



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 19-00319
)
Applicant for Security Clearance)
)

Appearances

For Government: Daniel O'Reilley, Esq., Department Counsel
For Applicant: *Pro se*

05/19/2020

Decision

MASON, Paul J., Administrative Judge:

Applicant's 2005 Chapter 13 Bankruptcy petition was converted to a Chapter 7 petition in 2009, then dismissed. Between July 2013 and September 2018, he incurred additional delinquent debt. In April 2019, he filed another Chapter 13 petition which is pending. The extenuating circumstances for his problems have been evaluated. However, Applicant's evidence in mitigation lacks essential documentary support that he claimed he would but did not produce, to show he has his financial issues under control. Eligibility for a security clearance is denied.

Statement of the Case

On August 24, 2017, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for a position with a defense contractor. On December 20, 2017, he provided a personal subject interview (PSI) to an investigator from the Office of Personnel Management (OPM). On December 21, 2017, Applicant was interviewed by phone. Three additional PSIs were conducted in April, August, and September 2018. After reviewing the results of a

security background investigation, the Department of Defense (DOD) could not make the affirmative findings required to grant a security clearance, and issued to Applicant a Statement of Reasons (SOR), dated May 8, 2019, detailing security concerns under 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 June 8, 2017.

Applicant provided his notarized answer on July 15, 2019, and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 23, 2019, for a hearing on November 20, 2019. The hearing was held as scheduled. The Government's six exhibits (GE) 1-6 and Applicant's two exhibits (AE) A-B were entered into evidence without objection. On December 5, 2019, Applicant submitted six additional exhibits (AE C-H) that have been admitted into evidence without objection. On December 4, 2019, DOHA received the hearing transcript (Tr.). The record in this case closed on December 5, 2019.

Rulings on Procedure

At the beginning of the hearing, I asked Applicant whether he objected to the PSIs (GE 2). I advised him that the exhibit would not be admitted into evidence over his objection. I then advised him that he could call a recess and review the exhibit for inaccuracies, then testify about modifications that he wished to make to improve the truthfulness and clarity of the exhibit. Applicant chose to make one modification. (Tr. 45) GE 2 was admitted into evidence.

Page numbers of the Government's exhibits, except for GE 1, are handwritten and appear in the lower right hand corner of the exhibit. Applicant's exhibits are similarly marked in the lower right hand corner of the exhibit.

Findings of Fact

The SOR alleges that Applicant owes 11 delinquent debts (SOR 1.a-1.k) that became delinquent between July 2013 and September 2018. The total amount of debt is \$22,448. In 2005, he filed a Chapter 13 Bankruptcy petition that was dismissed in 2009 (SOR 1.l) after conversion to a Chapter 7. In April 2019, he filed a second Chapter 13 petition that is pending (SOR 1.m). Applicant admitted all allegations with explanations. All of the listed debts, except for SOR 1.c, 1.d, 1.g, and 1.k were included in the April 2019 Chapter 13 bankruptcy petition (SOR 1.m).

Applicant is 55 years old. He was married for almost 11 years before divorcing in 2003. He has a 24-year-old daughter from this marriage. He and his partner have been together since 2006. In 2004, Applicant obtained an associate's degree in electronic engineering, and in June 2019, he received a bachelor's degree in information

technology (IT), with a focus in cybersecurity. (GE 1 at 25-26, 29, 31, 45; Tr. 37; GE 2 at 3)

Applicant served on active duty in the U.S. Army (USA) from 1986 to 1994, when he was honorably discharged. He served in the Army Reserve from 1994 to 2009.

