



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



In the matter of:)	
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)	ISCR Case No. 14-06502
Applicant for Security Clearance)	

Appearances

For Government:
 Jeff Nagel, Esquire, Department Counsel
 For Applicant:
 Andrew H. Tran, Esquire
 Claery & Green LLP

February 18, 2016

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on March 10, 2014. (Government Exhibit 1.) On January 27, 2015, 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 March 31, 2015 (Answer), and April 14, 2015 (Supplemental Answer),¹ and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on June 10, 2015. This case was

¹Transcript (Tr.) 14-15.

assigned to me on June 16, 2015. The Defense Office of Hearings and Appeals (DOHA) issued notices of hearing on July 1, and July 13, 2015. I convened the hearing as scheduled on July 22, 2015. The Government offered Government Exhibits 1 through 7, which were admitted without objection. Applicant testified on his own behalf, called one additional witness, and submitted Applicant Exhibits A through I, which were also admitted without objection. Applicant asked that the record remain open for the receipt of additional documents. DOHA received the transcript of the hearing on July 30, 2015. Applicant submitted Applicant Exhibit J on August 25, 2015, which was admitted without objection. The record closed on August 25, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

Applicant is 61, and married to his second wife. He served in the Marine Corps for 20 years, retiring from active duty in 1995 with an Honorable Discharge. (Tr. 46-49.) 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.b, 1.d, 1.e, 1.f, 1.h, 1.i, 1.j, and 1.k 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.a, 1.c, 1.g, and 1.l.) He also submitted additional information to support his request for a security clearance.

The SOR lists 12 delinquent debts, totaling approximately \$111,391. The existence and amount of these debts is supported by credit reports dated April 2, 2014; November 13, 2014; June 8, 2015; and July 22, 2015. (Government Exhibits 4, 5, 6, and 7.)²

According to Applicant, his current financial difficulties began in 2007 when his first wife died after a ten year battle with cancer. Applicant and his wife had four children. At the time of her death two were still in high school. (Applicant Exhibit A; Tr. 31-35.)

²Government Exhibits 2 and 3 indicate that Applicant was indebted to his state taxing authority in the amount of \$4,505 as of November 2012. Applicant claims that the debt was being paid from a garnishment on his wages and was due to be paid in full in July 2015. (Tr. 101-105.) The Government elected not to allege this debt in the SOR. Accordingly, it will be considered only in terms of determining any mitigation, and under the whole-person concept.

1.a. Applicant denied that he owed a finance company \$33,772 for a past-due mortgage. Applicant stated that he had arranged for a short sale of the house and did not owe any money on the mortgage. He submitted an IRS Form 1099 from 2012 concerning the house, which indicated that \$338,710 of debt had been discharged. Applicant also submitted his tax return for the same year, which indicates the same thing. (Applicant Exhibit J at 6-9; Tr. 35-40, 73-74.) This debt is resolved.

1.b. Applicant admitted that he owed a collection agent \$2,189 for a past-due account. He states that he has a payment arrangement with this creditor and is paying on it. The credit reports in the record show Applicant is, "Paying under a partial payment agreement." In addition, he submitted a copy of his August 2015 payment. (Government Exhibits 5 at 2, 6 at 2, 7 at 3; Applicant Exhibit J at 11; Tr. 40-45, 74-75.) This debt is being resolved.

1.c. Applicant denied that he owes \$1,440 to an automobile finance company for a repossessed vehicle. He states that he has a payment arrangement with this creditor and is paying on it. The credit reports in the record support Applicant, showing a steadily decreasing balance. In addition, he submitted a copy of his July 2015 payment. (Government Exhibits 5 at 2, 6 at 4, 7 at 3; Applicant Exhibit J at 12; Tr. 49-51, 75-76.) This debt is being resolved.

1.d. Applicant admitted that he owed a telephone company \$243 for a past-due account. The collection agency on this account sent Applicant a proposed settlement letter on July 16, 2015. After the hearing, Applicant's attorney stated that his client had made the required payment in a timely fashion, but had not received a receipt as of the date the record closed. (Applicant Exhibit J at 4, 10; Tr. 51-52, 75-76.) Based on all of the available information, I find this debt is being resolved.

1.e. Applicant admitted that he owes a telephone company \$56 for a past-due account. He stated, "I talked with them last week, and I will settle that bill shortly." No evidence was submitted that Applicant has paid this debt. (Tr. 53-54, 76.) This debt is not resolved.

1.f. Applicant admitted that he is indebted to the Department of Education for a student loan with a past-due amount of \$2,797. Applicant has not made any current payments on this debt. He is in communication with the collection agent, but there are no current plans to resolve this debt. (Applicant Exhibit J at 4; Tr. 54-56, 77-79.) This debt is not resolved.

