



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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Applicant for Security Clearance)

ISCR Case No. 19-03615

Appearances

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

09/02/2020

Remand Decision

MASON, Paul J., Administrative Judge:

Having weighed all the entire record, the filing of a Chapter 13 bankruptcy petition and two character references, without more evidence in mitigation, does not meet Applicant’s ultimate burden of persuasion under the guideline for financial considerations. Eligibility for a security clearance is denied.

Statement of the Case

On July 2, 2019, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP, Item 2) requesting a security clearance so that he could work for a defense contractor. On July 23, 2019, Applicant provided an interview (PSI, Item 3) to an investigator from the Office of Personnel Management (OPM). The Department of Defense (DOD) could not make the necessary affirmative findings to grant or continue Applicant’s eligibility for a clearance and issued a Statement of Reasons (SOR) on February 3, 2020. The SOR detailed reasons for their decision under the financial considerations guideline (Guideline F). DOD Directive 5220.6, *Defense Industrial*

Personnel Security Clearance Review Program (January 2, 1992), as amended (Directive); and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), made effective in the DOD on June 8, 2017.

Applicant provided his answer to the SOR on March 13, 2020. He decided to have his case decided on the written record rather than after a hearing. Department Counsel submitted a copy of the File of Relevant Material (FORM) on June 18, 2020. The FORM contains ten exhibits (Items 1-10). Applicant received the FORM on June 25, 2020; his response to the FORM was due on July 25, 2020. He did not submit a response. The case was assigned to me of August 13, 2020.

Rulings on Evidence

On page three of the FORM, Applicant was advised that he could make corrections, additions, or deletions to improve the clarity of his July 23, 2019 PSI (Item 3). In the alternative, if he objected to the entire exhibit because it was not authenticated, the exhibit would not be admitted into evidence. The exhibit will be admitted into evidence as Applicant raised no objections. See DOD Directive 5220.6, E31.20.

Findings of Fact

The SOR alleges 3 delinquent accounts under SOR 1.a (credit card account), 1.b (lease) and 1.c. (lease). The total amount of the delinquent debt is \$25,771. Applicant admitted the three allegations and provided documented evidence showing that he filed a Chapter 13 Bankruptcy petition in February 2020. Though he supplied explanations in for two of the three debts in his earlier July 2019 PSI, he supplied no explanations in his answer to the SOR of the surrounding circumstances for how the three accounts slipped into arrears. He furnished no details about his Chapter 13 petition, specifically whether he has made any payments under the petition. Applicant's completion of a credit counseling course is commendable, but it is also a condition precedent to the final approval of the Chapter 13 bankruptcy. Moreover, Applicant imparted no information of how he benefited from the course. (Applicant's March 2020 answer to the SOR)

Applicant is 32 years old and has been married since December 2013. He has a 12-year-old stepdaughter, two daughters 8 and 6 years old, and a 5-year-old son. He has no criminal record. He has no drug or alcohol problems. He seeks to retain his security clearance that he has held since 2008. (Item 2 at 26-39)

Applicant has been employed as an aircraft painter since August 2017. He has also been in the United States Air Force (USAF) Reserve since December 2016, and on active duty as a job maintenance journeyman in the USAF from November 2008 to

December 2016. He has been steadily employed in the military or in commercial jobs since 2008. (Item 2 at 14-23)

SOR 1.a – This is a delinquent credit card account (\$19,640) that was opened in June 2013. Applicant claimed that he was paying \$100 on the account every month, including May 2019, but missed a payment in June 2019. He also declared that the account was still active, however the program for this credit card was no longer accepted. No additional information was provided. Credit bureau records show that the last payment activity on the account was in May 2018. Though Applicant did not mention this account in Item 2 (July 2019 e-QIP), he explained in Item 3 (July 2019 PSI) that he used the credit card for his motorcycle and accessories. According to the bankruptcy records there were two motorcycles. When he filed his Chapter 13 petition in February 2020, he noted that he surrendered the motorcycle identified in SOR 1.a. (Item 3 at 4; Item 4 at 10; Item 5 at 2; Item 6 at 2; Item 9, Schedule A/B property at 2) The account listed in the petition, but is unresolved.

SOR 1.b – This is a landlord-tenant lease (\$5,008) that Applicant breached between April and August 2014. He explained that his wife was pregnant when they moved into the apartment and she was allergic to the marijuana fumes they both regularly smelled within the apartment building. Applicant indicated he complained to the landlord several times, but no action was taken. He discovered a state law which indicated that if the premises contained a safety hazard, the tenant could vacate the dwelling if the landlord did not fix the hazard within 30 days. In July 2019, Applicant was receiving assistance to dispute the debt. However, if it was determined that he owed the rental debt he would pay it. Though the delinquent rental account and the other two accounts are listed in Applicant's Chapter 13 petition, there is no evidence indicating that payments have been made under the bankruptcy petition.

