



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)

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ISCR Case No. 20-01302

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Applicant for Security Clearance)

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel

For Applicant: *Pro se*

10/04/2021

Decision

MASON, Paul J., Administrative Judge:

Applicant's unpredicted unemployment in February 2015 for five months and reduced income when he resumed working in July 2015, has been considered. However, he has taken no action to address the listed indebtedness that is now over six years delinquent. The financial considerations guideline is unmitigated. Eligibility for a security clearance is denied.

Statement of Case

Applicant signed an Electronic Questionnaire for Investigations Processing (e-QIP, Item 3) on March 29, 2019. He provided a personal subject interview (PSI, Item 7) to an investigator from the Office of Personnel Management (OPM) on April 20, 2019. After being unable to make an affirmative finding regarding Applicant's security clearance eligibility, on November 2, 2020, the Department of Defense Counterintelligence Security Agency (DCSA), issued a Statement of Reasons (SOR) detailing security concerns under the guideline for financial considerations (Guideline F). This case is adjudicated in

accordance with Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 1992), as amended (Directive); and the adjudicative guidelines (AG) dated June 8, 2017.

The Government sent a copy of the Government's File of Relevant Material (FORM), the Government's evidence in support of the allegations of the SOR, to Applicant on May 28, 2021. The FORM included seven items of evidence listed on page 1 of the FORM. He received the FORM on June 9, 2021. The FORM recommended he file objections, submit additional information or provide explanations within 30 days of receiving the FORM. Applicant submitted a response (2 credit bureau reports dated June 2021) to the FORM on June 30, 2021. DOHA received the documentation (two credit reports) on July 1, 2021. The response, which Department Counsel had no objection to, was entered into evidence. The FORM was assigned to me on August 30, 2021.

Rulings on Evidence

At the top of page two of the FORM, the Government advised Applicant that he could make corrections to the April 20, 2019 PSI to improve the exhibit's clarity and accuracy. Alternatively, he was advised that if he objected to the entire PSI on the ground that it was unauthenticated by a government witness, it would not be entered into evidence. Applicant did not object, and the exhibit is admitted into evidence as Item 7.

Findings of Fact

Applicant is 53 year old. He has owned his home since October 2014. He has been married to his second wife since 2000. He has two daughters, 33 and 26 years old, twin sons 32 years old, and a stepdaughter 31 years old. Applicant has never held a security clearance. (Item 3 at 8-34)

Paragraph 1 alleges 22 delinquent debts under the guideline for financial considerations (Guideline F). The debts total \$31,279. Applicant admitted all allegations. (Item 2)

Applicant explained that that the listed debts became delinquent after February 2015. Before that date, he had no problem paying his debts and was financially stable because he had been employed by the same employer for 21 years, and was earning \$86,000 a year in early 2015. He had purchased his first home in September 2013 (though he indicated in his March 2019 e-QIP that the purchase was in October 2014), and was paying a monthly mortgage of \$2,300. In February 2015, his job was eliminated and he was unemployed for five months before finding employment in July 2015, earning less than a third of what he had been earning about six months earlier. The combined earnings of Applicant and his wife were not enough to cover the mortgage. While they considered letting the house go into foreclosure, they negotiated a home loan modification (HLM) resulting in a more reasonable mortgage. (Item 2)

Applicant indicated in his April 2019 PSI that in May 2019, he would be begin a new job working for another contractor earning about \$35 an hour. Because he had a rent-free arrangement with his son, he would have extra money to pay off his delinquent debts. (Item 2; Item 7 at 10)

However, Applicant indicated in his December 2020 answer to the SOR that he changed his mind about repaying the delinquent debts. He concluded that establishing repayment plans with the listed creditors would essentially set him back financially. He stated, "I do not have any plans to pay this debt off anytime soon," and bankruptcy is not an option because of the age of the debts. (Item 2)

