



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



In the matter of:)
)
) ISCR Case No. 19-03666
)
Applicant for Security Clearance)

Appearances

For Government: Andrew Henderson, Esq., Department Counsel
For Applicant: *Pro se*

12/02/2020

Decision

TUIDER, Robert, Administrative Judge:

Applicant failed to mitigate security concerns regarding Guideline F (financial considerations). Clearance is denied.

Statement of the Case

On January 28, 2015, Applicant submitted a Questionnaire for National Security Positions (SF-86). On February 6, 2020, the Defense Counterintelligence and Security Agency, Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F. The SOR detailed reasons why the CAF was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On March 10, 2020, Applicant submitted his SOR Answer.

On July 14, 2020, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. On September 14, 2020, DOHA issued a notice of hearing scheduling the hearing for September 29, 2020. On the morning of the hearing, Applicant sent an email to all concerned parties that he was ill and would not be able to attend his

scheduled hearing. I convened the hearing absent the applicant, and continued the case to a date to be determined. (See Transcript (Tr.) for September 29, 2020 hearing; Exhibit I) On October 6, 2020, DOHA issued a notice of hearing rescheduling the hearing for December 2, 2020. The hearing was convened as rescheduled. Government Exhibits (GE) 1 through 12 were admitted without objection. Applicant testified and submitted Applicant's Exhibit (AE) A, which was admitted without objection. I held the record open until January 29, 2021, to afford Applicant an opportunity to submit additional evidence. He timely submitted AE B through E, which were admitted without objection. On December 21, 2020, DOHA received the hearing transcript.

Findings of Fact

Applicant's SOR alleged 18 allegations under Guideline F. His admissions and denials are broken down as follows. He admitted SOR ¶¶ 1.a, 1.b, 1.d, 1.g, 1.h, 1.k, 1.m, 1.p, 1.q, and 1.r., with explanations. Applicant denied SOR ¶¶ 1.c, 1.e, 1.f, 1.i, 1.j, 1.l, 1.n, and 1.o, with explanations. Additional findings of fact follow.

Background Information

Applicant is a 59-year-old business analyst who has been employed by a defense contractor since January 2019. (GE 1; Tr. 12-13) He seeks to retain his secret security clearance, which is a requirement of his continued employment. (Tr. 33-34) Applicant has held a clearance since he was on active duty in the Navy, discussed below. (Tr. 33-34)

Applicant received his high school diploma in 1979. He went on to earn a bachelor of science degree in management in 2015, and a master of business administration degree in 2016. (Tr. 14-15, 26-28; AE A) He served in the U.S. Navy from February 1983 to January 1992, and was honorably discharged as an Operations Specialist First Class (pay grade E-6). Before he was discharged, he had been selected for chief petty officer, was surface warfare qualified, and had earned "several ribbons and awards." (Tr. 16-17) After Applicant's separation from the Navy, he held a number of jobs, primarily as a defense contractor at various U.S. locations. (GE 1; Tr. 17-26)

Applicant was married from 1983 to 1988, and that marriage ended by divorce. He has one adult son from that marriage. Applicant remarried in 1989, and has five adult children from his second marriage. All of the children from his second marriage are living at home and dependent on him for support. (GE 1; Tr. 16, 28-33, 41) His wife is a homemaker and is not employed outside the home. (Tr. 33)

Financial Considerations

Applicant's SOR listed 18 allegations under this concern consisting of 15 debts totaling \$43,536, and three bankruptcy filings. The debts are established by his January 28, 2015 Electronic Questionnaire for Investigations Processing (SF-86); his April 24, 2017 and June 24, 2015 Office of Personnel Management Personal Subject Interviews (OPM PSI); a June 30, 2015 Joint Personnel Adjudications System (JPAS) Incident

History; his July 10, 2020, October 1, 2019, June 6, 2017, and February 10, 2015 credit reports; his July 26, 2011 Chapter 13 Bankruptcy Documents; November 21, 2011 Chapter 13 Bankruptcy Documents; April 17, 2012 Chapter 7 Bankruptcy Documents; July 11, 2005 Sworn Affidavit; and his March 10, 2020 SOR Answer. (SOR Answer; GE 1-12)

Applicant stated that his financial problems began during his first marriage because of his former spouse's misuse of credit cards and overspending without consulting him. Some of the debts from his first marriage continued after Applicant remarried. He did not become aware of a large credit-card debt his former spouse had incurred until 1992, when he attempted to buy a car. In addition, he paid child support for the son born during his first marriage, even though he claims not to be that son's biological father. Applicant filed his first bankruptcy, which was not alleged in the SOR, in the late 1990's. Applicant stated that he filed that bankruptcy because he had five children and the "bills were compounding." (Tr. 34-44; GE 12)