1.g. Applicant denied that he is indebted to a creditor for a collection account in the amount of \$61,367. According to Applicant, this debt is a student loan for his son. He also states that his late wife signed the loan application in his name without his permission shortly before she died. In support of that statement he submitted Applicant Exhibit C, the loan application, arguing that the signature on the form was not his.³ However, Applicant admitted in testimony that a lawsuit has now been filed by this

³Given the state of the record, no finding is made as to whether Applicant signed Applicant Exhibit C.

creditor in relation to this debt. Applicant did not submit the complaint or his answer. As of the present time, Applicant did not submit sufficient evidence to show that he is not legally responsible for this debt. (Tr. 56-62, 81-88, 97-101.) This debt is not resolved.

1.h. Applicant admitted that he is indebted to the Department of Education for a student loan with a past-due amount of \$1,792. Applicant has not made any current payments on this debt. He is in communication with the collection agent, but there are no current plans to resolve this debt. (Applicant Exhibit J at 4; Tr. 54-56, 77-79.) This debt is not resolved.

1.i. Applicant admitted that he is indebted to the Department of Education for a student loan with a past-due amount of \$1,165. Applicant has not made any current payments on this debt. He is in communication with the collection agent, but there are no current plans to resolve this debt. (Applicant Exhibit J at 4; Tr. 54-56, 77-79.) This debt is not resolved.

1.j. Applicant admitted that he is indebted to the Department of Education for a student loan with a past-due amount of \$1,726. Applicant has not made any current payments on this debt. He is in communication with the collection agent, but there are no current plans to resolve this debt. (Applicant Exhibit J at 4; Tr. 54-56, 77-79.) This debt is not resolved.⁴

1.k. Applicant admitted that he is indebted in the amount of \$4,758 for a past-due credit card debt. He states that he has a payment arrangement with this creditor and is paying \$50 a month on it. The credit reports in the record support Applicant, showing a steadily decreasing balance on this account. (Government Exhibits 4 at 4, 6 at 3, 7 at 5; Tr. 62-64, 79-80.) This debt is being resolved.

1.l. Applicant denied in his Answer that he owed a medical creditor \$86 for a past-due account. He testified that he had talked to the creditor just before the hearing, and determined that it was a debt of his. However, due to the age of the debt, Applicant felt it was uncollectible and has no plans to pay it. (Applicant Exhibit I; Tr. 64-67, 80-81.) This debt is not resolved.

Applicant admitted that his current financial situation is precarious, stating, "Sometimes I am in the red. Sometimes I am in the black." (Applicant Exhibit J at 13; Tr. 68, 89-95.)

Mitigation

A coworker of Applicant testified on his behalf. The witness stated that Applicant is "totally trustworthy." He recommends that Applicant retain his security clearance. (Tr. 25-29.)

⁴As of July 22, 2015, Applicant owed the Department of Education a total of \$169,483 for the loans set forth in allegations 1.f, 1.h, 1.i, and 1.j. (Government Exhibit 7 at 4.)

Two co-workers submitted letters of recommendation on Applicant's behalf. They both state that Applicant is a trustworthy individual and fully deserving of a security clearance. (Applicant Exhibits D and E.)

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 sufficiently apply to Applicant’s case, except for the debts in allegations 1.a, 1.b, 1.c, 1.d, and 1.k. Those allegations are found for Applicant.

Applicant’s financial difficulties have been in existence since at least 2008, if not before. I have considered the fact of Applicant’s wife’s death and its impact on his finances. However, Applicant presented insufficient evidence to show that he has acted responsibly with regard to all of his significant indebtedness. He has resolved his mortgage with a short sale of his home, and he has payment arrangements with several

of his other creditors, as shown above. However, he has made no payments since 2008 on the almost \$170,000 in student loans he admits owing. In addition, while he states he is beginning the process of consolidating those loans, there is no current plan to pay these debts in the foreseeable future.

Finally, AG ¶ 20(e) requires that Applicant have “a reasonable basis to dispute the legitimacy of the past-due debt,” and that he “provides documented proof to substantiate the basis of the dispute.” He did not submit sufficient evidence to show that the very substantial debt of over \$60,000 in allegation 1.g is not his, or that it is legitimately in dispute.

Given the state of the record, I cannot find that he has acted responsibly with regard to all of his debts, or that he has initiated a good-faith effort to repay or resolve many of 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 does not yet have a history of paying his debts, and there is insufficient evidence at this time 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 at this time. 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:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For 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:	For Applicant
Subparagraph 1.l:	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