



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-04799

Appearances

For Government: Andrew Henderson, Esquire, Department Counsel

For Applicant: *Pro se*

February 13, 2017

Decision

ROSS, Wilford H., Administrative Judge:

Statement of the Case

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on July 2, 2014. (Government Exhibit 1.) On March 11, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, 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 for Determining Eligibility for Access to Classified Information*, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing (Answer) on April 2, 2016, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on

May 5, 2016. The case was assigned to me on May 9, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on May 11, 2016. I convened the hearing as scheduled on June 28, 2016. The Government offered Government Exhibits 1 through 4, which were admitted without objection. Applicant testified on his own behalf, and submitted Applicant Exhibits A through D, which were also admitted without objection. I granted Applicant's request to leave the record open until July 15, 2016, to permit him to submit additional evidence. On July 13, 2016, he submitted Applicant Exhibit E. Department Counsel had no objection and the exhibit was admitted into the record, which closed as scheduled. DOHA received the transcript of the hearing (Tr.) on July 8, 2016.

Findings of Fact

Applicant is a 34-year-old employee of a defense contractor, and is applying for a security clearance in connection with this employment. He has two children from a prior relationship. The children live with their mother and Applicant provides child support. (Government Exhibit 1 at Section 18; Tr. 29-30.)

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. (Answer; Tr. 10.) He submitted additional evidence to support his request for access to classified information.

The SOR lists five delinquent debts, totaling approximately \$46,913. The existence and amount of the debts is supported by credit reports submitted by the Government dated July 15, 2014; January 20, 2016; and May 3, 2016. (Government Exhibits 2, 3, and 4.) In addition, Applicant submitted credit reports from each of the three credit-reporting services, all dated March 18, 2016. (Applicant Exhibits B, C, and D.)

The current status of the debts is as follows:

1.a. Applicant admitted that he owed a collection agent \$8,489 for a past-due student loan debt. In his Answer and at the hearing, Applicant stated that he believed this account was a duplicate with the accounts in allegations 1.b and 1.c. (Tr. 26-28, 35-40.)

After the hearing, Applicant did additional research and discovered that the debt in 1.b is a separate debt. However, it does appear that the debts in 1.a and 1.c are the same debt. Applicant Exhibit E at 21 is the latest payment letter from the creditor stated in allegation 1.a. In that letter the creditor in 1.c is specifically cited as being the claimant. The document goes on to show, as Applicant had testified, that he has \$350 taken out of his bank account every month. He has been making payments since at least 2014, as

shown in Government Exhibit 1 at page 43. As of July 6, 2016, the balance had been reduced to \$6,588.39. This debt is being resolved.

1.b. Applicant admitted he owed Bank B \$14,595 for a past-due student loan. As stated, Applicant believed that this was the same debt as that set forth in 1.a and 1.c, but he now believes he was mistaken.

In Applicant Exhibit E at page 3 Applicant writes:

I called the number listed on the credit report for this item, which directed me to [Loan Servicer], which is the company that now manages [Bank B] student loans. I made multiple attempts to make contact (phone and email), but their systems were down for maintenance. I finally had an email get through.

The response from Loan Servicer is found at page 17 of Applicant Exhibit E. In it, the Loan Servicer says that Applicant's Bank B loan was not serviced by them, but they were unable to provide information as to who is the current servicer. Applicant states in Applicant Exhibit E at 3, "I continue diligently to find a contact that can provide me with information for the loan that was charged off, so that I may rectify the issue." Based on the available information the actual status of this debt is uncertain, but it appears to be unresolved.

1.c. Applicant admitted that he owed a past-due student loan that was reported by a different collection agency in the amount of \$16,574. As stated, this debt is the same as that set forth in 1.a., is being resolved, and has been reduced to \$6,588.39.

1.d. Applicant admitted owing a finance company \$4,497 on an unpaid judgment. Applicant testified that he thought this was the same debt as that in 1.e, discussed below. (Tr. 22-26.)

