



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 18-00480
)
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

04/30/2019

Decision

MASON, Paul J., Administrative Judge:

Applicant demonstrated good judgment in September 2016 by filing a Chapter 13 bankruptcy petition after discovering he was having difficulty paying his debts. However, he used poor judgment by not complying with the bankruptcy court’s order. Applicant’s evidence in mitigation does not overcome the lingering security concerns under the guideline for financial considerations. Eligibility for security clearance access is denied.

Statement of the Case

On November 23, 2016, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to apply for a security clearance required for a position with a defense contractor. On December 15, 2017, Applicant provided an interview (PSI) to an investigator from the Office of Personnel Management (OPM). The Department of Defense (DOD) could not make the affirmative findings necessary to grant a security clearance. DOD issued Applicant a Statement of Reasons (SOR), dated March 8, 2018, 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 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 AGs were made effective on or after June 8, 2017.

Applicant provided his notarized answer on March 26, 2018, and requested a hearing. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 5, 2018, for a hearing on October 30, 2018. The hearing was held as scheduled. The Government's seven exhibits (GE) 1-7 and Applicant's 7 exhibits (AE) A-G were admitted without objection. The Government's discovery letter, dated April 18, 2018, which had been marked as GE 8, is remarked as Hearing exhibit (HE) 1. DOHA received the transcript (Tr.) on November 7, 2018. The record in this case closed the same day.

Rulings on Procedure

Regarding Applicant's December 2017 PSI (GE 2), I advised him that the PSI may not be entered into evidence without an authenticating witness. Alternatively, I advised him that he could have a recess to review the December 2017 PSI for inconsistencies. He replied that he had no objection to the PSI's entry into evidence. AE 2 was admitted into evidence. (Tr. 30-31)

Findings of Fact

The SOR lists three allegations under the financial considerations guideline: SOR 1.a - Applicant filed a Chapter 13 bankruptcy petition in September 2016; SOR 1.b - a delinquent credit union debt; and SOR 1.c - a delinquent medical debt. Applicant admitted the three allegations and provided explanations.

Applicant is 39 years old and divorced. Since 1999, he has been earning college credits and is one course short of receiving his bachelor's degree. He served in the United States (US) Navy from March 2000 to March 2004, receiving an honorable discharge. Applicant has been continually employed from 2005 to the present. During that time, he has received several training certificates in connection with his employment. Since June 2007, Applicant has been working in communication security for several different defense contractors. He has no issues with his security clearance which he has held since 2000. (GE 1 at 10-11, 11-13, 17-18, 41; Tr. 56-60, 62)

In December 2013, Applicant purchased a home (HX) for \$420,000 in his name, though his then-girlfriend provided unexplained financial help with the purchase. He

financed the entire amount of the purchase with a Veterans Affairs (VA) loan at a fixed interest rate. His then-girlfriend paid the utilities and food, and Applicant paid the mortgage and insurance. At the time of the purchase of HX, Applicant was renting out a townhouse (not listed in the SOR) that he had purchased in 2005. After his girlfriend left him in March 2014, Applicant had trouble managing all the financial responsibilities of HX. His financial problems increased in December 2014 or January 2015, when his renters moved out of the townhouse and Applicant was unable to rent the property. After the first and second mortgages on the townhouse became delinquent, he sold the townhouse in a short-sale. The resulting deficiency balance after the short-sale was forgiven by the mortgage lender. (GE 1 at 42; GE 2 at 4; Tr. 50, 65-69)

SOR 1.a – Following his March 2014 breakup, and losing the renters of his townhouse, Applicant began misusing credit cards to supplement his income so he could pay bills. In September 2016, Applicant filed a Chapter 13 bankruptcy petition, listing \$457,000 in liabilities and assets of \$390,580. He included HX (\$420,000) in the Chapter 13 petition, along with a car loan, utility accounts, medical accounts, and two federal credit union accounts. One of the credit union accounts was a credit card (SOR 1.b), and one was a personal loan (unlisted). The payment terms of the plan were: \$325 a month for the first 14 months; \$400 a month for months 15 through 17; and \$965 a month for 43 months for a total of 60 months. The payment plan began in October 2016. In June 2017, he moved out of HX and rented the property for \$3,000 a month until June 2018. The Chapter 13 petition plan was confirmed in September 2017. (GE 2 at 6-7; GE 5 at 13; Tr. 72, 75)

