



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 16-03122

Appearances

For Government: Chris Morin, Esquire, Department Counsel
For Applicant: *Pro se*

May 9, 2018

Decision

ROSS, Wilford H., Administrative Judge:

On November 21, 2014, Applicant submitted his most recent Electronic Questionnaires for Investigations Processing (e-QIP). (Item 3.) On January 6, 2017, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). 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 within the Department of Defense on September 1, 2006.

Applicant signed his Answer to the SOR (Answer) on February 22, 2017, and requested his case be decided on the written record in lieu of a hearing. (Item 2.) On June 5, 2017, Department Counsel submitted the Department's written case. A

complete copy of the file of relevant material (FORM), consisting of Items 1 to 6, was provided to Applicant, who received the file on June 12, 2017.¹

Applicant was given 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He submitted additional information in a timely fashion. Department Counsel had no objection to my considering the additional information, and the packet is admitted into evidence as Applicant Exhibit A. The case was assigned to me on October 1, 2017. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is granted.

The SOR in this case was issued under the adjudicative guidelines that came into effect within the DoD on September 1, 2006. Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (December 10, 2016), implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions² issued on or after June 8, 2017, are to be decided using the new *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), as implemented in Appendix A of SEAD 4. I considered the previous adjudicative guidelines, as well as the new AG, in adjudicating Applicant's national security eligibility. My decision would be the same under either set of guidelines, although this decision is issued pursuant to the new AG promulgated in SEAD 4.

Findings of Fact

Applicant is 58 and married with three children. He retired from the Army as a sergeant first class. He has been employed by a defense contractor since August 2014 and seeks to obtain a security clearance in connection with his employment. (Item 3 at Sections 13A, 15, 17.)

¹ Department Counsel submitted six Items in support of the SOR allegations. Item 4 is inadmissible. It is the summary of an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management on August 6, 2015. Applicant did not adopt the summary as his own statement, or otherwise certify it to be accurate. Under Directive ¶ E3.1.20, this Report of Investigation (ROI) summary is inadmissible in the Government's case in chief in the absence of an authenticating witness. (See Executive Order 10865 § 5.) In light of Applicant's admissions, Item 4 is also cumulative. Applicant is not legally trained and might not have understood Department Counsel's FORM footnote 1, which described the potential admissibility of Item 4. I therefor reviewed it for any potentially mitigating information that Applicant might have thought would be considered. Any such mitigating information will be discussed later in this decision.

² SEAD 4 ¶ D.7 defines "National Security Eligibility" as, "Eligibility for access to classified information or eligibility to hold a sensitive position, to include access to sensitive compartmented information, restricted data, and controlled or special access program information."

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 all the allegations in the SOR, with explanations. Those admissions are findings of fact. The total amount of money Applicant allegedly owes on all SOR-listed debts is approximately \$39,434. The existence and amount of the debts is supported by statements in Applicant's e-QIP, and by credit reports dated December 4, 2014; and June 6, 2016. (Item 3 at Section 26, and Items 5 and 6.)

The status of the debts, based on record evidence including Applicant's admissions and explanations, is as follows:

1.a. Applicant admitted owing a creditor \$9,755 for a past-due student loan. Applicant provided a chronology of his attempts to find the entities that are currently handling his student loan debt. He submitted documentation from two of them showing that he has just begun the process of consolidating his student loan debt. No further information was provided. This debt is being resolved. (Applicant Exhibit A at 1, 20-26.)

1.b. Applicant admitted owing a creditor \$8,467 as the balance due on a repossessed automobile. Applicant submitted documentation showing that this debt was being paid pursuant to a garnishment. From November 2016 to June 2017 \$4,612 had been paid to the creditor. No information was submitted showing the garnishment had been fulfilled. This debt is being resolved through garnishment. (Applicant Exhibit A at 2, 33-51.)

1.c. Applicant admitted owing a creditor \$5,880 for a charged-off account. Applicant stated that this debt would be paid pursuant to a settlement agreement starting in July 2017. He presented documentary evidence supporting that statement from his bank. I find Applicant has made a good-faith attempt to resolve this debt. This allegation is found for Applicant. (Applicant Exhibit A at 1-2, 16.)