In his e-QIP, which was prepared two years before the hearing, Applicant stated that this was a different debt from that in 1.e, and that he had paid off the judgment. In addition, Applicant did research after the hearing and confirmed that this was a different debt than 1.e. He provided copies of bank documents showing that he had paid a law firm \$5,420 in preauthorized monthly installments from October 2009 through October 2010. Applicant also attempted to contact the law firm by email, but was unsuccessful. Based on all available information, I find that this debt is resolved. (Government Exhibit 1 at 39-40; Applicant Exhibit E at 3-16, 18, 22-24.)

1.e. Applicant admitted owing a bank \$2,398 for a charged-off account. As stated, Applicant testified that he thought this was the same debt as 1.d, above. In fact, Applicant had previously stated in his 2014 e-QIP that he had paid the debt off, and provided a statement from the collection agency confirming that fact. This debt is resolved. (Government Exhibit 1 at 41-42; Applicant Exhibit E at 3, 19-20.)

Applicant testified about how he wound up in financial trouble. He said, "With the payments, it was a combination of having kids, freaking out about that, dealing with school and dealing with work and just trying to balance all those is essentially new to adult life." (Tr. 28-29, 32-33.)

With regard to his student loans, the record shows that Applicant had government-provided student loans as well. They have been consolidated and, since March 2014, he has been consistently paying on this account without missing any payments. (Government Exhibit 4 at 3; Applicant Exhibit C at 2-3.)

Applicant's current financial situation is stable. He is able to maintain his current debts, pay child support, and make the agreed payments on his student loans. (Tr. 44-45.)

Mitigation

A letter of recommendation was submitted by Applicant's supervisor. This person has known Applicant for two years. The writer describes Applicant as an "exemplary employee." He further states, "[Applicant's] unwavering commitment and trustworthiness is exactly the type of person the United States Government should entrust privileged information to." (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 (DCs) and mitigating conditions (MCs), which are to be used 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 overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), 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. 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 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. 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.” Section 7 of Executive Order 10865 provides: “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.”

A person applying for access to classified information seeks to enter 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.

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

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant, based on documentary and testimonial evidence, had four delinquent accounts that he formerly could not resolve. As stated, allegations 1.a and 1.c are the same debt. 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. His financial problems began when he and his girlfriend started a family before they were financially ready. They have since separated, and he has been consistently making child support payments for several years. In addition, since 2014 he has been making consistent monthly payments on two different student loans, one of which is listed in the SOR and one that is not. He has also paid off the debts in SOR 1.d and 1.e. Applicant showed evidence that he has been attempting to resolve the ownership of the debt in 1.b, so that he can pay it. 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 shown 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).

In evaluating Guideline F cases, the DOHA Appeal Board has previously noted that the concept of “meaningful track record” necessarily includes evidence of actual debt reduction through payment of debts.” However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has “established a plan to resolve his financial problems and taken significant actions to implement that plan.” The administrative judge can reasonably consider the entirety of an applicant’s financial situation and his actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶

E2.2(a) (“Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”) 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.¹ That is the situation here, where Applicant has been consistently paying off a student loan not listed in the SOR. Applicant has acted in a way that shows good judgment, beginning before issuance of the SOR to resolve his financial situation. All of these 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 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 pertinent facts and circumstances surrounding this case. I specifically considered the current status of Applicant’s debts. I find that there is little or no “potential for pressure, coercion, exploitation, or duress” as set forth in AG ¶ 2(a)(8). In addition, Applicant’s attitude about paying his debt shows permanent behavioral changes under AG ¶ 2(a)(6) and there is little likelihood of continuation or recurrence under AG ¶ 2(a)(9). Using the whole-person standard, Applicant has mitigated the security significance of his financial considerations and is eligible for a security clearance.

¹ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted.)

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.e: 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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS
Administrative Judge