



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 16-02986

Appearances

For Government:

Adrienne Driskill, Esquire, Department Counsel

For Applicant:

Pro se

February 15, 2018

Decision

ROSS, Wilford H., Administrative Judge:

Statement of the Case

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on February 26, 2015. (Government Exhibit 1.) On November 17, 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 December 28, 2016, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on January 22, 2017. The case was assigned to me on January 31, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on February 23, 2017. I convened the hearing as scheduled on April 12, 2017.

The Government offered Government Exhibits 1 through 5, which were admitted without objection. Applicant offered Applicant Exhibits A through G, which were admitted without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on April 19, 2017. Applicant requested that the record remain open for the receipt of additional exhibits. He submitted Applicant Exhibit H on April 25, 2017, which was admitted without objection. At his request, the record remained open until October 10, 2017 for additional exhibits. No further exhibits were received from Applicant by that date and the record closed.

Findings of Fact

Applicant is 40 years old, married for the second time, and has four children. Applicant is a retired E-7 in the Navy. He is seeking to retain national security eligibility for a security clearance. (Applicant Exhibit F; Tr. 55-58.)

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. Therefore he is potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds.

In his Answer, Applicant admitted all three allegations in the SOR with explanations. He also submitted additional evidence to support his request for a finding of national security eligibility.

1.a. Applicant admitted that he was indebted for a past-due second mortgage debt in the amount of \$4,264. The second mortgage loan balance was \$40,371. Applicant stated that this house was part of his divorce from his first wife in 2014. The ex-wife was supposed to make payments on the house, and did not do so. Beginning in 2012 Applicant began arranging a short sale of the house, which finally occurred in 2015. As part of the settlement from the short sale the second mortgage holder received \$3,329.71. The second mortgage holder cancelled the remainder of the debt and provided Applicant a

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.

Form 1099 indicating that \$31,871.46 of debt was written off. This debt is resolved. (Applicant Exhibits C, D, E, and H: Tr. 22-29.)

1.b. Applicant admitted owing \$16,994 for a charged-off credit card debt. According to Applicant, he and his ex-wife were ordered to each make payments on half of this debt as part of their divorce. Applicant stated he paid on this debt for approximately two years and then stopped when his ex-wife refused to make any payments on the debt because of spite. The most recent credit report in the record, dating from January 2017, indicates the last payment on this debt was in August 2013. (Government Exhibit 5; Tr. 23, 33-36, 58-59.)

The last hearing on this divorce was in 2014. Applicant testified that his attorney and the divorce court told him at that time not to make any more payments on this debt until his ex-wife agreed to pay her half. A divorce court hearing was supposed to take place in June 2017. Applicant testified that he hoped to resolve the debt situation at that time. Applicant was given from April to October 2017 to provide a written statement from the court or his attorney confirming the fact that he had been instructed not to make payments on this debt, or any additional information from the court. No such statement, or any other information, was received. This debt is not resolved. (Applicant Exhibits A and B; Tr. 23, 31-32, 34-40.)

1.c. Applicant admitted owing \$3,150 for a charged-off credit card debt. Applicant stated that his failure to pay off this debt was due to a bank error, when the bank failed to automatically make payments on the account. He has not yet settled this account with the credit card holder. No current payments have been made on this account. This debt is not resolved. (Tr. 40-46.)

Applicant testified that his current financial situation is stable. He makes a sufficient income, is able to maintain his household without problems, and the most recent credit report in the record shows no new delinquent accounts. (Government Exhibit 5; Applicant Exhibits A and B; Tr. 46-47, 52-55, 59-62.)

Policies

When evaluating an applicant's suitability for a 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 two conditions that could raise security concerns and may be disqualifying in this case:

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

Applicant had a severely past-due mortgage, which he did not or could not resolve, as well as two charged-off credit card debts. Both 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;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant has not mitigated all the allegations in the SOR. While subparagraph 1.a is resolved, the situation regarding the two credit card debts is not resolved. According to his own testimony, Applicant owes at least half of the debt in subparagraph 1.b, approximately \$8,000. He was given six months to provide documentation from the court or his lawyer confirming that he was told not to pay this debt. No such documentation was provided. Accordingly, it is unproven that he is not responsible for the entire \$16,000 debt. In addition, no payments have been made on subparagraph 1.c. None of the cited

mitigating conditions have application in this case. Paragraph 1 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 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 has not mitigated the concerns regarding his financial situation. Applicant was unable to show that he has acted responsibly with regard to his debt issues. Overall, the record evidence does 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:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	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 or continue Applicant's national security eligibility. Eligibility for access to classified information is denied.

WILFORD H. ROSS
Administrative Judge