Though Applicant certified in his August 2017 e-QIP that he had never been investigated or held a security clearance, he informed the OPM investigator in December 2017 that he held a security clearance in the Army and when he worked for a contractor in 2011. Except for one three-month period between May and August 2010, Applicant has been steadily employed, earning at least \$85,000 a year, since his discharge from the Army Reserve in 2009. (GE 1 at 25-26, 29, 31, 41, 45; Tr. 37; GE 2 at 2-3)

Applicant filed his first Chapter 13 Bankruptcy petition in July 2005 (SOR 1.l) because "I got to a point where I had more going out than I had coming in...." (Tr. 69) He indicated that he filed the petition to save his house. His former wife had incurred a large amount of debt which he had to pay under the terms of his divorce decree in October 2003. The decree required him to pay \$368 a month in child support. GE 5 at 11, 23-26; Tr. 69-73)

The Chapter 13 petition was converted to a Chapter 7 in May 2009 after the mortgage company found an investor who purchased Applicant's house and several other houses in the area. He conceded that he had not been making payments regularly under the Chapter 13 petition plan. The Chapter 7 petition was dismissed in October 2009 because Applicant was not appearing at bankruptcy meetings after he moved out of the state. Though he claims he had no debt in 2009, the 2005 bankruptcy petition shows under Schedule F that, among several accounts listed, he owed two delinquent accounts totaling about \$570, a judgment of \$5,171, and a medical account amounting to \$1,300. (GE 5 at 11, 23-26; Tr. 69-73)

SOR 1.a – This mortgage account on Applicant's house in location B became delinquent in April 2018. The amount of the delinquency is \$2,847 on a balance of \$192,159. He purchased the house in October 2014 and rented it in 2017 while he was working in location A. The mortgage account became delinquent because Applicant took a \$20,000 pay cut when he moved from employment location A to B in July 2018. (GE 6; Tr. 31-34, 46, 73, 86; July 2019 answer to SOR)

After Applicant moved to his house in location B, he discovered the renters had caused extensive damage which he repaired. He had to fumigate the house. Because water had been left standing on the kitchen floor, he had to repair the floor. He had to repaint the house and fix the yard. He withdrew \$1,000 from his retirement account for the repairs. After fixing the damage, he had no money to pay the mortgage account. Applicant filed a Chapter 13 Bankruptcy petition in April 2019 (SOR 1.m) to save his house in location B. The additional debts listed in the petition, which include most of the

SOR accounts, confirm that the SOR 1.a mortgage was not Applicant's only overdue account in April 2019. The reason why Applicant moved was to relocate his disabled mother from location C to his house in location B. His mother decided to move instead with one of Applicant's sisters. (GE 6; Tr. 31-35, 46, 73, 85-86; July 2019 answer to SOR)

Regarding Applicant's payments of the mortgage through the April 2019 Chapter 13 petition, he claimed he could provide documentation showing: (1) that he was current on his \$800 monthly payments under the Chapter 13 payment plan (SOR 1.a); and (2) that he would produce documentation from 2018 showing the four missed mortgage payments. Applicant's documentation does not show an \$800 mortgage payment made in August 2019 and thereafter, or any previous petition-plan payments of \$1,000 a month before then. There are two postings, each identified as "bankruptcy payment," for August 2 and August 6, 2019, but no payment amount is entered next to either posting. (Tr. 46-50, 75; July 2019 answer to the SOR; AE A, C, G)

The lack of credible documentation of payments under the bankruptcy petition payment plan generates questions of how Applicant reworked his budget to bring the mortgage to a current status. In the email exchanges between Applicant and his bankruptcy attorney on August 18, 2019, the attorney noted that Applicant's plan payment was behind and commented that fewer less costly payment options were available regarding payment plans for the mortgage. SOR 1.a was removed from the Chapter 13 petition after Applicant received a home loan modification (HLM) on the mortgage. The HLM was signed, dated, and notarized by Applicant on August 1, 2019, but contains no lender acknowledgement date by the mortgage company, or a signature from a notary. (Tr. 46-50, 75; July 2019 answer to the SOR; AE A, C, G; AE H at 5-6)

