



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



In the matter of:

ISCR Case No. 15-05561

Applicant for Security Clearance

Appearances

For Government: Andrew Henderson, Esq., Department Counsel

For Applicant: *Pro se*

June 1, 2017

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of the Case

On January 13, 2015, Applicant submitted a signed Electronic Questionnaires for Investigations Processing (e-QIP.) On April 19, 2016, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F for Financial Considerations, and J for Criminal Conduct. The action was taken under Executive Order (EO) 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 September 1, 2006.

Applicant answered the SOR on May 31, 2016 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on August 17, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 31, 2016, scheduling the hearing for September 19, 2016. The hearing was convened as scheduled. The Government offered Exhibits (GXs) 1 through 6, which were admitted without objection. Despite the undersigned keeping the record open until

October 19, 2016, to enable Applicant to submit documentation in support of his contentions, Applicant offered no exhibits. However, Applicant did testify on his own behalf. The record was closed October 19, 2016. DOHA received the transcript of the hearing (TR) on September 28, 2016.

Findings of Fact

Applicant is 33 years old. He has been employed by a government contractor as a “DRIVER” for four years. (GX 1 at pages 5 and 10.) He does not hold a security clearance. (GX 1 at pages 29~30.) He is divorced and avers he has no children on his e-QIP. (GX at pages 17~18.)¹

Under Guideline F of the SOR, Applicant was alleged to be delinquent on 39 debts, in a total exceeding \$30,000. Applicant denied the SOR allegations in ¶¶ 1.a.~1.c., 1.g.~1.l., 1.n.~1.s., 1.u.~1.x., and 1.g.~1.gg, but admitted the rest. His debts are identified in the credit reports entered into evidence. (GXs 2 and 3.) Under Guideline J, as to the alleged criminal conduct, Applicant admits all the allegations, except for ¶¶ 2.a. and 2.e., with explanations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Guideline F – Financial Considerations

Applicant attributes his alleged financial delinquencies (and to the admitted criminal conduct, which will be examined separately), to being “young and irresponsible.” (TR at page 38 lines 6~23.) He is also taking “a financial education class.” (TR at page 39 lines 17~25.)

1.a.~1.c. Applicant denies these three alleged past-due debts, totaling about \$1,356, and avers that they have been paid. (TR at page 27 line 20 to page 29 line 5.) As these debts appear on the Government’s most recent March 2016, credit report (CR); and as Applicant has offered no documentation in support of his averment, I find that these debts are still past due. (GX 3 at page 2.)

1.d. and 1.e. Applicant admits these two alleged past-due debts, totaling about \$704, and again avers that they have been paid. (TR at page 29 lines 6~23.) As these debts appear on the Government’s most recent March 2016 CR; and as Applicant has offered no documentation in support of his averment, I again find that these debts are still past due. (GX 3 at page 6.)

1.f. Applicant denies this alleged past-due “CHILD SUPPORT” debt, totaling about \$8,865, and avers that was paid “roughly six months ago.” (TR at page 29 line 24 to page 30 line 9.) As this debt appears on the Government’s most recent March 2016 CR; and as Applicant has offered no documentation in support of his averment, I find that this debts is still past due. (GX 3 at page 7.)

¹ This averment is suspect as allegation 1.f., which Applicant admits, involves “CHILD SUPPORT.”

1.g. and 1.h. Applicant denies these two alleged past-due debts, totaling about \$118, and avers that they have been paid. (TR at page 30 lines 10~18.) As these debts appear on the Government's most recent March 2016 CR; and as Applicant has offered no documentation in support of his averment, I find that these debts are still past due. (GX 3 at pages 7 and 8.)

1.i. Applicant denies this alleged past-due debt, totaling about \$1,886, and avers that it has been paid. (TR at page 30 line 19 to page 31 line 3, and at page 41 line 23 to page 42 line 9.) As this debt appears on the Government's January 2015 CR; and as Applicant has offered no documentation in support of his averment, I find that this debt is still past due. (GX 2 at page 3.)

