



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-06615

Appearances

For Government: Andrew Henderson, Esquire, Department Counsel
For Applicant: *Pro se*

April 27, 2017

Decision

ROSS, Wilford H., Administrative Judge:

Statement of the Case

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on May 21, 2013. (Government Exhibit 1.) On May 9, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F. 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 June 7, 2016, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on July 28, 2016. The case was assigned to me on August 2, 2016. The Defense Office

of Hearings and Appeals (DOHA) issued a Notice of Hearing on August 9, 2016. I convened the hearing as scheduled on September 16, 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 F, which were also admitted without objection. I granted Applicant's request to leave the record open until October 14, 2016, to permit him to submit additional evidence. Applicant elected not to submit any additional evidence. DOHA received the transcript of the hearing (Tr.) on September 26, 2016.

Findings of Fact

Applicant is a 53-year-old employee of a defense contractor, and currently holds a security clearance in connection with this employment. He was married, but he and his wife were divorced in 2005. He received an Honorable Discharge from the Marine Corps. (Government Exhibit 1 at Sections 15, 17.)

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 allegations 1.f and 1.g in the SOR under this Paragraph. He denied the remaining allegations (1.a to 1.e). (Answer.) Applicant submitted additional evidence to support his request for access to classified information.

The SOR lists two state tax liens, totaling approximately \$39,181. (SOR 1.a and 1.d.) The SOR also lists a Federal tax lien in the amount of \$25,739. (SOR 1.b.) In addition, the SOR lists three past-due consumer debts, which total \$1,497. (SOR 1.e, 1.f, and 1.g.) The existence and amount of the debts is supported by credit reports submitted by the Government dated April 21, 2015; and July 28, 2016. (Government Exhibits 5, and 6.) In addition, Applicant submitted a credit report dated August 8, 2016. (Applicant Exhibit A.)¹ Finally, Applicant is alleged to have failed to file his Federal income tax returns for tax years 2006, 2007, and 2008. (SOR 1.c.)

Applicant stated that he did not file his Federal and state tax returns for 2006, 2007, and 2008 in a timely manner because he did not have the money at that time to pay his taxes. He went on to explain that the cause of his financial problems in those years was connected to a failed business partnership, where his partner absconded with Applicant's money, as well as debts related to his divorce in 2005. Applicant testified that he has filed tax returns for those three years, and has filed all of his subsequent tax returns in a timely fashion. (Tr. 20-30, 48.)²

¹ See Government Exhibits 3, and 4.

² See Applicant Exhibit B.

Concerning his unpaid Federal taxes, the IRS filed a lien against Applicant in the amount of \$63,188.60 on December 28, 2010, concerning tax years 2006, 2007, and 2008. This lien included the amount in SOR 1.b. Applicant worked overtime at his employment, had his tax refunds applied to the back taxes, and resolved all of these liens, which is shown by a Release of Tax Lien from the IRS dated March 25, 2015, and the most recent credit report in the record. (Applicant Exhibits A and C; Tr. 32-34, 38-41.)

As stated, Applicant owed his state taxing authority \$39,181 in back taxes for the 2006, 2007, and 2008 tax years. His state taxing authority filed liens against Applicant in 2011 and 2012. The taxing authority also attached Applicant's wages, and he negotiated a payment plan with them. Once again, Applicant worked overtime at his employment, had his tax refunds applied to his back taxes, and successfully paid off these liens, which were released in 2015. He submitted documentation from the taxing authority dated August 17, 2015, showing that he had no taxes due from tax year 2006 through tax year 2014. (Government Exhibits 3 and 4; Applicant Exhibits A and B; Tr. 32-34, 38-41.)

It is alleged in SOR 1.e that Applicant is indebted to a creditor for a past-due debt in the amount of \$723. Applicant submitted documentation showing that he paid this debt in full in February 2015 to a collection agency. It is resolved. (Applicant Exhibit D; Tr. 50.)

It is alleged in SOR 1.f that Applicant is indebted to a time share company for a charged-off account in the amount of \$419. Applicant testified that he contacted the creditor in 2015 and, because they had already charged off the debt, they were not willing to allow Applicant to pay the debt off. (Answer; Tr. 50.)

Finally, it is alleged that Applicant owed a bank \$355 for a past-due debt. In his Answer Applicant stated, "I can't confirm or deny it is paid. I'm waiting for a response from [the bank]." He was unable to provide any further information during the hearing. However, the credit reports in the record show that the original bank sold the debt to another lender, and closed the account in approximately 2011. The credit reports go on to show that a collection agency purchased a debt from this bank in the approximate amount of \$449 before May 2012. The reports further show that Applicant paid this debt in full for less than full balance in approximately February 2015. This corresponds to the time Applicant paid the debt in SOR 1.e, and it was also the year his tax liens were released. Based on all of the available evidence, I find this debt has been resolved. (Government Exhibits 5 and 6; Applicant Exhibit A; 50-52.)

Applicant's current financial situation is stable. He submitted documents showing that he has sufficient income every month, as well as savings and investments. Applicant is able to maintain his current debts, as shown by his credit report. (Applicant Exhibits A, E, and F; Tr. 43, 52-53.)

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, three apply to the facts found in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant, based on documentary and testimonial evidence, had three delinquent accounts, and state and Federal tax liens, that he formerly could not resolve. He also admitted not filing in a timely fashion his 2006, 2007, and 2008 income tax returns. 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 got divorced in 2005, and then his business partner embezzled money from Applicant, leaving him in a financial hole. Applicant admittedly did not file his tax returns in a timely fashion for those years, because he could not afford to pay the taxes. This was foolish on his part, and has been rectified. He stated that he has filed all of his subsequent tax returns in a timely fashion, and paid

all assessed late-filing penalties and interest, for the years he missed. In addition, after the Federal and state taxing authorities began to file liens and levy on his salary, Applicant worked overtime and made payment arrangements to pay these debts off in as short a period as possible. The evidence shows that, in the span of about two years, Applicant paid approximately \$128,108 in back taxes. With regard to the three small consumer debts, Applicant provided evidence that he paid two, and that he was only unable to pay the third because the creditor had written it off and refused to accept payment.

Based on the particular facts of this case, I find that Applicant 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). Applicant has acted in a way that shows good judgment, resolving his financial situation through working hard and paying well over \$100,000 in back taxes and other debts over a three-year period, which has given him a fresh start. All of the stated 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. Applicant’s current financial situation is stable, and he has resolved all but a miniscule percentage of his once large past-due indebtedness. 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 current financial status 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.

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.g:

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