SOR 1.b – This is an installment contract for a car that became delinquent in September 2018. The past-due amount is \$577 on a balance of \$28,199. The account is listed in Applicant's April 2019 Chapter 13 Bankruptcy petition. (GE 6 at 14; Tr. 47, 49-50)

SOR 1.c – This is an installment contract for a car; the deficiency balance owed is \$8,976. Applicant and his partner cosigned for the car in 2016. The account became delinquent in May 2018. Eventually, the car was sold at auction, leaving a deficiency balance. Applicant returned the car to the dealer in April 2018 after his partner lost his job in February 2018 and could not meet his portion of the monthly payments. (GE 3 at 2; Tr. 51-54)

Applicant tried to place the SOR 1.c deficiency balance in the April 2019 Bankruptcy petition, but the trustee refused because of joint ownership status of the account. Applicant's partner is now working as a chef and is making all payments on the deficiency balance. Applicant indicated he could provide documentation to show his partner is making payments on SOR 1.c. No documentation was submitted. (Tr. 51-54, 81-82)

SOR 1.d – This is an unsecured personal loan that Applicant opened in September 2017, with a former female coworker as cosigner. The account, which totals \$5,193, became delinquent in September 2018. The female coworker satisfied the account in November 2018. Applicant took out the loan to pay his daughter's rent to avoid her eviction, and to provide her with funds for a car payment. When the female coworker could not make her portion of the monthly payments, Applicant became delinquent on the full payment by two months. (GE 3 at 2; Tr. 56-57, 83; AE D)

SOR 1.e – This is an account for cable equipment which is now in the April 2019 bankruptcy (SOR 1.m). The account, which is \$1,603, became delinquent in August 2014. Applicant claimed that he returned the equipment, but threw away the shipping receipt. The Government credit report information shows that Applicant disputed the account. (GE 1 at 49; GE 2 at 4; Tr. 58-60)

SOR 1.f – This cable account that became delinquent in April 2017; the past-due amount is \$450. Applicant testified that the balance was actually \$900, and when he visited the cable company, an agent settled the account for \$450. He testified that he paid the amount in June 2018, but the cable company does not have a record of the \$450 payment. Applicant believes that his bankruptcy attorney just moved the account into the Chapter 13 petition without investigating whether the account was valid. (GE 3 at 2; Tr. 60-63)

SOR 1.g – This is a medical account (\$71) that became delinquent in April 2017. Applicant's documentation shows that he paid the account in May 2019, about a week after he received the SOR. He was not aware of the account until the OPM investigator informed him in the December 2017 PSI. When asked why he waited about a year and a half to pay the debt in May 2019, he explained that after receiving the SOR a short time earlier in May 2019, he decided to pay the debt. He predicted that he would have eventually paid the debt because it was so small. (Tr. 62-65)

SOR 1.h – This phone account (\$120) became delinquent in May 2014. Applicant testified that he closed the account 30 days after he received the phone because he was dissatisfied with the service. He told the OPM investigator in December 2017 that he was overcharged for the phone, but planned to contact the collection agency and set a payment plan. Documentation shows that Applicant disputed the account. The debt is now in the April 2019 Chapter 13 petition. (GE 2 at 4; GE 4 at 3; Tr. 65-66)

SOR 1.i – This is a cable account (\$1,555) that became delinquent in August 2017. Applicant agreed to assume primary liability for a cable account for his daughter. She finally returned the cable equipment to the creditor. In December 2017, Applicant indicated to the OPM that he intended to contact the collection agency and make payments. Applicant testified that the account no longer appears on his credit report. He agreed to furnish a copy of his credit report to show the account was no longer posted. No credit report was submitted. (GE 2 at 5; GE 4 at 15; Tr. 66-67)