Applicant's history of indebtedness included a number of debts listed in his 2003 Chapter 13 bankruptcy and not alleged in the SOR. (Tr. 43-46; GE 12) Applicant's June 30, 2020 JPAS Incident History documents Applicant's extensive history of garnishments and indebtedness from 2005 to 2019. One of the garnishments came about because he accepted funds from FEMA, discussed below. (Tr. 46-47, 51; GE 4) Applicant stated the two 2011 Chapter 13 bankruptcies were "mistakes" that ultimately led to his filing a 2012 Chapter 7 bankruptcy. He was granted a discharge of his nonpriority unsecured debts in 2014. (Tr. 47-48) Department Counsel questioned Applicant about a 2012 \$15,000 civil judgment against him involving a condominium he attempted to purchase from a "shipmate." Applicant was evicted from the condominium with a \$15,000 judgment against him. (Tr. 48-50)

Shortly after Applicant was evicted from the condominium in 2012, he relocated his family to a rental home in a coastal community that was struck by a hurricane before he moved in. Applicant applied to FEMA for financial aid to recover from the hurricane. Applicant stated that as part of the condition to receive financial aid, he was required to move out of state, which he did. FEMA subsequently determined that he was ineligible to receive the aid because he did not lose anything and attempted to recover the funds paid to him. FEMA ultimately garnished Applicant's wages for \$9,300. (Tr. 51-54)

As noted, Applicant's SOR listed 18 allegations consisting of 15 debts totaling \$43,536 and three bankruptcies. These debts vary in type of creditor and amount and range from a \$52 delinquent medical bill to a \$26,530 charged-off automobile loan. Applicant explained that he had taken, or was taking, various steps to address these debts. However, he did not produce any documentary evidence to corroborate his claims of settlement, payments made, or attempts to resolve these debts. Nor did Applicant's SOR Answer contain any documentation of debt resolution. Applicant stated that he sent "about 17 letters" to creditors seeking resolution of his debts, but had not received any replies. (Tr. 56-70) He did not submit copies of any of the letters as exhibits. Applicant submitted an unexecuted mitigation plan to regain financial responsibility. (AE A)

Applicant lost his employment through a reduction in force (RIF) and he was unemployed from March 2013 to September 2014. During this timeframe, Applicant drew unemployment for six months and withdrew money from his 401K for living expenses. (Tr. 73, 75, 78; GE 1) An investigator with the Office of Personnel Management (OPM) interviewed Applicant on June 24, 2015, and April 24, 2017 regarding his financial situation. Applicant explained that he did not send letters to creditors after his 2017 OPM interview because he was RIF'd a second time and unemployed from January 2018 to January 2019. However, Applicant did not reinstate his plan to establish payment plans with his creditors after beginning his current employment in January 2019. After Applicant was RIF'd, he drew unemployment for six months and used his savings and money from his 401K for living expenses. (Tr. 58-59, 74, 78) Applicant stated that after beginning his current job his focus was on providing for his family and regaining his financial footing. He added that after the COVID-19 lockdown, three of his adult children who were working lost their jobs and moved in with him. (Tr. 59, 74)

At his hearing, Applicant submitted a matrix summary that reflected his debts were pending verification except for two debts that he claimed were current. He did not submit any documentation that reflected any of his SOR debts were resolved. (AE A) The monthly budget Applicant submitted at his hearing reflected a net monthly income of \$7,200 with a net monthly remainder of \$2,076. However, he orally amended that monthly remainder during his testimony because his expenses had gone up after his son and two daughters lost their jobs and were dependent on him for support. He estimated his net monthly remainder was "probably about \$200 to \$300 a month right now." (Tr. 70-71; AE A)

Applicant acknowledged that he was earning a good income since he began working for his current employer, but had experienced a financial setback. He stated he had "six people that were relying on my income to sustain them and pay their bills, and pay my bills and also pay the debt that I had with my friends." Applicant explained that his budget was pre-COVID. (Tr. 72-73, 76-77) He also submitted evidence of a business he formed in 2018 to develop a business process for Government procurement and acquisition. (AE A) The record does not contain any evidence that Applicant derived any income from this business. He completed an online credit-counseling course, date unknown. (AE A)

At the conclusion of the hearing, I advised Applicant that he had not mitigated his debts. (Tr. 77) As noted, I held the record open until January 29, 2021, to afford him an opportunity to submit additional evidence. I informed him that he needed to produce documentation for each SOR debt and an updated budget among other things. (Tr. 77-83) As noted Applicant timely submitted AE B through E. However, his post-hearings submissions did not contain any documentation demonstrating that the 15 listed SOR debts had been mitigated or addressed in any meaningful way apart from what appears to be a settlement agreement that may be linked to SOR ¶ 1.i (credit-card collection account for \$219). The settlement agreement provided indicates three \$72 payments remained. (AE F) Applicant's post-hearing matrix summary reflects that debts were

resolved by settlement agreement, barred by statute of limitation, were paid, or were removed. However, Applicant did not provide documentation of debt resolution in his post-hearing exhibits except for one debt that may have been listed on his SOR. (AE D-E) He stated in his forwarding email, "Note: Creditors were not forthcoming with agreement documents."

