



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 17-01009
)
Applicant for Security Clearance)
)

Appearances

For Government: Moira Modzelewski, Esq., and
Benjamin Dorsey, Esq., Department Counsel
For Applicant: *Pro se*

05/28/2019

Decision

MASON, Paul J., Administrative Judge:

Applicant’s long history of not paying child support as required has resulted in large child support arrears. The credit bureau reports indicate that by September 2015, he accumulated \$15,673 in child support arrears for one of his daughters. In early 2018, he demonstrated good judgment by hiring an attorney to address the support arrears issues. However, instead of applying more of his earnings to resolve the arrears issue, he exercised poor judgment by purchasing a vehicle in December 2017 and a motorcycle in May 2018. Eligibility for security clearance access is denied.

Statement of the Case

On April 2, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to retain a security clearance required for a position with a defense contractor. The Department of Defense (DOD) could not make the affirmative findings required to continue a security clearance. DOD issued to Applicant a Statement of Reasons (SOR), dated May 5, 2017, detailing security concerns raised by

financial considerations (Guideline F). The action was taken under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective in the DOD on September 1, 2006.

While this case was pending a decision, the Director of National Intelligence issued Security Executive Agent Directive 4, establishing *National Security Adjudicative Guidelines for Determining Eligibility for access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs). The guidelines are applicable to all individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The new AGs supersede the September 1, 2006 AGs and are effective on or after June 8, 2017. Accordingly, I have evaluated Applicant's security clearance eligibility under the new AGs.¹

Applicant provided his notarized answer on May 26, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 23, 2018, for a hearing on November 15, 2018. The hearing was held as scheduled. The Government's three exhibits (GE) 1-3 and Applicant's nine exhibits (AE) A-I were entered into evidence without objection. The record remained open until November 30, 2018, to allow Applicant to submit additional documentation regarding his budget. No supplemental documentation was received. DOHA received the hearing transcript (Tr.) on November 26, 2018. The record closed on November 30, 2018.

Findings of Fact

The SOR alleges that Applicant owes delinquent child support of \$15,673 (SOR 1.a). The account was placed in collection in In September 2015. Applicant admitted the allegation. (GE 2 at 1; Applicant's answer to SOR)

Applicant is 38 years old. He married in 2004 and divorced in 2012. He has five children, two 17-year-old daughters, and three sons, ages 17, 4, and 1 year. Applicant served on active duty in the United States (U.S.) Army from July 1999 until his honorable discharge in March 2008. He attended vocational school from March 2008 for six years. In 2014, Applicant began taking course material for a bachelor's degree in cybersecurity, but withdrew to begin course work to earn information technology (IT) certifications. In March 2018, he began online course work towards a bachelor's degree in science, with an ultimate goal of obtaining a master's degree in IT. (GE 1 at 13, 27, 30; Tr. 7-15)

After his discharge from the U.S. Army in March 2008, Applicant worked in defense contractor positions and in federal employment positions. He worked as a

¹ My decision in this case would be the same under the 2006 or 2017 guidelines.

material coordinator, a supply technician, an account manager, a quality safety manager, and a management and program analyst. In 2015, Applicant worked in his first cyber security position. He was employed at a help desk from 2016 until June 2018, when the contract ended resulting in his unemployment. He is still unemployed. He currently has a sponsor. His previous periods of unemployment were March to June 2008, March to May 2012. September to November 2012, and July to September 2013. He has held a security clearance since 1999. (GE 1 at 13-33; Tr. 10-15, 33-34)

Applicant's first daughter was born in 2002 and she is 17 years old. In January 2003, a child support court order for this daughter began in state X. The child support payments were \$289 a month; the support order increased to \$350 a month in October 2008. Applicant claims that he began having difficulty paying the support after he was discharged from the Army in 2008. Because of joint marital accounts related to the marriage (2004 to 2012) and lawyer fees related to the divorce, he could only pay some but not all the monthly child support. He initially filed for separation from his former wife in state X, but after he moved to state Y, he had to refile for separation. (Tr. 37-39)