SOR 1.j – This is a payday loan (\$920) that became delinquent in August 2017. Applicant needed the funds to pay for his travel to and from his daughter’s high school graduation in May 2014. Applicant chose the payday loan because he could not obtain the funds in any other way. Though Applicant believed the interest rate of the loan was 160%, he could not remember why he could not maintain payments. Surprisingly, he informed the OPM investigator in December 2017 that he was making \$50 monthly payments on the debt. The account is included in Applicant’s April 2019 Chapter 13 petition. (GE 2 at 4; GE 4 at 15; Tr. 67-68, 83)

SOR 1.k – This is a dental account for Applicant’s daughter. The bill (\$136) became delinquent in July 2013. Even though he discussed the debt with the OPM investigator in December 2017, he did not pay the debt until after he received the SOR in May 2019, the same explanation he supplied for paying the SOR 1.g debt. (GE 4 at 16; Tr. 68-69; AE B)

Though he provided no documentation to support his claims, Applicant indicated that he used credit counseling companies to fix his credit issues. He paid them every month, but saw no results because he was still receiving calls and letters from creditors. He began contacting the collection agencies directly, but the creditors always wanted more money than the parties had originally negotiated. (GE 1 at 46)

In 2017, he paid a credit repair firm \$100 a month for up to six months to discourage collection agencies from contacting him. He noted that the firm had been making some early progress in removing some accounts from his credit report. However, he became dissatisfied again because he was still receiving phone calls and letters from collection agents. He testified that he pulled out of the credit-repair service after paying a \$100 a month for six months and seeing no improvement in his overall finances. Applicant has never received financial counseling and has not obtained financial advice from anyone. (GE 1 at 46-47; GE 2 at 4; Tr. 74, 79-80)

Though Applicant has had uninterrupted employment for the last ten years, he has been able to save only \$1,000, although he believes he could borrow some of the \$4,000 that his partner has saved. The reasons for the paltry savings is: that Applicant has had to occasionally subsidize his daughter’s college living and transportation expenses over the years; that he has paid most of his partner’s bills whenever he could not pay them; and that he had to spend a large amount of money in July 2018 to fix the damage to his house in location B. (Tr. 78-79, 87)

In his closing statement, Applicant conceded that he has made some poor financial choices, but takes responsibility for all his decisions. He indicated that he has established a budget to keep track of his finances. (AE F) He used the word “budget” several times in his July 2019 answer to the SOR and in his closing statement, but did not explain whether he has a written budget or a computer-generated budget. AE E is not a budget, but a list of creditors with undated payment amounts posted next to each creditor. (AE E)

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.

An applicant who seeks a security clearance with the Government must demonstrate that he has good judgment and is trustworthy. A gauge of his judgment and trustworthiness can be evaluated by how he goes about managing his personal affairs. An applicant who shows a history of financial irresponsibility in paying his voluntarily incurred debts may also demonstrate irresponsibility in failing to comply with rules and regulations for safeguarding sensitive or classified information.

The conditions under AG ¶19 that raise security concerns and may be disqualifying include:

- (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.

While Applicant claims he filed a Chapter 13 Bankruptcy petition in 2005 to save his house, Schedule F of the petition shows that he also had other delinquent accounts and one judgment. In 2009, the petition was converted to a Chapter 7, then it was dismissed, not discharged, meaning that the Schedule F accounts identified as delinquent in the original 2005 petition remained delinquent. Between July 2013 and September 2018, Applicant incurred 11 additional delinquent debts totaling \$22,448. In November 2018, a cosigner on a personal loan, made the final payment on the balance of the loan. In May 2019, Applicant satisfied SOR 1.g and 1.k, reducing the total delinquent debt amount to \$17,048. A Chapter 13 petition filed in 2005 and dismissed in October 2009, with a record of continued financial problems for ten additional years, shows a long history of not handling financial obligations in a responsible manner. AG ¶¶ 19(a) and 19(c) apply. I do not conclude that Applicant was unwilling to resolve his indebtedness based on the initial good judgment he used to file a Chapter 13 petition in 2005 and in April 2019. Applicant's two main problems have been a lack of financial counseling and not prioritizing his own financial responsibilities. AG ¶ 19(b)

