



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



In the matter of:)	
)	
)	ISCR Case No. 18-02238
)	
Applicant for Security Clearance)	

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: *Pro se*

09/17/2019

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. He failed to provide sufficient evidence to explain why he was unable to pay or otherwise resolve the debts in the Statement of Reasons (SOR). Financial considerations security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On September 21, 2018, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued an SOR to Applicant, detailing the security concerns under Guideline F, financial considerations, under which it was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him.

The DoD CAF acted under Executive Order 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 for Determining Eligibility for Access to Classified Information* (AG) effective within the DoD on June 8, 2017.

On December 5, 2018, Applicant answered the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). (SOR Response) On March 21, 2019, DOHA issued a Notice of Hearing scheduling a hearing that was conducted on April 9, 2019.

Four Government exhibits (Ex. 1 – 4) were admitted into evidence without objection. Applicant submitted no documents at the hearing. Applicant testified, as reflected in a transcript (Tr.) received on April 18, 2019. The record was held open following the hearing to allow Applicant to submit documents. No additional submissions were received.

Findings of Fact

In Applicant's answer to the SOR, he admitted his home went to foreclosure, but denied the five additional delinquent obligations listed in the SOR. After a thorough review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 49-year-old program manager who has worked for a defense contractor since February 2007 and seeks to obtain a security clearance. He is married, and has a daughter age 22 and a son age 18. His annual salary is approximately \$125,000 and his wife, a special education school teacher, has an annual salary of \$50,000. (Tr. 23) She has been employed as a teacher for 22 years. (Tr. 27)

When Applicant completed his March 2017 Electronic Questionnaires for Investigation Processing (e-QIP), he indicated he had two delinquent obligations of \$428 and \$103 He also listed a delinquent \$1,800 student loan and stated he was currently in the process of establishing a monthly \$250 automatic draft to pay the student loan obligation. (Ex. 1)

The SOR alleges six delinquent debts, and the record establishes the status of Applicant's past-due accounts as follows:

SOR ¶ 1.a alleges \$27,084 was past due on his mortgage that went to foreclosure. (Ex. 3) Applicant stated he purchased the home in 1997. He paid \$72,000 for the home and obtained a mortgage requiring monthly mortgage payments of \$1,200. (Tr. 18) His July 2017 credit report indicating that in July 2006, the current lender obtained the 30-year mortgage with a balance of \$76,000. The mortgage required monthly payments of \$993. (Ex. 3, 4) As of July 2017, the balance owed was \$78,516.

In June 2018, Applicant had an enhanced subject interview during which his finances were discussed. His wife failed to pay the mortgage for four or five months resulting in \$27,084 becoming past due. (Ex. 2) He was unaware his wife was not making the mortgage payments as required. He indicated that his wife was handling the

household's finances. (Tr. 17, 28, 31) That has since changed, Applicant has taken a more active role in the household's finances.

Applicant went to court and was given the option to bring the mortgage current or vacate the property. (Tr. 17) He chose to leave. The bank gave him three months to leave. (Ex. 2) In August 2016, the bank forced him to leave the residence. (Ex. 2) He asserts he has not received any correspondence from the lender following the foreclosure nor has he contacted the lender since leaving the home. (Tr. 25) He does not know the home's sale price at foreclosure nor the amount of equity he accumulated during the 19 years he owned the home. (Tr. 26) He says failing to list the foreclosure on his March 2017 was not an intentional omission or misrepresentation. (Ex. 2)

SOR ¶ 1.b alleges an \$834 charged-off credit card account. (Ex. 4) The account was opened in July 2017. (Ex. 2) In his December 2018 SOR Response and at the hearing, Applicant stated he did not know the nature of the debt. (Tr. 19)

SOR ¶ 1.c alleges a \$1,356 charged-off account. (Ex. 4) The account was opened in January 2017. (Ex. 2) In his December 2018 SOR Response and at the hearing, Applicant did not recognize this debt. (Tr. 20)