Applicant testified that in September 2018, HX was placed under contract for a short-sale. The contract price was \$420,000, and Applicant owed \$428,000 on the mortgage. He indicated that the buyer requested a 60-day approval process. Applicant contacted the mortgage lender on October 29, 2018, and was told they were waiting on an unidentified document. He did not have a set date for finalization of the short-sale, but assumed it would be before December 2018. There are several emails between the realtor and Applicant, but no emails showing that the mortgage lender finalized the short-sale, or that the process would be completed before December 2018. (AE C; Tr. 52-53)

Although Applicant claimed that he decided to place HX on the market shortly after he filed the Chapter 13 petition in September 2016, all documentation related to his efforts to sell HX occurred in 2018. Applicant seemed to modify his earlier decision to sell by indicating that he wanted to exhaust all avenues to keep HX. One of those avenues was to acquire tenants (which he did between June 2017 and June 2018) for HX to generate extra money to pay bills and meet the Chapter 13 plan payments. (Tr. 88-89)

On October 4, 2018, the Chapter 13 trustee filed a Motion to Dismiss the Chapter 13 Petition and Notice of an Opportunity for a Hearing. The trustee indicated that Applicant had defaulted on \$2,850 in plan payments. Applicant admitted that he missed

two plan payments. Also, Applicant failed to provide the trustee a copy of his 2016 and 2017 federal tax returns as required by the terms of the Chapter 13 order. Applicant was given until October 25, 2018, to provide a responsive pleading to the trustee's motion, together with a request for a hearing, or the case could be dismissed on October 25, 2018. The record contains no documentation of a response by Applicant to the motion. (GE 5 at 11; GE 7)

The Chapter 13 payment history, which appears at the last page of the October 2018 motion to dismiss, lists the payments Applicant made (and missed) between October 2016 and September 2018. Applicant attributed the missed payments to oversight. In addition, he complained to his bankruptcy lawyer that the payment plan amounts remained at the same level even after the renters of HX between June 2017 and June 2018, moved out in June 2018. Without the rental income, it was more difficult to make the higher plan payments. Applicant made the \$965 payment on October 25, 2018. (GE 7; Tr. 80-87, 93, 97)

Though Applicant provided no documentation, he testified that a hearing date on the motion to dismiss the Chapter 13 bankruptcy case was scheduled for December 2018. He plans to have the short-sale of HX finalized before the hearing. Then, his bankruptcy attorney can inform the bankruptcy court that HX is no longer a liability and should be removed from the Chapter 13 bankruptcy petition. (Tr. 91-92)

SOR 1.b – This credit card account that Applicant opened in 2012, became delinquent in August 2016. The account is past due in the amount of \$4,449, with a total balance of \$11,678. The account is listed in Applicant's Chapter 13 bankruptcy petition. (AE E; Tr. 94)

SOR 1.c – This medical account (\$1,880) became delinquent in 2017 and was placed for collection. Applicant's documentation shows that he made a payment of \$103 in May, \$216 in August, and \$216 in October 2018. In the future, Applicant intends to use the creditor's website to make future payments. Besides the accounts listed in SOR, Applicant has an unlisted delinquent cell phone bill amounting to \$670. The bill represents an outstanding balance with his former service provider that his new service provider promised to pay when he switched service. (AE B; Tr. 97-102)

Applicant's budget since August 2018 has a net monthly remainder of \$470 a month. His savings account is depleted to about \$200 after he paid a \$1,000 home owners association bill. He exhausted his retirement account in 2014. He has only one corporate credit card which he uses on work trips. Applicant has had no additional financial counseling since the mandated counseling he received when he filed his Chapter 13 bankruptcy petition in September 2016. (GE 1 at 43; AE A; Tr. 102-107)

Character Evidence

The audit chief for a branch of a federal agency has known Applicant for a long time as an employee and does not believe he is a security risk. He should be allowed time to resolve his mishandling of unidentified financial matters. (AE F) The branch chief for the same federal agency as the audit chief indicated that he has known Applicant for 14 years and states that Applicant is not a security risk. Applicant counseled with the branch chief about filing bankruptcy in August 2016. The branch chief advised him to inform his facility security officer and disclose everything about the process. (AE G)

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.

Applicant filed a Chapter 13 bankruptcy petition in September 2016, claiming \$457,000 in liabilities and \$390,580 in assets (SOR 1.a). Most of the liability is from HX. The delinquent credit union credit card debt (SOR 1.b) is included in the Chapter 13 petition. The delinquent medical debt, which is outside of the Chapter 13 petition, is set forth at SOR 1.c. The failure of Applicant to comply with all terms of the Chapter 13 order, invoke the application following disqualifying conditions under of AG ¶ 19:

(a) inability to satisfy debts; and

(c) a history of not meeting financial obligations.

