



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



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| In the matter of: |) | |
| ----- |) | |
| |) | ISCR Case No. 14-04191 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

December 23, 2015

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his most recent Electronic Questionnaire for Investigations Processing (e-QIP), on October 19, 2012. (Item 3.) On October 8, 2014, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F (Financial Considerations) concerning Applicant. (Item 1.) 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 October 31, 2014, and requested a decision by an administrative judge without a hearing. (Item 2.) Department Counsel submitted the Government’s written case (FORM) to Applicant on May 4, 2015.¹

¹Department Counsel submitted nine Items in support of the SOR allegations. Items 8 and 9 consist of the records of unsworn interviews of Applicant conducted by interviewers from the Office of Personnel Management on February 21, 2013; and August 3, 2007. They were never adopted by Applicant as his own statements, or otherwise certified by him to be accurate. Under Directive ¶ E3.1.20, these Reports of

Applicant acknowledged receipt of the FORM May 12, 2015. He was given 30 days from receipt of the FORM to submit any additional documentation. Applicant submitted additional information consisting of an updated statement notarized June 3, 2015 (Statement), and ten enclosures (Enclosures 1.a - 1.j, Rebuttal to Statement of Reasons, Budget Enclosure).² The case was assigned to me on August 20, 2015. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is granted.

Findings of Fact

Applicant is 52, married, and has four children ages 26, 24, 23, and 21. He is employed by a defense contractor and seeks to retain a security clearance in connection with his employment. He served honorably in the United States Coast Guard from 1982 through 2002. (Item 3.)

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 under this paragraph. Those admissions are findings of fact. He also stated that subparagraphs 1.e, 1.h and, 1.j are duplicates of subparagraphs 1.b and 1.d.

The SOR lists 10 delinquent debts. (Subparagraphs 1.a through 1.j.) In its FORM at page 6 the Government acknowledges that the debts in subparagraphs 1.b and 1.d are current, and that the debt alleged in subparagraph 1.i has been resolved. The Government alleges that the seven remaining delinquent debts total approximately \$40,667. The existence and amount of all the debts is supported by credit reports dated October 25, 2012; June 2, 2014; and February 19, 2015. (Items 7, 6, and 5.) The current status of the debts is as follows:

1.a. Applicant admitted owing this past-due mortgage debt in the amount of \$3,232. He submitted documentation showing that this debt is current as of May 2015, when the record closed.(Item 2 at 2,³ 13; Statement at 2; Enclosure 1.a.) It is resolved.

1.b. Applicant admitted owing this past-due student loan debt in the amount of \$764. The Government acknowledges that this account is current and in good standing. (Item 2 at 2-3, 14-15; Statement at 2-3; Enclosure 1.b.) This debt is resolved.

Investigation summaries are inadmissible in the absence of authenticating witnesses. They are also cumulative given his admissions.

²There are no Attachments 1.e or 1.h.

³The page numbers for Item 2 refer to the hand written numbers in the lower right-hand corner of the Item.

1.c. Applicant admitted owing this past-due debt for a credit card in the amount of \$5,233. He made an arrangement with the credit card company to make monthly payments to resolve the debt, and submitted documentary evidence that he has been making regular payments since January 2015. (Item 2 at 3, 16; Statement at 3-4; Enclosure 1.c.) This debt is being resolved.

1.d. Applicant admitted owing this past-due student loan debt in the amount of \$453. The Government acknowledges that this student loan account is current and in good standing. (Item 2 at 3, 17-18; Statement at 5-6; Enclosure 1.d.) This debt is resolved.

1.e. Applicant admitted owing this past-due student loan debt in the amount of \$558. He submitted documentation showing that this was part of the student loan set forth under 1.d, above. He submitted evidence that he has a repayment agreement for this student loan, and it is current as of June 2015. (Item 2 at 4, 19-24; Statement at 6-7; Enclosure 1.d.) This debt is resolved.

