



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 14-03356
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

September 4, 2015

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on September 30, 2013. (Government Exhibit 1.) On October 14, 2014, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F (Financial Considerations) concerning Applicant. 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 (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on January 27, 2015 (Answer), and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on April 24, 2015. This case was assigned to me on April 30, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 11, 2015. I convened the hearing as scheduled on June 15, 2015. The Government offered Government Exhibits 1 through 5, which were admitted without objection. Applicant testified on his own behalf. Applicant asked that the record remain open for the receipt of additional documents. Applicant submitted Applicant Exhibit A on June 16, 2015,

which was admitted without objection. DOHA received the transcript of the hearing (Tr.) on June 23, 2015. The record closed on June 30, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

Applicant is 38, and divorced with two children. He served in the Navy for 14 years, leaving active duty in 2014 with an Honorable Discharge. He is employed by a defense contractor, and seeks to retain a security clearance in connection with his employment.

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 allegations 1.a, 1.b, 1.c, 1.d, 1.e., 1.f, 1.g, 1.h, 1.i, 1.j, 1.l, 1.m, 1.o, 1.r, and 1.t. in the SOR under this Paragraph. Those admissions are findings of fact. He denied the remaining allegations, or stated he had no knowledge of the underlying debts. (Allegations 1.k, 1.n, 1.p, 1.q, 1.s, and 1.u.) He also submitted additional information to support his request for a security clearance.

The SOR lists 21 delinquent debts, totaling approximately \$85,155. The existence and amount of these debts is supported by credit reports dated November 5, 2013; June 13, 2014; April 24, 2015; and June 10, 2015. (Government Exhibits 2, 3, 4, and 5.)

According to Applicant, his current financial difficulties began in 2011 and 2012. He was divorced in 2011, and left active duty with the Navy in 2012. After the divorce he began having to pay \$1,000 a month in child support. He also found his income dropped after he left the service. (Government Exhibit 2 at Sections 15, and 17; Tr. 19-21, 32.)

1.a. Applicant admits that he owes a finance company for a repossessed automobile. The SOR alleges that Applicant owes \$27,557. The most recent credit report, Government Exhibit 5 at page 4, indicates that the past-due amount is \$10,312. Applicant has made no recent payments on this account and has no plans to make payments on this account. (Tr. 34-35.) This debt is not resolved.

1.b. Applicant admits that he owes a finance company \$11,627 for a charged-off account. He states in his Answer that the current balance is "under \$6,000." However, he did not support this statement with any documentary evidence. Applicant has made no recent payments on this account and has no plans to make payments on this account. (Tr. 35-36.) This debt is not resolved.

1.c. Applicant admits that he owes a finance company \$9,229 for a charged-off account. He states in his Answer that the current balance is "under \$6,000." However, he did not support this statement with any documentary evidence. Applicant has made no recent payments on this account and has no plans to make payments on this account. (Tr. 36-38.) This debt is not resolved.

1.d. Applicant admits that he owes a finance company \$6,941 for a charged-off account. Applicant has made no recent payments on this account and has no plans to make payments on this account. (Tr. 38-40.) This debt is not resolved.

1.e. Applicant admits that he is indebted to a creditor for an account placed for collection in the amount of \$6,537. He also states that this debt is a duplicate of allegation 1.r, which concerns a judgment on a lawsuit. The Government acknowledged that these two allegations concern the same account. (Government Exhibit 5 at 1; Tr. 41-43.) Given the fact that a judgment supercedes this past-due account, the allegation is found for Applicant.

1.f. Applicant admits that he owes a finance company \$6,178 for a charged-off account. Applicant has made no recent payments on this account and has no plans to make payments on this account. (Tr. 44.) This debt is not resolved.

1.g. Applicant admits that he is indebted to a creditor for an account placed for collection in the amount of \$3,056. He was unsure of the status of this debt. Applicant has not made any payments on this debt and has no current plans to pay this debt. (Tr. 44.) It is not resolved.

1.h. Applicant admits that he is indebted to a creditor for a past-due debt in the amount of approximately \$1,787. Applicant has not made any payments on this debt and has no current plans to pay this debt. It is not resolved.

1.i. Applicant admits that he owes a creditor \$1,115 for a past-due account. Applicant has made no recent payments on this account and has no plans to make payments on this account. This debt is not resolved.

1.j. Applicant admits that he owes a creditor \$761 for a past-due account. Applicant has made no recent payments on this account and has no plans to make payments on this account. This debt is not resolved.

1.k. Applicant states that he has no knowledge of a past-due debt to this creditor in the amount of \$731. The debt is found in two of the Government credit reports. Applicant has not formally disputed this debt with the credit reporting services. Applicant has made no recent payments on this account and has no plans to make payments on this account. (Government Exhibits 2 and 4; Tr. 46-48.) This debt is not resolved.

1.l. Applicant admits that he owes a creditor \$566 for a past-due account. Applicant has made no recent payments on this account and has no plans to make payments on this account. This debt is not resolved.

1.m. Applicant admits that he owes a creditor \$416 for a past-due account regarding a cable bill. At the hearing, he states that he had no knowledge of the account and further states that the cable company “have no record of this.” (Tr. 45.) Applicant has made no recent payments on this account and has no plans to make payments on this account. This debt is not resolved.