1.j. Applicant denies this alleged past-due debt, totaling about \$9,404, and avers that he is "still trying to resolve" it. (TR at page 31 line 4 to page 32 line 4.) As this debt appears on the Government's January 2015 CR; and as Applicant has offered no documentation in support of his averment, I find that this debt is still past due. (GX 2 at page 5.)

1.k. and 1.l. Applicant denies these two alleged past-due debts, totaling about \$3,655, and avers that they have been paid. (TR at page 32 lines 5~24.) As these debts appear on the Government's January 2015 CR; and as Applicant has offered no documentation in support of his averment, I find that these debts are still past due. (GX 2 at page 5.)

1.m. Applicant admits this alleged past-due debt, totaling about \$737, and avers that it has been paid. (TR at page 32 line 25 to page 33 line 7.) As this debt appears on the Government's January 2015 CR; and as Applicant has offered no documentation in support of his averment, I find that this debt is still past due. (GX 2 at page 6.)

1.n.~1.r. Applicant denies these five alleged past-due debts, totaling about \$2,227, and avers that they have been paid. (TR at page 33 line 8 to page 35 line 12.) As these debts appear on the Government's January 2015 CR; and as Applicant has offered no documentation in support of his averment, I find that these debts are still past due. (GX 2 at pages 6 and 7.)

1.t. Applicant admits this alleged past-due debt, totaling about \$199, and avers that it has been paid. (TR at page 35 lines 3~16.) As this debt appears on the Government's January 2015 CR; and as Applicant has offered no documentation in support of his averment, I find that this debt is still past due. (GX 2 at page 7.)

1.u.~1.x. Applicant denies these four alleged past-due debts, totaling about \$662, and avers that they have been paid or are in error. (TR at page 35 line 17 to page 36 line 16.) As these debts appear on the Government's January 2015 CR; and as Applicant has offered no documentation in support of his averment, I find that these debts are still past due. (GX 2 at pages 7 and 8.)

1.y. Applicant admits this alleged past-due debt, totaling about \$105, and avers that it has been paid. (TR at page 36 lines 17~19.) As this debt appears on the Government's January 2015 CR; and as Applicant has offered no documentation in support of his averment, I find that this debt is still past due. (GX 2 at page 8.)

1.z. Applicant denies this alleged past-due debt, totaling about \$80, and avers that it has been paid. (TR at page 36 lines 20~23.) As this debt appears on the Government's January 2015 CR; and as Applicant has offered no documentation in support of his averment, I find that this debt is still past due. (GX 2 at page 9.)

1.aa.~1.ee. Applicant denies these five alleged past-due debts, to the same creditor as the result of writing "bad checks," totaling about \$317, and avers that they have been settled. (TR at page 36 line 24 to page 37 line 9.) As these debts appear on the Government's January 2015 CR; and as Applicant has offered no documentation in support of his averment, I find that these debts are still past due. (GX 2 at pages 9 and 10.)

1.ff. and 1.gg. Applicant denies these two alleged past-due debts, totaling about \$99, and avers that they have been paid. (TR at page 37 lines 120~19) As these debts appear on the Government's January 2015 CR; and as Applicant has offered no documentation in support of his averment, I find that these debts are still past due. (GX 2 at page 10.)

1.hh.~1.mm. Applicant admits these six alleged past-due debts, to the same creditor, totaling about \$192, and avers that he is "waiting for an itemized bill." (TR at page 37 line 20 to page 38 line 5.) As these debts appear on the Government's January 2015 CR; and as Applicant has offered no documentation in support of his averment, I find that these debts are still past due. (GX 2 at pages 10 and 11.)

Guideline J – Criminal Conduct

Under Guideline J the SOR alleges Applicant committed 12 crimes from October of 2005 until September of 2012. Applicant admits to all, except for SOR allegations 2.a. and 2.e.

