



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-06532

Appearances

For Government: Andrew Henderson, Esquire, Department Counsel

For Applicant: *Pro se*

November 30, 2016

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP), on June 21, 2012. (Government Exhibit 1.) He submitted a subsequent one on October 27, 2015. (Applicant Exhibit E.) On May 1, 2016, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct) concerning 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 on June 3, 2016 (Answer), and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on July 14, 2016. This case was assigned to me on July 19, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 8, 2016. I convened the hearing as scheduled on September 1, 2016. The Government offered Government Exhibits 1 through 6, which were admitted without objection. Applicant testified on his own behalf, and submitted Applicant Exhibits A through E, which were

also admitted without objection. Applicant asked that the record remain open for the receipt of additional documents. Applicant submitted Applicant Exhibit F on September 14, 2016. The exhibit was admitted without objection. DOHA received the transcript of the hearing (Tr.) on September 12, 2016. The record closed on September 14, 2016. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

Applicant is 45, and separated from his third wife. He retired after a successful career in the United States Marine Corps. (Applicant Exhibit F at 8; Tr. 29-30.) 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 denied allegations 1.a, 1.c, and 1.d in the SOR. He admitted the remaining two allegations (1.b and 1.e). He also submitted additional information to support his request for a security clearance.

Applicant was married to his second wife from 2000 through 2010. According to Applicant, most of the financial issues were due to his second wife acquiring debts without his knowledge while he was deployed overseas in the Marine Corps. His second wife signed a notarized statement stating that she did mislead Applicant concerning acquisition of various debts, the fact that she was paying their debts during the marriage, and that she also mislead him about her taking responsibility for various debts after their divorce. (Applicant Exhibit B; Tr. 26-28, 52-54.)¹

The SOR lists two foreclosures as being of security significance (SOR 1.a and 1.d). It also lists two delinquent debts, totaling approximately \$16,056 (SOR 1.b and 1.c). The existence and amount of the debts is supported by credit reports dated June 26, 2012; July 10, 2015; and July 13, 2016. (Government Exhibits 4, 5, and 6.) Applicant submitted his own credit report dated June 1, 2016. (Applicant Exhibit A.)

The current status of the debts is as follows:

1.a. Applicant denied that he had owed a past-due mortgage in the amount of \$15,954. The property was also alleged to be in foreclosure. According to Applicant, this

¹Applicant submitted a February 13, 2012 statement signed by Applicant and his second wife that allegedly divided the marital debts in their divorce. (Applicant Exhibit C.) However, Applicant admitted that the statement had never been presented to the court and was not part of their divorce decree. (Tr. 43-45.) Accordingly, it has no legal force and is not binding.

property became delinquent because of his second wife's inaction in paying the mortgage for several months. The house was eventually foreclosed on and sold in approximately 2010. Applicant told a Government investigator in 2012 that he had to pay additional taxes due to the foreclosure sale. (Government Exhibit 2; Tr. 34-42.) This debt does not appear on the most recent credit reports in the record. (Government Exhibit 6; Applicant Exhibit A.) Based on all the available information, I find this debt is resolved by foreclosure.

1.b. Applicant admitted that he owed a credit union \$12,819 for a past-due loan. Applicant maintains, however, that his second wife is responsible for this debt, which is for a travel trailer that was eventually repossessed. Applicant Exhibit C shows that the second wife allegedly agreed to make payments on this debt, but according to Applicant she did not do so. As stated, this agreement was not part of their divorce decree and not enforceable in court. However, Applicant argues he relied on this agreement in not attempting to resolve this debt himself. (Government Exhibit 6; Applicant Exhibits A, B, and C; Tr. 42-44.) This debt is not resolved.

1.c. Applicant denied that he owed a past-due credit card debt in the amount of \$3,237. Applicant has continually stated that his second wife opened this account without his knowledge. The debt appears on the 2015 credit report, but not the two reports from 2016. (Government Exhibits 2, 5, and 6; Applicant Exhibits A and B; Tr. 45-46.) This debt is not resolved.

1.d. Applicant denied that he owed \$20,294 for the second mortgage on the property discussed under 1.a, above. Applicant had no knowledge as to the current status of this debt, but he believed it to have been resolved when the house was foreclosed upon and sold. The debt is not shown on the most recent credit reports in the record. (Government Exhibits 2 and 6; Applicant Exhibits A and C; Tr. 46-47, 57-59.) This debt is not resolved.