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;
- (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's 2005 Chapter 13 Bankruptcy petition was filed more than 14 years ago. However, none of the accounts, including the delinquent accounts, were paid or discharged since the original petition was converted to a Chapter 7, then dismissed in 2009. Applicant's accumulation of 11 additional delinquent accounts between 2013 and September 2018, and his inability to address most of the debts until April 2019 (SOR 1.m) when he filed the second Chapter 13 Bankruptcy petition, continues to raise security concerns about his reliability and judgment. The lack of credible documentation related to Applicant's payments under the current Chapter 13 petition payment schedule, weighed against the circumstances of the dismissed Chapter 7 petition in 2009, raise lingering concerns about whether Applicant will complete this current plan successfully. AG ¶ 20(a) does not apply.

Applicant's daughter's occasional living and transportation expenses, his partner's expenses over the years, and the renters' damage to house before he returned to location B in July 2018 were unforeseen events beyond Applicant's control that resulted in financial problems. The first prong of AG ¶ 20(b) applies.

The second prong of AG ¶ 20(b) requires responsible action to be taken under the circumstances. From 2010 to the present, Applicant has been steadily employed and earning at least \$85,000 a year. Nevertheless, he accumulated more delinquent debt between 2013 and September 2018, and has taken no action to address most of the debt until he filed the Chapter 13 petition in April 2019. After weighing the questionable documentation submitted as evidence regarding Applicant's payments under the current Chapter 13 plan, with the surrounding circumstances leading to the dismissed Chapter 7 petition in 2009, I conclude that the second prong of AG ¶ 20(b) has only minimal application.

Applicant explained that he had hired credit-counseling firms and credit-repair services without success. He testified that he has never received financial counseling or financial advice. Though he has a Chapter 13 Bankruptcy petition plan underway, he has provided negligible evidence that he is making regular payments under the plan. Based on the absence of financial counseling, I am unable to confidently conclude his debts are under control or being resolved. AG ¶ 20(c) does not apply.

Shortly after he received the SOR in May 2019, Applicant satisfied the SOR 1.g and 1.k debts. Although Applicant receives some credit for satisfying these two debts, the payoffs were not made in good faith, but after he received the SOR. He was not simply paying off his debts to show financial responsibility, but to enhance his chances of receiving a security clearance. AG ¶ 20(d) has limited application to Applicant's payoff of SOR 1.g and 1.k debts.

The Government credit reports show that Applicant disputed SOR 1.e and 1.h. He provided a reasonable basis for the disputes but provided no documentation to support the disputes. He claimed that SOR 1.i no longer appeared on his credit report. While he testified he would supply a credit report to prove his claim, no report was provided. In addition, all three debts are in his Chapter 13 Bankruptcy petition. AE ¶ 20(e) does not apply.

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 55 years old. He has a 24-year-old daughter his former wife from his previous marriage. He has been in a relationship with his partner since 2006. His first Chapter 13 Bankruptcy petition in 2005 was ultimately dismissed in 2009 after it had been converted to a Chapter 7. Between 2013 and September 2018, he continued to accumulate additional delinquent debts listed in the SOR.

Applicant has a long history of financial problems, He has been given ample notice by the Government that his debts raised security concerns. He had sufficient time to seek help concerning his debt delinquencies through some kind of financial counseling. The purpose of counseling is teach an applicant how to control his earnings and expenses. Toward that end, financial counseling encourages one to live within his means so that he can regularly save money and ensure that he pays his own financial obligations before he pays the obligations of others. Considering the evidence as a whole, Applicant's evidence in mitigation is insufficient to overcome the adverse evidence under the financial considerations guideline.

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, 1.c, 1.e, 1.f, 1.h, 1.i, 1.j, 1.l, 1.m: Against Applicant

Subparagraphs 1.d, 1.g, 1.k: 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