



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



In the matter of:

Applicant for Security Clearance

)
)
)
)
)
)

ISCR Case No. 17-00192

Appearances

For Government:

Adrienne Driskill, Esquire, Department Counsel

For Applicant:

Pro se

July 6, 2018

Decision

ROSS, Wilford H., Administrative Judge:

Statement of the Case

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on December 14, 2015. (Government Exhibit 1.) On February 21, 2017, 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) (SOR subparagraphs 1.a to 1.g). 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 One) on March 20, 2017, and requested a decision be made on the written record without a hearing.

On April 17, 2017, pursuant to ¶ E3.1.8 of the Directive, Department Counsel requested a hearing be held in this case. Accordingly, this case was converted to a hearing and assigned to me on May 9, 2017.

Department Counsel submitted a proposed Amendment to the Statement of Reasons (Amendment) to Applicant on April 27, 2017. The Amendment contained four additional allegations under Guideline F (SOR subparagraphs 1.h through 1.k). Applicant answered the Amendment in writing (Answer Two) on May 6, 2017.

Department Counsel was prepared to proceed on April 27, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on June 12, 2017. I convened the hearing as scheduled on August 24, 2017.

The Government offered Government Exhibits 1 through 6, which were admitted without objection. Applicant offered Applicant Exhibits A through M, which were also admitted without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on September 1, 2017. Applicant requested that the record remain open for the receipt of additional exhibits. He submitted Applicant Exhibit N on September 20, 2017, which was admitted without objection, and the record closed.

Findings of Fact

Applicant is 33 years old, married for the second time, and has no children. He is seeking national security eligibility for a security clearance for the first time.

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 Answers, Applicant admitted all eleven allegations in the SOR and Amendment with explanations. He also submitted additional evidence to support his request for a finding of national security eligibility. The SOR alleges that Applicant had \$23,622 in past-due indebtedness. This included a second mortgage that was past due, as well as additional consumer debt. The debts were incurred from approximately 2008 to 2013, during Applicant's first marriage, because Applicant and his then wife overextended themselves financially. These debts eventually became past due in the

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.

2013-2015 timeframe, when Applicant was in the midst of obtaining a divorce from his ex-wife. The existence and amounts of these debts was confirmed by admissions in Applicant's Answers; in a Report of Investigation (ROI) prepared by an investigator with the Office of Personnel Management (OPM) setting forth the results of an interview with Applicant on September 21, 2016; and credit reports of Applicant dated January 15, 2016; January 5, 2017; and April 4, 2017. (Government Exhibits 2, 3, 4, and 5; Tr. 22-23.)

Applicant accepted responsibility for the debts set forth in the SOR as part of his divorce decree from his first wife. He did this in order to avoid paying her spousal support. Applicant stopped making payments on all the debts in the SOR around the time he separated from his ex-wife. He has not made payments since then on any of the debts in the SOR. Applicant's divorce was final on December 28, 2015. (Applicant Exhibits G and H; Tr. 23-24, 43-44.)

In order to assist Applicant in resolving his debts he retained a law firm in May 2016. The retainer documents with this law firm are found at pages 5-9 of Applicant Exhibit N. The debts in allegations 1.c, d, f, and g are specifically set forth in those documents.

On August 1, 2017, more than a year later, an attorney for the law firm provided a letter to the Applicant. In that letter the attorney states, "Listed below are the accounts reflecting inaccurately or erroneously with the major credit reporting agencies which our firm will dispute on your behalf and attempt to correct or permanently delete." The letter references the creditors in allegations 1.a, b, c, d, f, g, h, i, j, and k of the SOR. However, it is noted that the letter does not state that the law firm, or this specific lawyer, has actually done anything to validate or resolve Applicant's debts during the prior fourteen months. Applicant testified that he was very disappointed with the level of communication he had with this law firm. (Applicant Exhibit A; Tr. 40-41, 46-49.)

He further testified:

The initial retainer document stated that they would negotiate with the creditors and either get it dissolved or make a payment plan, but since they have been working on it, I have not received a single status update as far as who they've talked to, what they've done, or anything. (Tr. 49-50.)

After the hearing, Applicant obtained another letter from the law firm. This letter also does not set forth the work the law firm has done for the Applicant, if any. Rather, it required Applicant to specifically authorize the law firm in writing to correspond with outside parties about their work. (Applicant Exhibit N at 33-34.)

The current status of the debts is as follows:

1.a. Applicant admitted that he was indebted for a past-due second mortgage debt in the amount of \$4,250. Applicant believed that the law firm would dispute this debt.

There is no evidence that happened. The two most recent credit reports in the record, both dated June 28, 2017, and provided by Applicant, continue to show this debt as past due and owing. This debt is not resolved. (Applicant Exhibits C and D; Tr. 30-31.)

1.b. Applicant admitted that a house he owned with his ex-wife was foreclosed upon. After Applicant and his ex-wife separated in 2013 and moved across the country they were unable to maintain payments on this house. The evidence in the record indicates that the foreclosure occurred in 2015, and that Applicant has no continuing financial obligation on this debt. This debt is resolved. (Applicant Exhibits C and D; Tr. 24-30.)