1.d. Applicant admitted owing a tax lien in the amount of \$572. Applicant provided documentary evidence showing the tax levy was paid through deductions from his military retirement pay. This debt is resolved. (Applicant Exhibit A at 3, 27-32.)

1.e. Applicant admitted owing a creditor \$7,888 for a past-due automobile loan. Applicant was able to find the current collection agent for this account, which is different from that stated on the SOR. He has made arrangements to pay \$100 a month. Appellant submitted evidence from his bank showing that the first payment would be made on June 30, 2017. I find Applicant has made a good-faith attempt to resolve this debt. This allegation is found for Applicant. (Item 4 at 8; Applicant Exhibit A at 1-2, 13-15.)

1.f. Applicant admitted owing a creditor \$5,647 as the balance due on a repossessed automobile. Applicant stated, "I went to the website got the number shown says the number is no longer in service will try by other means to contact this creditor." No further information was provided. Based on the totality of the evidence, I find Applicant has made a good-faith effort to resolve this debt. (Applicant Exhibit A at 2.)

1.g. Applicant admitted owing \$517 for a charged-off account. Applicant states he called the creditor, "spoke with [X] reference debt spoke with [Y] a manager and he said 'You have never been in our office there is nothing in our system and there is nothing he can do to assist me.' And he hung up." I find that Applicant has made a good-faith effort to resolve this debt. This allegation is found for Applicant. (Applicant Exhibit A at 2.)

1.h. Applicant admitted that he owed \$708 for a past-due telephone bill. Applicant stated that he contacted the collection agency set forth in the SOR, and was told the debt had been recalled by the original creditor. No further information was provided. This debt is not resolved. (Applicant Exhibit A at 2.)

Applicant stated in his response to the FORM:

My debt has been accrued over several years of poor choices such as Gambling, bad investments, bad decision making, trying to afford what I could not, and trying to maintain a lifestyle that I thought would make others happy. This has been detrimental to me and has cost me greatly and has put me in the situation in which I find myself now. (Applicant Exhibit A at 1.)

Applicant submitted documentation showing that he had made payment arrangements with different collection agencies to resolve three additional debts that were not alleged in the SOR. (Applicant Exhibit A at 2, 17-19.)

Applicant did not submit any evidence concerning the quality of his job performance. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

Policies

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 useful in evaluating an applicant's eligibility for national security eligibility.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, the administrative judge applies 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, "Any doubt concerning personnel being considered for national security eligibility 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.

According to 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. 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.

Finally, as emphasized in Section 7 of EO 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 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 a tax lien, which he had not resolved. All three of these conditions apply, thereby shifting the burden to Applicant to mitigate the resulting security concerns.

The guideline includes three 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;
- (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's debt problems have been in existence for many years. However, as further described below, Applicant has been diligently working to resolve his debts. AG ¶ 20(a) has some application.

Applicant admits that his debt problems are due to his own conduct. He also showed, in Applicant Exhibit A, his actions to resolve his indebtedness. Applicant submitted evidence showing that he engaged in the time-consuming and frustrating business of following his debts through several collection agencies to find the one that is currently collecting his debts. He also submitted evidence showing that he has made payment arrangements with the creditors he has been able to find, and is beginning to fulfil them. In addition, the tax lien in the record has been resolved. AG ¶¶ 20 (d) and 20 (g) have application in this case.

The DOHA Appeal Board has said, "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."³ It is Applicant's burden to show with sufficient evidence that he has mitigated the security concerns of his financial situation. He has done so, for the reasons set forth in this decision. 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(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.

³ ISCR 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.))

Under AG ¶ 2(c), the ultimate determination of whether to grant national security 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. Applicant was financially irresponsible in the past. His current conduct shows that he has learned his lesson and is now financially stable. Overall, the record evidence as described above leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did mitigate the security concerns arising under the guideline for Financial Considerations.

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.h:

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 Applicant national security eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS
Administrative Judge