Character Evidence

Applicant's resume documents a post-Navy career primarily as a defense contractor. He submitted two work-related professional certificates. (AE A) His company president wrote a favorable reference letter on his behalf, stating that Applicant is required to maintain a secret security clearance to remain on the company's current contract. The company president also lauded Applicant's performance noting that Applicant received "great reviews" from the Government customer and his peers. He added that the company considers Applicant "a key role in the success of the project." Applicant received a "100/100" for his most recent employee performance review. (AE B, AE C)

Policies

This case is adjudicated under Executive Order (EO) 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), which became effective on June 8, 2017.

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 are to be used 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, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching 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.

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."

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.” The applicant has the ultimate burden of persuasion to obtain 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. 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 EO 10865 provides that adverse decisions shall be “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

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. 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.

AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts;” 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.

(internal citation omitted).

Applicant's history of delinquent debt is documented as noted above. Applicant's SOR lists 15 delinquent debts totaling \$43,536. The majority of his debts have been delinquent for more than two years. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

AG ¶ 20 lists five potentially mitigating conditions under these facts:

(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.

The Appeal Board explained an applicant's responsibility to prove applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The

standard applicable in security clearance decisions is that articulated in *Egan, supra*. “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.” Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

Applicant’s conduct does not warrant full application of AG ¶ 20(a) because there is more than one delinquent debt and his financial problems are not isolated. Therefore, his debts are “a continuing course of conduct” under the Appeal Board’s jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)).

Applicant’s conduct in resolving his debts warrants partial application of AG ¶¶ 20(b) and 20(c). With regard to AG ¶ 20(b), Applicant presented evidence of several events beyond his control to include loss of employment and taking on the unplanned added expense of supporting three of his five adult children. However, he has been working full time and earning a good salary since January 2019. Applicant did not establish that he acted responsibly under the circumstances. “Even if Applicant’s financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties.” ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current. With regard to AG ¶ 20(c), although Applicant took an online credit-counseling course, there is no clear indication that his financial status is being resolved or is under control.

AG ¶ 20(d) is not applicable. The Appeal Board has previously explained what constitutes a “good faith” effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the “good faith” mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant’s debts. The Directive does not define the term ‘good-faith.’ However, the Board has indicated that the concept of good-faith ‘requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.’ Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the “good faith” mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

Additionally, Applicant indicated in his post-hearing submission that the statute of limitation barred a number of his debts. Security clearance decisions are not controlled or limited by statutes of limitations. A statute of limitations may limit the legal collectability of a debt; however, an administrative judge is required to consider the history of the debt's resolution as well as its current status. A security clearance adjudication is not a proceeding aimed at collecting an applicant's personal debts. Rather, it is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness. Accordingly, even if a delinquent debt is legally unenforceable under state law, an administrative judge is required to consider the facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy the debt in a timely manner. ISCR Case No. 14-03991 at 2 (App. Bd. Jul. 17, 2015).

Particularly problematic is Applicant's lack of reasonably available corroborating documentation. I informed Applicant at the conclusion of the hearing of documentation that could mitigate his debts. It is well established under DOHA case law that applicants have the burden of presenting reasonably available corroborating documentation, and if they do not, their claims of payments or payment plans are entitled to less weight. ISCR Case No. 15-05478 at 6 (App. Bd. Oct. 2, 2017) and ISCR Case No. 15-04851 at 4 (App. Bd. Apr. 28, 2017). AG ¶ 20(e) is not relevant. In sum, Applicant's evidence is insufficient to mitigate financial considerations security concerns.

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.

The ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. AG ¶ 2(c). The discussion in the Analysis section under Guideline F is incorporated in this whole-person section. However, further comments are warranted.

Although the rationale for continuing Applicant's security clearance is insufficient to support national security eligibility at this time, there are several factors tending to support potential future approval of his access to classified information. Applicant is a 59-year-old business analyst, who has the background and experience to understand

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. National security eligibility is denied.

Robert Tuidier
Administrative Judge