When Applicant's first daughter came to live with him in June 2016, his child support should have been modified downward but it was not. In October 2016, the first daughter was removed from Applicant's home because of allegations of sexual abuse against Applicant that were found to be totally groundless. The first daughter was relocated to her grandmother's residence, but after residing there for three to four months, she ran away. The daughter was placed in an outplacement program at a boarding school in July 2018 and was to move back with Applicant in December 2018, when she was discharged from the program. (Tr. 44-45, 53-55)

Applicant's child support payment ledger for January 2003 through May 11, 2017 (child support for first daughter) indicates that his payment record to the county child support office of state X was neither regular in amount nor frequency. That is probably why his child support arrears (\$35) started accruing immediately when his support payments increased from \$289 to \$350 a month in October 2008. On March 30, 2017, the state Y division of child support enforcement (DCSE), the state where he currently resides, informed him by letter that he owed \$15,673 in past-due child support and threatened to suspend his driver's license because his past-due child support was over \$5,000 or was past due by 90 days or more. (AE A; AE F)

When Applicant received the letter in March 2017 from state Y claiming he owed child support arrears of \$15,673 to state X (division of child support), he began to investigate why the arrearage was so high. In June 2017, he was informed by letter from the state Y division of child support enforcement (DCSE) that because of the existence of an out-of-state support order for the first daughter living with him in state Y during the period, and an in-state child support order for the second daughter residing in state X, the wage garnishment payments were "splitting" and neither mother was receiving the correct support due. Instead, they were receiving partial instead of full support payments from state X child support office, which increased Applicant's arrears.

No additional information was provided. Applicant hired an attorney in May 2018 and an audit was conducted of his entire child support payment history for the first daughter. On November 8, 2018, his attorney notified him that his child support hearing had just been held that day. The court found that his child support obligation (SOR 1.a) was suspended retroactive to March 2018. Applicant still owed arrears of \$6,794 to the mother of the SOR 1.a child support recipient, to be repaid at \$30 a month. Applicant's arrears owed to the child support recipient's grandmother was \$4,114, to be repaid at \$200 a month. Though Applicant had not received a court order that memorialized the findings, he informed the judge that he would start making payments on December 1, 2018, to the mother and grandmother. (AE A; AE B; AE D; AD E; Tr. 43-46)

Applicant has a second 17-year-old daughter whose child support order (unalleged) was also implemented in January 2003. The terms of the support order are the same as for the daughter in the preceding paragraph. Applicant claimed that he is regularly paying child support of \$350 and \$35 toward the arrearage on a monthly basis. The arrearage amount, about \$10,000, is not alleged in the SOR. Also unalleged in the SOR are Applicant's unofficial child support payments for his three sons: about \$350 a month for his 17-year-old son; about \$350 a month for his 4-year-old son; and about \$200 a month for his one-year-old son. (Tr. 40-42, 52, 57) I will consider this unalleged evidence in evaluating Applicant's case in mitigation or changed circumstances, and in applying the factors of the whole-person concept.

Applicant receives a partial disability pay from the U.S. Army and is financing his education from his military benefits. He lives by himself in an apartment that that he rents for \$1,100 a month. He has two cars; one is for commuting; the other is used for transporting his children in the local area and when he travels to state X to visit his children. He purchased one car in September 2016 and one car in December 2017. He pays a total of \$973 a month for both cars. He pays a total of \$100 a month for two motorcycles. He does not remember when he purchased one of the motorcycles, but he remembered it cost between \$3,000 and \$4,000. He purchased the other motorcycle in May 2018 for \$5,000. He uses one of the motorcycles for the track and the other is for leisure riding. Applicant has a total of \$3,000 in his checking and saving accounts. He has about \$500 in stock. He participated in financial counseling in September 2018 to remove the collection items that were negatively affecting his credit score. (Tr. 46-61)

In March 2018, Applicant opened a limited liability cybersecurity company and seeks to qualify for a facility security clearance so he can start bidding on contracts. He is trying to obtain his small business certification, minority-owned certification, and a service veteran certification. (Tr. 71-73)