1.e. Applicant admitted that he had filed for Chapter 7 bankruptcy relief in 2000. He filed this bankruptcy on his own after his first wife had filed a separate bankruptcy. They were separated at the time, and he wished to protect himself from being made solely liable for their marital debts. He was granted a discharge in February 2001. (Government Exhibit 3; Tr. 47-52.) This bankruptcy has no current security significance.

Applicant states that his current financial situation is stable. He is able to pay his monthly debts. (Applicant Exhibit A; Tr. 28-29.)

Paragraph 2 (Guideline E - Personal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has made false statements to the Department of Defense during the clearance screening process. Applicant denied the single allegation under this paragraph.

Applicant filled out an e-QIP on June 21, 2012. (Government Exhibit 1.) Section 26 of the e-QIP concerns Applicant's financial record. One of the subsections under that section is entitled, "Delinquency Involving Routine Accounts." Applicant was asked whether, in the past seven years, he had defaulted on a loan, had bills or debts turned over to a collection agency, had a credit card suspended, whether he had been 120 days delinquent on a debt, or whether he was currently 120 days delinquent on a debt. Applicant responded, "No," to this question. This was a false response. Applicant had delinquent debts that were in collection, and a property in foreclosure, as set forth under Paragraph 1, above, which fit the question.

Applicant stated that at that time in 2012 he did not know the true extent of his financial record because of the wrongful conduct of his second wife. However, Applicant Exhibit C, the alleged agreement between Applicant and his second wife, was signed by them on February 13, 2012, several months before Applicant filled out Government Exhibit 1. It sets forth some of the debts of concern, and shows that he had knowledge of them. He also stated that he simply did not put sufficient effort into filling out that e-QIP. He went on to state that Applicant Exhibit E was filled out in greater detail in 2015, after pulling his credit reports. However, in Section 26 of that e-QIP Applicant discussed only the first mortgage debt set forth under 1.a, above. In particular, he did not discuss the debt in 1.b, which is found on every credit report. Applicant maintains that his second wife agreed to pay that debt and he is not responsible for it.

Mitigation

As stated, Applicant had a successful career in the Marine Corps. He submitted three letters of recommendation from former Marines who served with him. He is described as someone who is "dedicated," and "trusted." All of the writers recommend him for a position of trust. (Applicant Exhibit F at 5-7.)

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.

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, based on documentary and testimonial evidence, had two delinquent accounts that he formerly could not resolve. There is also evidence of one foreclosure, involving two mortgages, on his record. 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 may apply to Applicant, but are not controlling. There is some evidence that Applicant’s financial problems began when his second wife established various accounts in his name without his consent. The problem is that Applicant was, and is, very vague about his past financial issues. During the hearing he was often confused about his past debt situation, particularly with regard to the foreclosure in 1.d, and the \$12,000 debt in 1.b. He seemed to have the attitude that once he got his second wife to agree to handle a debt, he had no further responsibility for it. That attitude is, of course, incorrect.

It is Applicant’s responsibility to set forth his financial situation in a sufficient way so that I can make 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.

Paragraph 2 (Guideline E - Personal Conduct)

The security concern relating to Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty or unwillingness to comply with rules or regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

I have examined the disqualifying conditions under AG ¶ 16 and especially considered the following:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant maintains that he did not intentionally falsify his 2012 e-QIP about his financial situation. Rather, he states that any falsification was unintentional and the result of his doing a poor job on the questionnaire. The problem is that his 2015 e-QIP, while better, was still far from complete in giving the Government an accurate picture of his financial situation. At the very least, it is obvious that Applicant read Section 26 in a way that meant he did not have to talk about his marital debts, which he knew or should have known were delinquent. Under the particular facts of this case, I find that his answers were intentionally false. I have reviewed the potential mitigating conditions set forth in AG ¶ 17, and find none of them apply to the facts of this case. In particular, I have examined the span of time, about four years, since the falsification. There is insufficient evidence that Applicant currently shows good judgment or is trustworthy and reliable. Paragraph 2 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 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 Guidelines F and E, above, applies here as well. Applicant's financial situation is still murky. In addition, he has not been forthcoming to the Government regarding his financial situation. Based on the record, I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I also cannot find that there is little

to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); or that there is a low likelihood of recurrence (AG ¶ 2(a)(9)).

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 has not mitigated the security concerns arising from his financial situation and personal conduct. Accordingly, the evidence supports denying 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:	AGAINST APPLICANT
Subparagraphs 1.a through 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against 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 denied.

WILFORD H. ROSS
Administrative Judge