Under Section 26 of his March 2019 e-QIP (Item 3), Applicant disclosed that the delinquent debts were caused by losing his employment in 2015. He explained that he resolved two delinquent debts after judgments had been filed against him. (Item 3 at 11-16, 33) Applicant contends that he paid off the first judgment (unlisted) in May 2018 by wage garnishment. He avers that the second judgment (SOR 1.a) was dismissed by the court in January 2019 because the collection agency did not file the requisite legal documentation. Though he presented no evidence to support his claim, the May 2021 credit report does not list the SOR 1.a debt. (Item 6; Item 7 at 4-5)

Most of the listed debts in the SOR were credit card accounts that became delinquent in 2014. See credit reports in Items 4, 5, and 6; Item 7 at 5-9. However, SOR 1.s became delinquent in March 2015. SOR 1.r and 1.t became delinquent in 2017, and 1.u, in April 2019. Applicant has never received financial counseling or debt consolidation services. While he encountered sudden unemployment in February 2015, he resumed employment in July of that year, though he his pay was much less. He submitted no evidence demonstrating that he contacted any of his creditors to explain the sudden change of his financial status in 2015, or to negotiate a settlement plan, or to establish a repayment plan under modified terms, or to otherwise resolve the debts after they became delinquent. While the delinquent accounts listed in the SOR do not appear on Applicant's June 2021 credit reports, he provided no evidence to show what he has done to clear up his credit problems, and how he will have all financial issues fixed by 2022 (June 2021 Response to FORM), other than to wait for the debts to be removed from his credit reports. There is no evidence showing that Applicant uses a budget to monitor his finances.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines, which are flexible rules of law, apply 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(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 evidence to rebut, explain, extenuate, or mitigate facts that he admits or denies. 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 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. Conditions that could raise a security concern 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.

Applicant has a history of financial difficulties that is confirmed by his April 2019 PSI, the April and November 2019 credit bureau reports, the May 2021 credit report, and Applicant's December 2020 answer to the SOR. Except for the SOR 1.a account, which Applicant claims was dismissed, and not listed in the May 2021 credit bureau report, the 21 delinquent accounts total \$28,173. After stating in April 2019 that his rent-free living arrangement would allow him to begin repaying the delinquent debts, seven months later he stated that he did not intend to address the delinquent debts “anytime soon.” AG ¶¶ 19(a), 19(c), 19(c) apply.

AG ¶ 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; and

(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.

While most of the listed debts in the SOR have been delinquent for more than six years, four accounts changed to a delinquent status after 2015. Applicant's failure to address these listed debts continues to raise doubt about his reliability, trustworthiness, and judgment. AG ¶ 20(a) does not apply.

Applicant's financial picture in February 2015 was detrimentally affected by circumstances beyond his control. His job was suddenly eliminated. Though he found work in July 2015, his earnings were dramatically reduced. While he realizes some mitigation because of the unanticipated loss of employment, he provided no evidence to demonstrate he acted reasonably to resolve the past-due debts. In sum, AG ¶ 20(c) has minimal application to the circumstances of this case. No mitigation is available to Applicant under AG ¶ 20(d) because he submitted no evidence of a good-faith effort to repay overdue creditors.

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 security clearance must be an overall common-sense judgment based upon careful consideration of the guidelines and the whole-person concept.

Applicant is 53 years old. He has been married to his second wife since 2000. He has four children and a stepdaughter. After working 26 years for one employer, his job was unexpectedly eliminated in February 2015 and he was unemployed until July 2015. He exercised good judgment by negotiating a HLM to keep his home. However, he stopped paying his other delinquent debts and indicated in December 2020 that he would not be addressing the past-due accounts anytime soon. Applicant's failure to act on the delinquent debts appears to signal his choice to not repay his debt and wait until his debts are removed from his credit report. Even though an applicant may decide to ignore his debts until they become legally unenforceable because the statute of limitations has run, the decision does not equate to a good-faith effort to repay creditors as defined by AG ¶ 20(d). Having weighed the evidence from a commonsense point of view, Applicant has not overcome the security concerns arising from the guideline for financial considerations.

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 G:	AGAINST APPLICANT
Subparagraph 1.a	For Applicant
Subparagraph 1.b-1.u	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 for access to classified information. Eligibility for a security clearance is denied.

Paul J. Mason
Administrative Judge