To manage his earnings and expenditures, Applicant utilizes a budget with the help of a computer software program. He testified that he wanted an opportunity to submit evidence of a budget. The record remained open until November 30, 2018, but no post-hearing evidence was received. (Tr. 49, 62-63)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines, which are not inflexible rules of law, should be applied with common sense and the general factors of 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(d) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

Analysis

Financial Considerations

The security concerns of the guideline for financial considerations are set forth in AG ¶ 18:

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 personnel 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

A person with access to classified information occupies a fiduciary relationship with the Government predicated on good judgment, trust and confidence. A person who displays financial irresponsibility may also be irresponsible or negligent in safeguarding classified information at all times and in all places.

AG ¶19 describes conditions that could raise a security concerns and may be disqualifying include:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has a long history of not paying his child support for his first daughter. His child support records from the state X division of child support show that his child support payments were irregular. At the time his child support payments increased to \$350 monthly by court order in October 2008, he was immediately assessed arrears. By September 2015, his child support arrears for the SOR 1.a daughter was \$15,673. AG ¶¶ 19(a) and 19(c) apply.

The pertinent mitigating conditions under AG ¶20 include:

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

After receiving a letter from DCSE of state Y in March 2017 advising him that he owed past due child support totaling \$15,673, and indicating that his driver's license could be suspended unless he took action on the child support issue, in May 2018, Applicant retained an attorney to file a motion to redirect support payments and determine child support arrears. In November 2018, his attorney advised him that after the hearing, the court determined that he no longer owed child support and his arrears were reduced to \$6,795. The mitigation Applicant receives under AG ¶ 20(a) is reduced by his failure to act much sooner to rectify the arrears problem. Mitigation under the condition is reduced even more because of the absence of documented evidence to

support Applicant's testimonial claim of owing only child support arrears for his second daughter.

AG ¶ 20(b) recognizes events that result in financial problems beyond the person's control. Applicant's brief periods of unemployment were events beyond his control. The improper calculations by the state X division of child support concerning his first daughter was an additional event beyond his control. However, AG ¶ 20(b) has limited application because Applicant has not demonstrated he acted responsibly under the circumstances. Instead of being more proactive in directing a larger part of his earnings to his child support and support arrears of his two oldest daughters, he purchased two cars in September 2016 and December 2017. He purchased his second motorcycle in May 2018. On balance, AG ¶ 20(b) has only limited application to the circumstances of this case.

AG ¶¶ 20(c) and 20(d) address steps an applicant has taken to bring his debts under control. Though Applicant contended that he received financial counseling in September 2018, the service was directed more toward eliminating collection items from his credit report. He claimed he had a budget to track his finances, yet, he declined to present evidence of a budget. While he appears to be gaining control over the arrears for his first daughter, there is no documented evidence to indicate that his second daughter's arrears issues are being resolved or under control. AG ¶ 20(c) is applicable in part. The limited application of AG ¶ 20(d) is dramatically diminished by Applicant's sporadic child support payment record since 2003.

Whole-Person Concept

I have examined the evidence under the specific guideline (financial considerations) in the context of the nine general factors of the whole-person concept 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 access to classified information must be an overall common-sense judgment based upon careful consideration of the guidelines and the whole-person concept.

Applicant is a 38-year-old mature adult, who is divorced with five children. He was honorably discharged from the U.S. Army in March 2008. He is taking courses to

complete a bachelor's in science degree and hopes to obtain a master's degree in IT. I considered that Applicant's child support arrears for his first daughter were much less in November 2018 than originally posted in the March 2017 letter from DCSE of state Y and the SOR. However, Applicant provided no documentation concerning the status of the child support issues for his second daughter. Even though he has known for a long time that he owed child support arrears for both daughters, he used extremely poor judgment and irresponsibility in purchasing a vehicle in December 2017 and a motorcycle in May 2018. Considering the evidence as a whole, Applicant has not mitigated the security concerns arising from the guideline for financial considerations.

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

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

Paul J. Mason
Administrative Judge