



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-06782

Appearances

For Government:
Aubrey De Angelis, Esquire, Department Counsel

For Applicant:
Pro se

September 14, 2017

Decision

ROSS, Wilford H., Administrative Judge:

Statement of the Case

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on April 1, 2015. (Government Exhibit 1.) On May 23, 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, 2006.¹

Applicant answered the SOR in writing (Answer) on June 27, 2016, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on August 9, 2016. The case was assigned to me on August 17, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on November 21, 2016. I convened the hearing as scheduled on January 25, 2017.

The Government offered Government Exhibits 1 through 5, which were admitted without objection. Applicant offered Applicant Exhibits A through D, which were admitted without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on February 3, 2017. Applicant requested that the record remain open for the receipt of additional exhibits. He submitted Applicant Exhibit E, which was admitted without objection, and the record closed.

Findings of Fact

Applicant is 43 years old, and married with three children. He is seeking to obtain national security eligibility for a security clearance.

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has a history of having past-due debts, including taxes. Therefore he is potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds.

In his Answer, Applicant admitted allegations 1.b, 1.c, 1.d, and 1.f, with explanations. He denied allegations 1.a, 1.e, and 1.g. He also submitted additional evidence to support his request for a finding of national security eligibility.

The SOR alleges that Applicant owes \$23,405 in past-due debts and taxes. Support for the existence and amounts of these debts is found in Applicant's Answer, and other admissions. The debts are also set forth in credit reports concerning Applicant dated April 25, 2015; August 9, 2016; and January 18, 2017. (Applicant Exhibits 1, 2, 3, 4, and 5.)

Applicant's financial problems began in approximately 2011, when he left a well-paying job. He was unemployed or underemployed for the next few years, until he began his current job in March 2015. Once he was gainfully employed full-time, Applicant began

¹ I considered the previous Adjudicative Guidelines, effective September 1, 2006; as well as the new Adjudicative Guidelines, effective June 8, 2017. My decision would be the same if the case was considered under the previous Adjudicative Guidelines.

working to resolve his past-due indebtedness, maintain his current payments, and save money in case he lost his clearance. (Tr. 17-19, 46-48.)

The status of all of the debts alleged in the SOR is as follows:

1.a. Applicant denied owing the Federal government \$2,000 in past-due taxes. The taxes were because of his decision to liquidate his retirement fund from his employment in 2011. He has paid those taxes in full, and does not owe any money to the Federal government for other taxes, as shown in documentation from the IRS. This debt is resolved. (Applicant Exhibit E at 20-21; Tr. 19-22.)

1.b. Applicant admitted owing past-due taxes to his home state in the approximate amount of \$2,528. He is in negotiation with the state to resolve this debt, and has paid \$1,000 towards the taxes. Applicant evinces a credible intent to pay off this debt as soon as possible. It is being resolved. (Applicant Exhibits C, and E at 19-20; Tr. 22-25, 49.)

1.c. Applicant admitted owing an automobile finance company \$9,384. He denies that his payments were ever past due. Applicant purchased the vehicle in December 2010. He made consistent monthly payments for three years. When he attempted to make his January 2014 payment he found that the company was the subject of Federal charges and there was now nowhere to send his money. (Tr. 25-26.)

Applicant submitted documentation dated May 29, 2014, from the Federal Trade Commission showing that the Commission had brought various charges against the finance company because of its practices. The company was fined and subject to a consent decree. (Applicant Exhibit E at 13-14, Tr. 28-31.)

Applicant still had possession of the vehicle, but no title. If he had been able to continue making timely monthly payments, like he had been, the debt would have been paid in July 2016. When Applicant was hired for his current employment he began investigating this debt and discovered that the company was back in business. He began negotiations with the creditor, and is making payments in accordance with an agreement with them. This debt is being resolved. (Applicant Exhibits B, and E at 12; Tr. 27-28.)

1.d. Applicant admitted owing a past-due credit card debt in the amount of \$495. Applicant believed that he had paid this debt in the past, but it is still showing as past due on his most recent credit report. Applicant no longer has this credit card. He evinced a credible intent to resolve this debt, if it exists, as soon as possible. (Government Exhibit 5 at 3; Tr. 31-32.)

1.e. Applicant denied owing a past-due debt of an unknown amount to this creditor. He denied having any knowledge of this creditor, or having a debt with them. The credit reports in the record, while stating that a debt was charged off, do not provide a charge-off figure. Based on all the available information, I find the Government has not met their

burden on this allegation of showing that Applicant owes any amount to this creditor. It is found for Applicant. (Government Exhibit 5 at 3; Tr. 32-34.)

1.f. Applicant admitted owing a past-due automobile loan in the amount of \$9,462. He has reached a payment arrangement with this creditor, and submitted documentation showing that he is making payments in accordance with this agreement. It is being resolved. (Applicant Exhibits A, and E at 4-5; Tr. 35-37.)

1.g. Applicant denied owing a past-due medical debt in the amount of \$64. He has no knowledge of any past-due medical debt, and his research did not reveal any medical debt. The one credit report that shows this debt also states, "Account in Dispute." Based on all the available information, I find the Government has not met their burden on this allegation of showing that Applicant owes any amount to this creditor. It is found for Applicant. (Government Exhibit 3 at 6; Tr. 37-39.)

Applicant's current financial situation is stable. He and his wife make a sufficient income, are able to maintain their household without problems, and he provided documentation showing that he is paying his normal monthly bills in a timely fashion. (Applicant Exhibit E at 7-10; Tr. 43-45, 49-51.)

Policies

When evaluating an applicant's suitability for national security eligibility and a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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. 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.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires, "Any doubt concerning personnel being considered for national security eligibility 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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 national security eligibility. 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 or sensitive 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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Paragraph 1 (Guideline F, Financial Considerations)

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personal security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

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

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

(f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant had several past-due debts, as well as Federal and state back taxes. All three of these conditions apply, thereby shifting the burden to Applicant to mitigate them.

The guideline includes four conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant had serious financial problems after leaving his employment in 2011. He was not permanently, gainfully, employed until March 2015. At that point he began working to resolve his debts. The Federal tax debt has been paid, and he has paid a substantial amount of his state tax debt. The two automobile debts (1.c and 1.f) are being paid in a manner that is acceptable to the respective creditors. With regard to allegation 1.c, Applicant proved that the creditor engaged in predatory lending practices. There are two small debts, amounting to less than \$600, that are not yet resolved. Applicant stated that he would work to resolve them as soon as possible. The Appeal Board has stated, "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."² His current financial status is stable, and he evinces a credible intent and ability to maintain that stability into the future. He has fully mitigated all the allegations in the SOR. Paragraph 1 is found for Applicant.

²ISCR 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)).

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(d):

(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 national security eligibility 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 is well-respected by his manager. (Applicant Exhibit D.) Applicant has mitigated the concerns regarding his financial situation. Overall, the record evidence does not create substantial doubt as to Applicant's present suitability for national security eligibility, and 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 national security eligibility. Eligibility for access to classified information is granted.

WILFORD H. ROSS
Administrative Judge