2.a., 2.c. and 2.e. In October of 2005, Applicant was arrested and charged with Check Forgery, a misdemeanor, in State A. (TR at page 17 line 19 to page 19 line 4.) He forged a "friend's" name on that person's check in the amount of "around \$2,500." (*Id.*) Applicant kept missing his court date; and in May of 2008, he was rearrested and the offense was raised to the level of a felony. (TR at page 20 line 12 to page 22 line 8.) Applicant then took a job in State B, where he was arrested in February of 2009 on a warrant from State A as a Fugitive from Justice. (TR at page 42 line 12 to page 43 line 5.) The Forgery charge was again reduced to a misdemeanor, and Applicant was fined, and ordered to pay restitution. (GXs 4 and 5.)

2.b., 2.d. and 2.k. In March of 2008, Applicant was arrested and charged with Theft by Check, a misdemeanor, in State A. (TR at page 19 line 15 to page 20 line 11.)

He bounced a check for “a couple of hundred dollars.” (*Id.*) Again, Applicant kept missing his court date; and in January of 2009, he was rearrested for the Theft. (TR at page 20 line 12 to page 22 line 8.) In June of 2010, Applicant was also arrested in State B, on a warrant from State A, as a Fugitive from Justice as to the Theft. (TR at page 42 line 12 to page 43 line 5.) Applicant was fined, and ordered to pay restitution. (GXs 4 and 5.)

2.f.~2.j. From April of 2009 to March 2010, Applicant admits that he received five traffic citations, all for Driving with a Suspended License, and on three of those five times, also for not having Liability Insurance. (TR at page 22 lines 9~25.)

2.k. This allegation has been discussed, above.

2.l. Finally, in September of 2012, Applicant admits that he was arrested and charged with Theft for a second time. (TR at page 23 line 22 to page 24 line 9.) He was sentenced to 30 days in jail, and placed on probation for two years. (*Id.*)

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the 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 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, administrative judges apply 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 “[a]ny 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.

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.” The applicant has the ultimate burden of persuasion to obtain 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.

Section 7 of EO 10865 provides that adverse decisions shall be “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

Guideline F - Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18, as follows:

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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

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

Applicant has a history of financial indebtedness documented by the credit reports in evidence, which substantiate all allegations. He failed to provide proof that he resolved any of the delinquencies. The evidence raises security concerns under both disqualifying conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (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's financial problems are ongoing. He has a long history of delinquencies. He has not demonstrated that future financial problems are unlikely. Mitigation under AG ¶ 20(a) has not been established.

Applicant avers that he is taking a "financial education class," but it is unclear as to whether this class will provide Applicant with any financial lessons on avoiding debt in the future. Further, there are no clear indications that his financial problems are being resolved or are under control. Mitigation under AG ¶¶ 20(b), (c), (d) or (e) has not been established.

Guideline J - Criminal Conduct

The security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable:

- (a) a single serious crime or multiple lesser offenses; and
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted; and

Applicant has a recent history of multiple criminal arrests and convictions that stretch from 2005 to 2012. These offenses give rise to concerns about Applicant's judgment and reliability, because of both the nature and the number of criminal offenses. The aforementioned disqualifying conditions have been established.

Four Criminal Conduct mitigating conditions under AG ¶ 32 are potentially applicable:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (c) evidence that the person did not commit the offense; and
- (d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

Applicant's criminal past continues to cast doubt on his trustworthiness and judgment. His offenses are recent and he failed to present evidence to show that similar criminal conduct is unlikely to recur. AG ¶ 32(a) does not provide full mitigation.

Applicant failed to present evidence to show that he was pressured into criminal acts. He admitted each of the allegations. Neither AG ¶¶ 32(b) nor 32(c) provide mitigation.

Applicant failed to introduce evidence of rehabilitation. He presented nothing to show a good employment record, or constructive community involvement. AG ¶ 32(d) does not provide full mitigation.

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. I have incorporated my comments under Guidelines F and J in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Financial Considerations and Criminal Conduct security concerns.

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
Subparagraph 1.a.~mm.	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a.~l.	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.

Richard A. Cefola
Administrative Judge