



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 19-01737
)
Applicant for Security Clearance)

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: Donald Bell, Esq.

02/03/2021

Decision

MASON, Paul J., Administrative Judge:

Applicant’s evidence falls short of mitigating the security concerns arising from the financial considerations guideline. There is no documentary evidence of any action taken on the SOR 1.a debt between January 2015 and September 2019, when Applicant began making payments under the Chapter 13 payment plan. While the budgetary documents furnish income and expense information for September 2019, the information is over a year old with no indication of debt repayments. Eligibility for security clearance access is denied.

Statement of the Case

On September 30, 2016, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to retain a security clearance required for a position with a defense contractor. The Department of Defense (DOD) could not make the affirmative findings required to continue a security clearance. DOD issued to Applicant a Statement of Reasons (SOR), dated June 20, 2019, detailing security concerns raised by financial considerations (Guideline F). The action was taken under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960),

as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective in the DOD on June 8, 2017.

Applicant provided his notarized answer on July 26, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 11, 2020, for a hearing on September 25, 2020. The hearing was held as scheduled. The Government's six exhibits (GE) 1-6 and Applicant's nine exhibits (AE) A-I were entered into evidence without objection. On September 30, 2020, Applicant submitted four post-hearing exhibits (AE J-M). Without objection, the four post-hearing exhibits were admitted into evidence. DOHA received the transcript (Tr.) on October 7, 2020. The record closed on October 7, 2020.

Procedural and Evidentiary Rulings

At the hearing during an examination of AE D, it was discovered that Applicant owes taxes for 2017 to the state and federal tax agencies because of the loss of an income deduction for his mortgage and his property taxes. (AE D (Chapter 13 Plan, amended at 2) Applicant is paying the posted tax balances through the Chapter 13 bankruptcy. Department Counsel moved to amend the SOR by adding two additional allegations:

1.c – You are indebted to the State of Maryland in the amount of \$1,426 for back taxes for tax year 2017.

1.d – You are indebted to the Internal Revenue Service (IRS) in the amount of \$7,667 for back taxes for tax year 2017.

Applicant's attorney did not oppose the amendment, noting that Applicant admitted the tax debts and was paying them through the pending Chapter 13 bankruptcy. Department Counsel's motion to amend the SOR (filed with the court on September 25, 2020) was granted. (Tr. 72-73) The motion is admitted into evidence as GE 7.

Findings of Fact

The SOR allegations identify two past due mortgage accounts under the financial considerations guideline. These past-due accounts appear in GE 4 and 5 (Government's credit reports dated 2016 and 2019), and his 2019 interrogatory answers. In Applicant's July 2019 answer to the SOR, he admitted that he owed the two mortgage accounts. He also explained how he was deceived by the misrepresentations made to him by a real estate company and the SOR 1.a mortgage lender regarding the lender's decision not to execute a short-sale of his property. (July 19, 2020 answer to SOR)

Applicant is 53 years. He has been married since June 1990. His wife is a contract officer representative employed by a federal government agency. He has 2 adult-aged sons, 29 and 25. Applicant has been employed by a defense contractor as an auditing liaison since June 2017. (GE 2 at 6) He was previously employed veteran's organization for five years. His only period of unemployment since 1992 was for three months between May and August 2012. (GE 1 at 9-19) Applicant served in the US Army from October 1986 to September 1989. (GE 1 at 20-21) He has held a security clearance since April 1985. (GE 1 at 38-39)

Applicant purchased a home in 1999. The mortgage company identified in SOR 1.a assumed the mortgage from another mortgage company in 2007. Applicant's last payment on the mortgage was in January 2015. (GE 5 at 1) SOR 1.b is a home equity loan Applicant opened in September 2008. He used part of the second loan to finance repairs he made on his home between 2009 and 2014. He used the other portion of the loan to pay for a student loan and income taxes for tax year 2007. The last payment made on the home equity loan was in October 2017. (GE 5 at 1)

Applicant claims that when he moved into the home in 1999, it was habitable. However, between 2009 and 2014, the house developed structural problems. There were too many layers of roofing atop the home by 2014. The basement leaked, and the air conditioning went out at some time that cannot be determined from the record. The gutters needed to be repaired or replaced. (Tr. 13-17, 45) Applicant claimed there was always some part of the house to repair. Notwithstanding the structural problems with the house, he continued making the mortgage and loan payments, though they were not always timely. There is no evidence that he continued to make mortgage payments after January 2015 and until he negotiated a short-sale with the SOR mortgage company in November 2016. As noted earlier, there was no additional payment activity after January 2015. (GE 2 at 4, 15)

In addition to the cost of fixing his house, Applicant indicated that his younger brother and oldest son caused him financial problems. For about six to eight months in 2015, Applicant's brother had no job or money and Applicant paid all living and transportation expenses for his brother's family living in two locations. (Tr. 18)