1.c. Applicant admitted owing a creditor \$7,641 for a charged-off consumer debt. Applicant believed that the law firm would dispute this debt. There is no evidence that happened. The two most recent credit reports in the record, both dated June 28, 2017, and provided by Applicant, continue to show this debt as past due and owing. This debt is not resolved. (Applicant Exhibits C and D; Tr. 32-37.)

1.d. Applicant admitted owing a creditor \$3,725 for a charged-off automobile loan. The vehicle was repossessed and sold in approximately May 2014. This debt was forgiven by the creditor and an IRS Form 1099 was provided to Applicant showing the entire amount of the debt was forgiven. This debt is resolved. (Applicant Exhibit B; Tr. 37-38.)

1.e. Applicant admitted owing a creditor \$3,251 to a bank for a past-due debt. Government Exhibits 3 and 4 state, "Consumer disputes this account information." This debt is not shown in Applicant Exhibits C and D, the two most recent credit reports. This allegation is found for Applicant because the record shows that he has disputed it, and it is unclear whether he still owes the debt. (Tr. 38-39.)

1.f. Applicant admitted owing a creditor \$1,502 for a charged-off computer debt. Applicant believed that the law firm would dispute this debt. There is no evidence that happened. The two most recent credit reports in the record, both dated June 28, 2017, and provided by Applicant, continue to show this debt as past due and owing. This debt is not resolved. (Applicant Exhibits C and D; Tr. 42.)

1.g. Applicant admitted owing a creditor \$724 for a past-due debt. Applicant believed that the law firm would dispute this debt. There is no evidence that happened. The two most recent credit reports in the record, both dated June 28, 2017, and provided by Applicant, continue to show this debt as past due and owing. This debt is not resolved. (Applicant Exhibits C, D, E, and F; Tr. 43.)

1.h. Applicant admitted owing a creditor \$338 for a charged-off debt. Applicant believed that the law firm would dispute this debt. There is no evidence that happened. The two most recent credit reports in the record, both dated June 28, 2017, and provided

by Applicant, continue to show this debt as past due and owing. This debt is not resolved. (Applicant Exhibits C and D; Tr. 44-45.)

1.i. Applicant admitted owing a creditor \$648 for a charged-off debt. Applicant believed that the law firm would dispute this debt. There is no evidence that happened. Government Exhibit 3, a credit report dated April 4, 2017, continues to show this debt as charged off. Applicant Exhibits C and D do not show this debt. However, as stated, Applicant admits not paying any of the past-due debts in the SOR. Based on the available record, I cannot find that this debt has been resolved. (Tr. 44-45.)

1.j. Applicant admitted owing a creditor \$861 for a charged-off debt. Applicant believed that the law firm would dispute this debt. There is no evidence that happened. The two most recent credit reports in the record, both dated June 28, 2017, and provided by Applicant, continue to show this debt as past due and owing. This debt is not resolved. (Applicant Exhibits C and D; Tr. 44-45.)

1.k. Applicant admitted owing a creditor \$682 for a charged-off debt. Applicant believed that the law firm would dispute this debt. There is no evidence that happened. The two most recent credit reports in the record, both dated June 28, 2017, and provided by Applicant, continue to show this debt as past due and owing. This debt is not resolved. (Applicant Exhibits C and D; Tr. 44-45.)

Applicant is remarried. Applicant's wife and her parents bought a house for him and his wife using their credit, not Applicant's. Applicant makes the payments on this house. He 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. (Applicant Exhibits I, J, K, L, and M; Tr. 50-53, 60-65.)

Mitigation

Applicant is a respected and successful employee. A Government employee, who works with Applicant, submitted a very laudatory letter of reference. He stated, "[Applicant] is a trusted member of our team and has shown only great dedication to the . . . mission." He has also received documentary plaudits from superiors and customers. (Applicant Exhibit N at 22-32.)

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 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 foreclosure, a past-due second mortgage debt, as well as other past-due debts. All of the debts had been due and owing since 2013. Both of these conditions apply, thereby shifting the burden to Applicant to mitigate them.

The guideline includes five 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;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant has not mitigated all of the allegations in the SOR. As stated, subparagraph 1.d is found for Applicant as that debt was forgiven. In addition, the foreclosure of Applicant's house was the direct result of his divorce. Accordingly, subparagraph 1.b is also found for Applicant.

Applicant stopped paying the remainder of the debts when he separated from his ex-wife in 2013, and has not made any payments since then. He did retain a law firm to help him repair his credit. However, he did not submit sufficient evidence to show that the law firm has done anything to assist him in resolving his debts. In fact, Applicant was unable to state what actions the law firm has taken on his behalf, if any. While the divorce had an impact on his ability to resolve his debts, the fact remains that hiring a law firm that appears to have done nothing in over a year does not show he has acted responsibly under the circumstances. The mere fact a debt does not appear on a credit report does not mean it is resolved, especially when Applicant admits not paying it. None of the cited mitigating conditions have application in this case with regard to Applicant's unresolved debts. 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, many of which have remained unresolved for several years. Overall, the record evidence creates 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:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	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