SOR 1.c – This delinquent account (\$1,123) is a lease that was opened in March 2015; the last payment activity on the account was September 2015. In his July 2019 PSI, Applicant disavowed any knowledge of the lease. However, the lease appears in Applicant's Chapter 13 petition. (Item 3 at 4; Item 4 at 10; Item 5 at 2; Item 6 at 6; Item 9 at 9)

Applicant provided no evidence that he has had financial counseling before his recent bankruptcy-related credit counseling in early 2020. He has never been in a debt consolidation program. He did not explain his financial practices and whether he utilizes a budget to monitor his finances. Applicant stressed that his current financial status was good and he was able to meet his debts on time. (Item 3 at 5)

In the Chapter 13 petition which Applicant filed in February 2020, he posted \$74,242 in assets and \$82,273 in liabilities. Subtracting \$5,670 in expenses from

Applicant and his wife's combined monthly income is \$8,159, leaves a net monthly remainder of \$2,489. There is no information in the record indicating that he remainder was used to pay off the delinquent debts. (Item 10 at 2)

Character Evidence

In an undated and unsigned character reference, Applicant's technical sergeant explained that she has known Applicant for three years. She considered him to be a team player who is able to complete his military and civilian job responsibilities in an exemplary manner. Without mentioning what his problems are, she was confident that he would be able to fix his predicaments to keep his security clearance.

On August 2, 2019, Applicant's coworker extolled Applicant's ingenuity for modernizing paint schemes to outsmart the competition. The coworker praised Applicant's hard-work and team player attitude.

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

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 sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other public trust issues 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 trustworthiness concern insofar as it may result from criminal activity, including espionage.

If a person who seeks a public trust position does not manage her finances in a responsible manner, then there is a probability they may adopt the same kind of irresponsible attitude toward safeguarding classified information.

AG ¶ 19. The disqualifying conditions relevant in this case are:

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

The SOR alleges that Applicant has three delinquent debts totaling \$25,771. The debts began becoming delinquent in 2013 when Applicant opened and used a credit card to purchase a motorcycle and accessories (SOR 1.a). The delinquent debts increased in 2014 (SOR 1.b) and 2015 (SOR 1.c) when Applicant violated apartment leases. AG ¶¶ 19(a) and 19(c) apply.

The Government credit bureau reports, bankruptcy records, Applicant's July 2019 PSI, and Applicant's March 2020 answer to the SOR, establish the Government's case under the financial considerations guideline. It is well-settled that negative information within credit bureau reports can establish allegations of debt delinquencies. Applicant has the ultimate burden of persuasion of producing evidence that rebuts or mitigates the Government's case and meets his burden of demonstrating he deserves to a security clearance.

AG ¶ 20. Conditions that could mitigate trustworthiness concerns 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;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a nonprofit 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.

While Applicant filed a Chapter 13 petition in February 2020, there is no evidence showing that Applicant has made any payments under the petition. It is likely that Applicant's financial problems will persist in the future. AG 20(a) provides no mitigation.

AG ¶ 20(b) recognizes that an applicant's financial problems may be caused by conditions beyond his control. The condition also requires that the individual act responsibly under the circumstances. Applicant has provided no information to demonstrate that the delinquent debts were caused by matters outside his control. He may argue that his underemployment was beyond his control. However, this reason really indicates that he has not been managing his finances in a responsible manner. Purchasing at least one motorcycle and accessories in lieu of using that money to pay family necessities, is an example of financial mismanagement. Waiting until after he received the SOR in early February 2020 to file his Chapter 13 petition is not acting reasonably and responsibly under the circumstances. AG ¶ 20(b) does not apply.

AG ¶ 20(c) is unavailable for mitigation. While Applicant has received credit counseling, there is nothing to show that he benefited from the counseling to avoid a recurrence of financial problems in the future. The filing of a Chapter 13 petition does not establish that Applicant's financial debts are being under resolved or under control.

Applicant is entitled to no mitigation under AG ¶ 20(d) because there is no evidence that he made any payments on the three debts since May 2018. Although Applicant's filing of the Chapter 13 petition in February 2020 represents a legitimate course of action in handling unpaid debts, it does not replace a good-faith track record of payments of past-due financial obligations. Applicant receives no mitigation under AG ¶ 20(e) because his dispute of SOR 1.a and 1.b is unsupported by documentary proof identifying the basis of the dispute or resolution.

Whole-Person Concept

I have examined the evidence under the guideline 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 a public trust position must be an overall common-sense judgment based upon careful consideration of the guidelines and the whole-person concept.

At the time of issuance of the SOR in February 2020, Applicant owed \$25,771. Given the long period of inaction in addressing his indebtedness, it is reasonable to infer that Applicant's motive for filing the Chapter 13 petition later in February 2020 was his anxiety over potentially losing his security clearance rather than a good-faith effort to tackle his delinquent debts. Having balanced all the disqualifying evidence against the favorable character endorsements, Applicant has not mitigated 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.c:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the security interests of the United States to grant Applicant eligibility to a public trust position. Eligibility for a security clearance is denied.

Paul J. Mason
Administrative Judge

KEYWORD: Financial Considerations

DIGEST: Applicant's filing of his Chapter 13 Bankruptcy petition in February 2020 was the only documented action he has taken to resolve three accounts totaling \$25,771. Because he did not file the petition until after he received the Statement of Reasons earlier in the same month, I conclude that the action was taken to protect his security clearance, rather than a good-faith effort to repay overdue financial obligations. Applicant's negligible evidence in mitigation falls far short of overcoming the security concerns raised by the guideline for financial considerations. Eligibility for a security clearance is denied.

CASE NO: 19-03615

