



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-00376

Appearances

For Government:

Adrienne Driskill, Esquire, Department Counsel

For Applicant:

Ryan Nerney, Esquire
The Edmunds Law Firm

July 16, 2018

Decision

ROSS, Wilford H., Administrative Judge:

Applicant has paid or resolved all of his once past-due debts. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted his most recent Electronic Questionnaire for Investigations Processing (e-QIP) on January 26, 2015. (Government Exhibit 1.) On March 16, 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). 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 April 4, 2017, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on May 5, 2017. The case was assigned to me on May 16, 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 23, 2017. The Government offered Government Exhibits 1 through 12, which were admitted without objection. Applicant offered Applicant Exhibits A through W, which were admitted without objection, and testified on his own behalf. I granted Applicant's request to leave the record open to permit him to submit additional evidence. DOHA received the transcript of the hearing (Tr.) on August 31, 2017. Applicant submitted Applicant Exhibits X through DD in a timely manner. Department Counsel had no objection and the exhibits were admitted into evidence. The record then closed.

Findings of Fact

Applicant is 34 years old and employed by a defense contractor. He is married, and has four children. Applicant is seeking to obtain a security clearance in connection with his employment. He has held a security clearance in the past.²

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.

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

The SOR alleged, and Applicant admitted, that he owed approximately \$34,747 in past-due indebtedness to various creditors. Support for the existence and amount of the debts is supported by admissions of the Applicant, and credit reports submitted by 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.

² It is noted for the record that Applicant had a prior security clearance denied in ISCR Case No. 09-08360 (February 1, 2012). (Government Exhibit 9.) That case has no influence on this decision.

Government dated February 10, 2015; October 12, 2016; and May 2, 2017. (Government Exhibits 1, 3, 6, 7, and 8.)

Applicant stated that his financial problems, as set out below, were due to several extenuating circumstances. First of all, many of the debts in the SOR are medical debts. This is due to the fact that Applicant's wife was hospitalized for a month with a major illness in 2012. One of Applicant's children was also ill and had to have major surgery in the 2013-2014 time frame. Finally, Applicant also became ill based on the stress of his wife and son's medical issues, as well as concern over his job and finances. The total of the past-due medical debts listed in the SOR amounted to \$6,469. (SOR 1.h, i, j, k, l, m, n, o, p, q, t, and u.) (Tr. 28-33, 48-49.)

In addition, after his wife recovered from her illness, she was subsequently laid off from her employment. She was unemployed for two years, until obtaining full-time employment in 2015. (Tr. 81-83.)

Applicant retained a debt resolution firm (DRF) in May 2017 to assist him with paying his debts. The company states in the debt negotiation agreement with Applicant, "[DRF] will not earn any fees for services until: a successful settlement is received on an enrolled debt, you approve the terms of the settlement, and payment has been made towards that settlement. The fee for services charged will only be associated with the debt that was settled at that time." The agreement with DRF is that they will attempt to resolve Applicant's debts that are over \$500. Those less than \$500 are to be resolved by Applicant. Applicant has been making regular payments to DRF since he entered into the agreement. (Applicant Exhibits H and CC; Tr. 35-37, 71.)

The current status of the debts is as follows:

1.a. Applicant admitted that he owed the Federal Government \$3,200 for back taxes. This debt was paid in full on August 4, 2017, as confirmed by documentation from the IRS. This debt is resolved. (Applicant Exhibits L and M; Tr. 25-27, 73-81, 83-85.)

1.b. Applicant admitted that he filed for Chapter 7 bankruptcy in December 2011. He received a discharge on February 28, 2012. (Government Exhibit 9; Applicant Exhibit K; Tr. 27-28.)

1.c. Applicant admitted that he owed a finance company \$14,261 for a repossessed automobile. Records from DRF show that they have reached a resolution with the finance company for repayment of this debt. I find that this debt is being resolved. (Applicant Exhibit CC; Tr. 34-35.)

1.d. Applicant admitted owing \$9,741 in past-due student loans. Records that were submitted by Applicant show that he is in a rehabilitation program with this debt, and has been making regular payments. This debt is being resolved. (Applicant Exhibits J and Z; Tr. 37-40, 86, 95-97.)

1.e. Applicant admitted owing a cable company a past-due debt in the amount of \$262. He paid this debt in full, as confirmed by records from his bank. This debt is resolved. (Applicant Exhibit X; Tr. 40-43.)

1.f. Applicant admitted owing an apartment complex \$123 for a past-due debt. He paid this debt in full, as confirmed by records from his bank. This debt is resolved. (Applicant Exhibit N; Tr. 43-45.)

1.g. Applicant admitted owing a past-due debt of \$510 for city utilities. This has been paid in full, as confirmed by records from the city. (Applicant Exhibits T and DD; Tr. 45-48.)

1.h. Applicant admitted that he owed a creditor \$2,404 for a past-due medical debt. This debt is included in his debt resolution program with DRF. This debt is being resolved. (Applicant Exhibits H and CC; Tr. 49.)

1.i. Applicant admitted owing \$1,136 for a past-due medical debt. This debt was included in Applicant's bankruptcy, as confirmed by bankruptcy court records. This debt is resolved. (Government Exhibit 9 at 23; Tr. 63-64.)