Applicant's oldest son had medical problems since his youth. After graduating from high school, he could not maintain employment and Applicant helped him with finances during his residential moves to varying parts of the U.S. (Tr. 19, 31-35)

Character Evidence

Applicant's DD 214 indicate that he received: the Air Force Achievement Medal, Marine Corps Good Conduct Medal, 2nd Award; Navy and Marine Corp Achievement Medal with Gold Star; National Defense Service Medal; Meritorious Unit Commendation; Certificate of Commendation; Certificate of Appreciation 2nd Award;

Meritorious Mast; Letter of Appreciation; and Rifle Expert Badge, 4th Award; Pistol Sharpshooter Badge; and a Good conduct Medal. (AE F)

For the employment period of April 2016 through December 31, 2016, Applicant's performance review comments by his supervisor were "highly motivated," "dependable and trustworthy," and "a model employee." On October 2, 2017, Applicant signed and notarized a statement of intention to file and pay all federal and state taxes in the future. If he does not comply with his statement of intention, he consents to having his security clearance automatically revoked. (AE B, D, F)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines are flexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied together 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

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.

19. Conditions that could raise a security concern and may be disqualifying include:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

When the SOR was issued in September 2016, Applicant owed \$81,737 in delinquent debt to five creditors. About 94% of the debt are two federal tax liens. The liens, which are posted in the government's 2015 and 2016 credit reports, indicate that the federal liens were filed in October 2008 and June 2010.¹ The state liens were filed in December 2008 and May 2011. Except for documentation that indicates he made a \$200 payment to the SOR 1.f credit card creditor on October 2, 2017, the other four liens are still unresolved, demonstrating a history of not meeting financial obligations. AG ¶¶ 19(a), 19(c), 19(f) apply.

20. Conditions that could mitigate security 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;
- (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

¹ Adverse information from credit reports can normally meet the substantial evidence standard and Government's obligations under E3.1.14. See, e.g., ISCR Case No. 14-02403 at 3 (App. Bd. Aug. 18, 2015); 03-20327 at 4 (App. Bd. Oct. 26, 2006)

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Though Applicant's most recent debt became delinquent more than five years ago in 2012, all the liens and almost the entire debt to the SOR 1.f creditor remain unpaid. Due to the large amount of federal tax debt, it is likely that the debts will continue into the future. Applicant's inaction after learning in 2015 about the liens and delinquent debts raises ongoing questions about his trustworthiness and judgment. AG ¶ 20(a) does not apply.

Applicant's three-month period of unemployment in 2011 is a circumstance recognized under AG ¶ 20(b). However, he has been steadily employed for the last six years without any work-related disruption or any other unanticipated event. When he learned about his delinquent debts in 2015, he did not act responsibly to address his delinquent debts. Applicant receives no mitigation under AG ¶ 20(b).

Applicant receives no mitigation under AG ¶ 20(c) because his only financial counseling occurred in 1996. While he claimed he was enrolled for future financial counseling, he provided no documentation of participation and there are no clear indications his financial problems are resolved or under control. I draw the same conclusion under AG ¶ 20(d) as the evidence is devoid of any good-faith efforts by Applicant to repay his delinquent debts. The fact that Applicant no longer owes the SOR 1.e creditor is not the result of a record of good-faith payments to resolve the debt, but the creditor's decision to terminate additional collection efforts.

AG ¶ 20(e) does not apply because there is no evidence corroborating Applicant's bald claim that he does not owe the federal tax liens and the one state tax claim in SOR 1.d. The mitigation due Applicant under AG ¶ 20(g) for his documented action to address the state tax lien in SOR 1.c must be weighed against the fact that the action was taken one day before the hearing, even though he was aware of the lien in 2015.

Whole-Person Concept

I have examined the evidence under the specific guidelines 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 married and has two stepchildren and a son from a previous marriage. His DD 214 shows that he received several awards and commendations for his honorable service in the U.S. Marine Corps between 1996 and 2003. His current supervisor praised Applicant's job performance for the period between April and December 31, 2016.

Weighing against the favorable evidence is the disqualifying evidence of Applicant's delinquent debts that he accrued between October 2008 and July 2012. He was placed on notice during his PSI in 2015 that he had these federal and state tax liens, and credit card debts. Though he claimed he made follow-up phone calls to the IRS and his CPA shortly after the interview in 2015, he also acknowledged that he did not believe he owed the debts and that he neglected the debts. He received additional notice upon issuance of the SOR in September 2016, and he responded in November 2016 that he was researching the liens with his CPA. He conceded at the October 2017 hearing that he had done very little to resolve his debts since he submitted his November 2016 answer to the SOR. The documented \$200 payment to the SOR 1.f creditor and the promise to pay the SOR 1.c creditor on the day before the hearing substantiates his observation. Viewing the evidence from an overall standpoint, Applicant has not mitigated the security concerns arising from the guideline for financial considerations. He has sufficiently mitigated the adverse evidence under the personal conduct 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.f:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	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 interest to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

Paul J. Mason
Administrative Judge