SOR ¶ 1.d alleges a \$428 collection account. (Ex. 3) During his June 2018 interview, Applicant indicated the debt was a credit card account. He had no knowledge about why it was not paid or when it went to collection. He asserts he paid the debt, but provided no documentation supporting such payment. (Ex. 2) In his December 2018 SOR Response and at the hearing, Applicant indicated he did not recognize this debt. (Tr. 20)

SOR ¶ 1.e alleges a \$415 charged-off account. (Ex. 3, 4) During his June 2018 interview, Applicant indicated he still has a credit card with this company, and would follow up on the debt and satisfy it. (Ex. 2)

SOR ¶ 1.f alleges a \$103 telephone service collection account. (Ex. 3) During his June 2018 interview, Applicant indicated he was unaware of this debt. He contacted the creditor and was told this was an old land-line account. He stated he believed this debt was paid when the land line was disconnected. He provided no documentation showing payment of the debt. He indicated he would follow up on the debt and satisfy it. (Ex. 2)

In Applicant's December 2018 SOR Response, for the delinquent obligations listed in SOR 1.b through 1.f., he stated. "I will work with this company to pay what is owed to them. I am not aware of this company." (SOR Response) At the hearing, he recognized the debts in SOR 1.a and 1.f. He said he would contact the companies and take care of the debts. (Tr. 21) He provided no documentation that he made any payments on the SOR delinquent obligations during the four months between his receipt of the SOR and the hearing. There is no showing he has contacted any of the holders of the delinquent obligations. (Tr. 35) At his hearing, he stated he would contact the companies and pay the debts within two months of the hearing. (Tr. 36)

Applicant has been renting a home for three years and has always been timely on his \$1,100 monthly rent payments. (Tr. 17, 37) He has \$30,000 in his 401(k) retirement plan. (Tr. 46) He is current on his wife's, his daughter's, and son's vehicle payments that total \$1,300 per month. (Tr. 37) Applicant has not received any financial counseling. (Tr. 41, 46) He is very involved in the community. (Tr. 43) He volunteers for the Special Olympics and has helped to raise \$300,000 for the organization over the years. (Tr. 43) He is also involved in a drug-free city organization, the county Relay for Life, and is very involved in civic organizations, being the past president of one. (Tr. 42)

The record was kept open to allow Applicant to submit any documentation showing payment of the delinquent obligations or any other material he believed was relevant. (Tr. 9) No documents were received.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered 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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the adjudication process is an examination of a sufficient period and a careful weight of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is known as the whole-person concept.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility 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.

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 to obtain a favorable security 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. Decisions include, by necessity, consideration of the possible risk

the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination of 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

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant’s financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant’s self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant’s security eligibility.

AG ¶ 19 includes three disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability to satisfy debts,” “(b) unwillingness to satisfy debts regardless of the ability to do so,” and “(c) a history of not meeting financial obligations.” In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government’s obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden

shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

The record having established disqualifying conditions, additional inquiry about the possible applicability of mitigating conditions is required. Applicant has the burden of establishing that matters in mitigation apply. Five financial considerations mitigating conditions under AG ¶ 20 are potentially applicable in this case:

(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;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant had five additional delinquent obligations that totaled \$3,136 in addition to the foreclosure. He knew of the Government's concern about his finances when he completed his March 2017 e-QIP. During his June 2018 interview, he was questioned about his delinquent obligations and said he would contact the companies and pay the debts. In his December 2018 SOR Response, he again said he would work with the companies to pay what was owed. At the hearing, he again said he would contacted the companies and pay the debts. However, there is no documentation showing any payments.

An applicant is not required to establish that he has paid off each debt in the SOR, or even that the first debts paid be those in the SOR. However, an applicant needs to show that he has a plan to resolve his debts and that he has taken significant steps to implement his plan. Applicant expressed a willingness to pay his delinquent debts numerous times. With a household income of \$175,000, he had the ability to pay his past-due debts. He has yet to show documentation that he has resolved even the smallest of

the SOR debts, which was \$103. He has stated numerous time he intends to contact the companies and pay the debts. A promise to pay debts at some future date is not a substitute for a track record of timely payments. See ISCR Case No. 07-13041 at 4 (App. Bd. Sep. 19, 2008) (citing ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999)). Without documented progress toward resolving the debts in the SOR, neither AG ¶ 20(c) nor AG ¶ 20(d) apply.