1.j. Applicant admitted that he owed a creditor \$910 for a past-due medical debt. This debt is included in his debt resolution program with DRF. This debt is being resolved. (Applicant Exhibits H and CC; Tr. 64-65.)

1.k. Applicant admitted that he owed a creditor \$504 for a past-due medical debt. This debt is included in his debt resolution program with DRF. This debt is being resolved. (Applicant Exhibits H and CC; Tr. 50.)

1.l. Applicant admitted that he owed a creditor \$488 for a past-due medical debt. This debt is included in his debt resolution program with DRF. This debt is being resolved. (Applicant Exhibits H and CC; Tr. 65.)

1.m. Applicant admitted that he owed a creditor \$291 for a past-due medical debt. Applicant has been in contact with the collection agency and with the hospital. Each entity tells him this debt has been cancelled. He was unable to obtain any additional information. I find that Applicant has made a good-faith attempt to resolve this debt. (Government Exhibit 6 at 7; Tr. 51-52.)

1.n. Applicant admitted that he owed a creditor \$198 for a past-due medical debt. Applicant has paid this debt in full, as confirmed by documentation from the creditor. This debt is resolved. (Applicant Exhibit W; Tr. 52-55.)

1.o. Applicant admitted that he owed a creditor \$187 for a past-due medical debt. Bankruptcy records, and the February 10, 2015 credit report, show that this debt was

included in Applicant's bankruptcy. This debt is resolved. (Government Exhibit 6 at 9, Exhibit 9 at 19; Tr. 56-57.)

1.p. Applicant admitted that he owed a creditor \$187 for a past-due medical debt. The February 10, 2015 credit report show that this debt was included in Applicant's bankruptcy. This debt is resolved. (Government Exhibit 6 at 10; Tr. 57-58.)

1.q. Applicant admitted that he owed a creditor \$131 for a past-due medical debt. Applicant has been in contact with the collection agency and with the hospital. Each entity tells him this debt has been cancelled. He was unable to obtain any additional information. I find that Applicant has made a good-faith attempt to resolve this debt. (Government Exhibit 6 at 10; Tr. 58-59.)

1.r. Applicant admitted that he owed a creditor \$101 for a past-due cable bill. Applicant has paid this debt in full, as confirmed by documentation from his bank. This debt is resolved. (Applicant Exhibit AA; Tr. 65-66.)

1.s. Applicant admitted that he owed a creditor \$80 for a past-due cable bill. Bankruptcy court records show that this debt was included in Applicant's bankruptcy. This debt is resolved. (Government Exhibit 9 at 22; Tr. 66-67.)

1.t. Applicant admitted that he owed a creditor \$21 for a past-due medical debt. Applicant has been in contact with the collection agency and with the hospital. Each entity tells him this debt has been cancelled. The February 10, 2015 credit report shows this debt to be, "closed." Based on the state of the record, I find the Government has not proven that this is a current debt of Applicant. (Government Exhibit 6 at 11; Tr. 62.)

1.u. Applicant admitted that he owed a creditor \$12 for a past-due medical debt. Applicant has been in contact with the collection agency and with the hospital. Each entity tells him this debt has been cancelled. The February 10, 2015 credit report shows this debt to be, "closed." Based on the state of the record, I find the Government has not proven that this is a current debt of Applicant. (Government Exhibit 6 at 11; Tr. 62.)

Applicant supplied evidence that he paid two other medical debts not alleged in the SOR, or found in his DRF program. (Applicant Exhibit W; Tr. 62-63.)

Applicant's current financial situation is stable. His wife is employed, his work situation has improved, and they are able to pay their current indebtedness with no trouble. A budget provided by Applicant, which includes payments for his student loan and the DRF plan, shows that Applicant is solvent at the end of every month. Applicant and his wife took a debt management class, which they found very helpful. Applicant understands the importance of resolving his past-due debts and remaining fiscally secure into the future. (Applicant Exhibits E and I; Tr. 68-71, 88-89, 94-104.)

Mitigation

Applicant provided five letters of recommendation from people who knew him in the defense industry. He is described as being “a top performer” and a person with an exceptional work ethic. (Applicant Exhibit B at 1-5.) (See Applicant Exhibit D.)

Policies

When evaluating an applicant’s suitability for national security eligibility, 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 approximately \$34,747 in past-due debts that he had not paid as of the time the SOR was issued. These facts establish *prima facie* support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

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, or 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;
- (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; 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 has paid or otherwise resolved the debts in the SOR. Most of the past-due indebtedness was incurred, or became delinquent, during the period of the medical issues of Applicant's family. In addition, Applicant's wife went through an extensive period of unemployment, which made it difficult to resolve his debts. The DRF used by Applicant does not get paid until a debt is resolved, which is incentive for them to work on his behalf. Applicant also submitted documentation showing he has paid other debts himself.

Applicant also showed that several of the debts alleged in the SOR were actually included in his earlier bankruptcy. He was unable to find any current information on several small debts. His current financial status is stable, and he evinces a credible intent of being able to maintain that stability into the future. He has fully mitigated all the allegations in the SOR. 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 national security eligibility 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 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 has mitigated the concerns regarding his financial situation. Overall, the record evidence does not create substantial doubt as to Applicant's present eligibility and 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.u:

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

WILFORD H. ROSS
Administrative Judge