applicant has done that. All of the cited mitigating conditions apply to the facts of 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 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 in the past, almost all have been resolved, and he has the knowledge and ability to avoid such problems in the future. He is working in good faith to resolve the remaining debt.

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

³ISCR 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)).

⁴ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (internal citations omitted).

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.d: 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