1.n. Applicant states that he has no knowledge of a past-due debt to this creditor in the amount of \$391. The debt is found in all four of the Government credit reports. Applicant has not formally disputed this debt with the credit reporting services. Applicant has made no recent payments on this account and has no plans to make payments on this account. (Government Exhibits 2, 3, 4, and 5; Tr. 55.) This debt is not resolved.

1.o. Applicant admits that he owes a creditor \$210 for a past-due account regarding a cable bill. At the hearing, he states that he had no knowledge of the account. (Tr. 55.) Applicant has made no recent payments on this account and has no plans to make payments on this account. This debt is not resolved.

1.p. Applicant states that he has no knowledge of a past-due debt to this creditor in the amount of \$210 for a returned check. He further states that he does not use checks, only a debit card. The debt is found in all four of the Government credit reports. Applicant has not formally disputed this debt with the credit reporting services. Applicant has made no recent payments on this account and has no plans to make payments on this account. (Government Exhibits 2, 3, 4, and 5; Tr. 53-54.) This debt is not resolved.

1.q. Applicant states that he has no knowledge of a past-due debt to the same creditor as in allegation 1.p in the amount of \$191 for a returned check. He further states that he does not use checks, only a debit card. The debt is found in all four of the Government credit reports. Applicant has not formally disputed this debt with the credit reporting services. Applicant has made no recent payments on this account and has no plans to make payments on this account. (Government Exhibits 2, 3, 4, and 5; Tr. 53-54.) This debt is not resolved.

1.r. Applicant admits that he is indebted to a creditor for a judgment in the amount of \$4,463. He states that this is a duplicate of allegation 1.e. Applicant states that he has not completely paid off the judgement. (Tr. 41-43.) This debt is not resolved.

1.s. Applicant states that he has no knowledge of a past-due debt to this creditor in the amount of \$699. He states that he did business with the original creditor, but paid cash. The debt is found on one of the Government credit reports. Applicant has not formally disputed this debt with the credit reporting services. Applicant has made no

recent payments on this account and has no plans to make payments on this account. (Government Exhibit 2; Tr. 51-53.) This debt is not resolved.

1.t. Applicant admits that he owes a creditor \$528 for unpaid fines owed to a government entity. At the hearing, he states that he had no knowledge of the account. (Tr. 49-51.) Applicant has made no recent payments on this account and has no plans to make payments on this account. This debt is not resolved.

1.u. Applicant states that he has no knowledge of a past-due debt to this mobile telephone provider in the amount of \$1,962. He states that this is his current cable and internet company is and his account is current with them. Applicant was given the opportunity to provide a current bill from this creditor, but he did not submit such a bill. The debt is found on one of the Government credit reports. Applicant has not formally disputed this debt with the credit reporting services. Applicant has made no recent payments on this account and has no plans to make payments on this account. (Government Exhibit 2; Tr. 48-49.) This debt is not resolved.

Regarding all of his past-due debts Applicant states that he wishes to pay them off, but acknowledges that he has not made any recent payments on any of them. (Tr. 55-58.)

Mitigation

Applicant submitted his most recent performance review. It showed that he “Exceeds Expectations” in most categories. (Applicant Exhibit A.)

Policies

Security clearance decisions are not made in a vacuum. 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 to be used as appropriate in evaluating an applicant’s eligibility for access to classified information.

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 over-arching 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, “Any doubt concerning personnel being considered for access to classified information 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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 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* 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 or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise

security concerns. Applicant has a considerable amount of debt that he has either been unable or unwilling to pay for several years. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where “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.” AG ¶ 20(b) states that the disqualifying conditions may be mitigated where “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), and the individual acted responsibly under the circumstances.” Also, AG ¶ 20(d) states it can be mitigating where, “the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” None of these mitigating conditions apply to Applicant’s case.

Applicant’s financial difficulties have been in existence since at least 2011, if not before. I have considered the fact of Applicant’s difficulty in adjusting to a reduced income when he left the service, and the fact of his divorce. However, Applicant presented no evidence to show that he has acted responsibly with regards to his significant indebtedness. Applicant submitted no evidence to show that any of the debts have been paid. He states that he has no knowledge of several of the debts, but has done very little, if anything, to contest them. Given the state of the record, I cannot find that he has acted responsibly with regard to his debts, or that he has initiated a good-faith effort to repay or resolve them.

In conclusion, looking at Applicant’s entire financial situation at the present time, the evidence does not support a finding that “there are clear indications that the problem is being resolved or is under control,” as is required by AG ¶ 20(c). 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 the relevant circumstances. 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. The administrative judge must consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. The discussion under Guideline F, above, applies here as well. Applicant has had financial problems for several years, which have not been resolved. He has a history of not paying his debts, and there is little evidence to show that he is now trustworthy and reliable. Applicant's conduct with regard to his finances was not mitigated.

Under AG ¶ 2(a)(3), his conduct is recent and continuing. I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I also cannot find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); or that there is little to no likelihood of continuation or recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial situation. Accordingly, the evidence supports denying his request for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For 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
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant

Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	Against Applicant
Subparagraph 1.s:	Against Applicant
Subparagraph 1.t:	Against Applicant
Subparagraph 1.u:	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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

WILFORD H. ROSS
Administrative Judge