AG ¶ 20 describes conditions that could mitigate security concerns:

(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.

In March 2014, four months after Applicant and his former girlfriend purchased HX, she broke up with him, shifting all HX financial responsibilities to Applicant. In December 2014, his renters vacated his townhouse. Applicant successfully sold the townhouse in a short-sale. The resulting deficiency balance was forgiven by the mortgage lender. The mitigation available under AG ¶ 20(b) is reduced by the passage of more than three years since the foregoing events.

Applicant's explanations of oversight and a high payment plan schedule are not credible. The oversight explanation does not make sense given Applicant's testimonial claim of exploring all avenues to try to save HX. If he was as focused as he claims in keeping HX, it was essential for him to conscientiously meet all payments under the Chapter 13 plan, or seek a payment plan modification through his bankruptcy attorney and the bankruptcy trustee. His complaint of an excessive payment schedule is not credible given the fact that he was on notice when he began making payments under

the Chapter 13 petition in 2016 that his payments would reach \$965 a month in the 18th month of the payment plan.

On October 4, 2018, the bankruptcy trustee filed a motion to dismiss the Chapter 13 case because Applicant missed \$2,850 in payments since the inception of the Chapter 13 plan in September 2016. Further, Applicant did not provide a copy of his 2016 and 2017 federal tax returns as required by the order confirming the Chapter 13 plan. Applicant was given until October 25, 2018, to provide a responsive pleading to the trustee's motion, together with a request for a hearing, or the case could be dismissed. Except for an unsubstantiated claim that a hearing was scheduled in December 2018, Applicant provided no testimony or documentation showing that he replied to motion to dismiss. He provided no evidence of how he intends to address the \$2,850 deficiency balance. Though Applicant receives mitigation credit under AG ¶ 20(c) for receiving mandated financial counseling, there remains a real possibility that the Chapter 13 petition could be dismissed. The mitigation due Applicant under AG ¶ 20(d) is tarnished by the lack of a consistent track record of payments ordered by the bankruptcy court under Chapter 13 payment plan.

Regarding Applicant's evidence of a predicted short-sale of HX, there is no set date for finalization of the short-sale, even though Applicant assumed it would be before the December 2018 hearing on the motion to dismiss the Chapter 13 bankruptcy case. In sum, without evidence of finalization of a short-sale of HX, the action that Applicant's bankruptcy attorney intends to take to modify the Chapter 13 petition by removing HX, thereby eliminating a substantial amount of liability, rests on speculation rather than evidence.

Whole-Person Concept

I have examined the evidence under the guidelines for 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 39 years old and divorced. He is one course short of receiving his bachelor's degree. He received an honorable discharge from the US Navy after serving from March 2000 to March 2004. Applicant has held a security clearance since 2000. He has received several training certificates related to his employment in communication security. I considered Applicant's favorable character evidence from the audit and branch chief of the federal agency where Applicant has worked for 14 years. He has been employed consistently since 2005. I have considered the good judgment Applicant exercised in filing a Chapter 13 bankruptcy petition in September 2016 and listing the SOR 1.b credit card debt in the petition.

On the other hand, Applicant used poor judgment by not complying with the terms of the of the Chapter 13 payment plan. First, he did not provide copies of his federal tax returns for 2016 and 2017 to the bankruptcy trustee as required by the Chapter 13 order. Second, he has not fully complied with the payment plan set forth in the Chapter 13 order. The \$2,850 in missed payments was sufficient to convince the bankruptcy trustee to move for a dismissal of the full Chapter 13 petition. Third, Applicant provided no testimony or documentary evidence of a responsive pleading to the motion to dismiss the Chapter 13 case. Applicant's documentation of a short-sale carries little weight as there is no documentary evidence showing that the short-sale has been finalized. The short-sale is pending and the subsequent action to seek a bankruptcy court modification of the Chapter 13 petition is conditioned upon the finalization of the short-sale. Neither event has occurred. Applicant's failure to comply with bankruptcy orders and terms indicates he may not comply with rules and regulations for safeguarding classified information. Considering all evidence in the context of the whole-person factors, specifically the lack of credible evidence explaining why Applicant missed the Chapter 13 plan payments, he has not mitigated the security concerns raised by 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
Subparagraphs 1.a-1.b:	Against Applicant
Subparagraphs 1.c:	For 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