None of the mitigating conditions apply. In 1997, Applicant purchased a home for \$72,000. In July 2017, twenty years later, the balance owed was \$78,516. He made monthly payments of approximately \$1,000 for most of that period. His wife stopped making mortgage payments resulting in a past-due amount of \$27,084. He asserts he was four or five months behind on his mortgage, however the amount past due indicates he was closer to two years behind on his mortgage. Following the foreclosure, he never checked to see what the house sold for or how much equity he had in the house. He simply moved out when asked to do so by the lender and never inquired as to any debt remaining on the home.

AG ¶ 20(a) does not apply because the debts remain unpaid, and as such, are considered recent. Applicant has been questioned about his delinquent obligations numerous times. His failure to take reasonable steps to address his delinquent accounts after he had been questioned about them casts doubt on his current reliability, trustworthiness, or good judgment. For the mitigating factors in AG ¶ 20(b) to apply, the individual must establish that the conditions that resulted in the financial problem were largely beyond the person's control and the individual must have acted responsibly under the circumstances. Applicant and his wife were employed full-time and had the income to make payments toward the past-due obligations. AG ¶ 20(b) does not apply.

AG ¶ 20(c) does not apply because there has been no financial counseling and the debts remain unpaid. AG ¶ 20(d) does not apply because there is no good-faith effort to pay the debts. AG ¶ 20(e) does not apply because Applicant has failed to provide any documented proof showing that the debts are not his debts.

Applicant has sufficient funds to satisfy all of his outstanding accounts, but has not shown any responsible action to resolve his debts. There is no indication that payments were made on any of the delinquent SOR obligations. There is no evidence that he received financial counseling, or that he initiated a good-faith effort to repay his financial obligations. Applicant failed to provide documentation that he has a legitimate basis to dispute any of his outstanding accounts, and he failed to provide a copy of a cancelled check or other documentation showing he has paid or resolved a debt alleged in the SOR. Under all of these circumstances, Applicant failed to establish that financial considerations security concerns are mitigated.

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 circumstances. The administrative judge should consider the nine adjudicative process factors 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 a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole-person concept. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The comments under Guideline F are incorporated in the whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

A security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. Applicant did not provide any evidence of payments, payment plans, or other actions to resolve the delinquent debts alleged in the SOR. Applicant's actions show a lack of financial responsibility and raise unmitigated questions about his reliability, trustworthiness, and ability to protect classified information. He is very active in the community, however, his civic involvement is not sufficient to overcome the security concerns raised by his failure to pay his delinquent obligations. I conclude that Applicant's financial considerations security concerns are not mitigated.

To conclude, Applicant did not present sufficient evidence to explain, extenuate, or mitigate the financial considerations security concerns. Applicant did not meet his ultimate burden of persuasion to obtain a favorable clearance decision. In reaching this conclusion, the whole-person concept was given due consideration and that analysis does not support a favorable decision.

The decision to deny Applicant a clearance at this time should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a security clearance in the future. The awarding of a security clearance is not a once in a life time occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under Applicant's current circumstances a clearance is not recommended, but should Applicant be afforded an opportunity to reapply for a security clearance in the future he may well demonstrate persuasive evidence of his security worthiness. Favorable consideration would be given to payment of his delinquent obligations. However, a clearance at this time is not warranted.

The law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, have been carefully applied to the facts and circumstances in the context of the whole person. The issue is not simply whether all the delinquent obligations have been paid—it is whether his financial circumstances raise concerns about Applicant’s fitness to hold a security clearance. (See AG ¶ 2(c)) Overall, the record evidence leaves me with questions and doubts about his eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the financial considerations security concerns.

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, Financial Considerations: AGAINST APPLICANT

Subparagraphs 1.a - f: 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 a security clearance. Eligibility for access to classified information is denied.

CLAUDE R. HEINY II
Administrative Judge