1.f. Applicant admitted owing this past-due student loan debt in the amount of \$6,470. He made an arrangement with the original lender to make monthly payments to resolve the debt, and submitted documentary evidence that he has been making regular payments since October 2014. (Item 2 at 4, 25-26; Statement at 7-8; Enclosure 1.f.) This debt is being resolved.

1.g. Applicant admitted owing a past-due debt to a credit union in the amount of \$6,398. The creditor forgave the debt in 2013 and supplied Applicant with an IRS Form 1099. Applicant supplied documentation showing that he properly reported the cancellation of debt as income on his 2013 tax return. (Item 2 at 5, 27; Statement at 8-9; Enclosure 1.g.) This debt is resolved.

1.h. Applicant admitted owing this past-due student loan debt in the amount of \$8,715. However, he further submits that it is a duplicate of the student loan debt set forth in subparagraphs 1.b and 1.d. After reviewing the documentation submitted by Applicant in this regard, I agree. This debt is being resolved.

1.i. Applicant admitted owing this past-due credit card debt in the amount of \$2,042. The Government acknowledges that this debt has been paid and resolved. (Item 2 at 6, 33; Statement at 10; Enclosure 1.i.)

1.j. Applicant admitted owing this past-due student loan debt in the amount of \$6,986. However, he further submits that it is a duplicate of the student loan debt set forth in subparagraphs 1.b. and 1.d. After reviewing the documentation submitted by Applicant in this regard, I agree. This debt is being resolved.

According to Applicant, this debt situation came about for several reasons over the past few years. Both Applicant and his wife have had severe medical issues. Both of his parents passed away within a very short period of time in 2010 and 2011. Applicant and his wife found themselves paying for the advanced education of their four children

for several years. They also had a house made uninhabitable due to flooding and other personal issues. However, the voluminous financial and other records he submitted show that he always was attempting to resolve his debt situation in a straightforward way. (Item 2 at 7-8; Statement at 12, 14, Rebuttal to Statement of Reasons at 6.)⁴ In addition, Applicant and his wife have prepared a budget, which shows that they have the means and ability to keep up on their regular bills and make payments on the debts set forth in the SOR. (Budget Enclosure.)

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 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. 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

⁴The copy of Applicant's Statement provided to me did not have a page 13.

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 had over \$40,000 in past-due debts, which were due and owing 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 conditions 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.” While Applicant’s financial difficulties have been in existence for several years, he has submitted evidence showing that he is current on his mortgage, as well as being current with payments towards the student loans. One other debt has been paid, he is paying on a second, and the last was forgiven by the creditor. This mitigating condition has application in this case.

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.” Applicant’s financial situation was affected by personal issues including his health, that of his wife, the deaths of both of his parents, a house flood and other incidents. This mitigating condition also has application in this case, since his responses to these unforeseeable setbacks has been uniformly responsible.

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.” Applicant has submitted voluminous evidence showing that he has always admitted responsibility for the debts and made efforts to pay them in a responsible manner. He has paid off one of the debts in the SOR. One has been forgiven by the creditor, and he properly reported the forgiveness on his taxes. He is making payments on a past-due credit card. Three others are duplicates. He is current on his mortgage and the student loans, which are the remaining debts. This mitigating condition has application to this case.

The 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.”⁵

In evaluating Guideline F cases, the Appeal Board has previously noted that the concept of “‘meaningful track record’ necessarily includes evidence of actual debt reduction through payment of debts.” However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrates that he has ‘. . . established a plan to resolve his financial problems and taken significant actions to implement that plan.’ The Judge can reasonably consider the entirety of an applicant’s financial situation and his actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (‘Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.’) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR. ⁶

In conclusion, looking at Applicant’s entire financial situation at the present time, I find 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 for Applicant.

⁵ISCR 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)).

⁶ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

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 are being resolved. His statements show a knowledge of his financial situation, and of the importance of remaining financially stable in the future in order to support retention of his security clearance.

I find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I also find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); and that there is little to no likelihood of continuation or recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his financial situation. Accordingly, the evidence supports granting 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:

FOR APPLICANT

Subparagraphs 1.a through 1.j:

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

WILFORD H. ROSS
Administrative Judge