



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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ISCR Case No. 20-00147

Applicant for Security Clearance

Appearances

For Government: Daniel Crowley, Esq., Department Counsel

For Applicant: *Pro se*

03/24/2021

Decision

MASON, Paul J., Administrative Judge:

With no documented effort to resolve the listed delinquent debts, Applicant has failed to mitigate the security concerns raised under the guideline for financial considerations. Security clearance application is denied.

Statement of Case

Applicant signed an Electronic Questionnaire for Investigations Processing (e-QIP, Item 3) on November 12, 2018. He provided an interview (PSI, Item 5) to an investigator from the Office of Personnel Management (OPM) on February 20, 2020. On April 3, 2020, the Department of Defense (DOD), Defense Counterintelligence Security Agency (DCSA), issued an SOR detailing security concerns under the guideline for financial considerations. 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.

Applicant's undated notarized answer to the SOR was probably submitted in April 2020 because an attachment to the answer is dated in the same month. 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 December 22, 2020. He received the FORM on January 13, 2021. The FORM recommended he file objections, submit additional information or provide explanations within 30 days of receiving the FORM. Applicant's response was due on February 12, 2021. DOHA received no response. I was assigned the case on March 11, 2021.

Rulings on Evidence

In a footnote on the second page of the FORM, the Government advised Applicant that he could make corrections to the February 20, 2020 personal subject interview (Item 5, PSI) to improve the exhibit's clarity and accuracy. Alternatively, he was advised that he could object to the entire PSI on the ground that it was unauthenticated by a government witness, and it would not be entered into evidence. Applicant did not object, and the exhibit is admitted into evidence. See, E3.1.20. of DOD Directive 5200.6, page 52.

Findings of Fact

The SOR alleges six delinquent debts totaling more than \$23,000. In his answer, Applicant denied all but the vehicle account set forth in SOR 1.b. He explained that his wife lost her employment, causing him a period of uncertainty in providing for his family. He fell behind on some financial obligations but paid them off while restoring others to a current status. He and his wife are working and have no health concerns. He held a clearance for 24 years while serving in the U.S. Navy. Attached to Applicant's answer is a letter dated April 1, 2020, from the vice president and chief counsel of Applicant's employer indicating that Applicant is considered an essential worker whose job is vital to the national interest. Even in ongoing regional emergency situations, Applicant is required to travel to and from work to execute his national defense responsibilities.

Applicant has been married to his second wife since August 2006. He has four sons from both marriages. He was awarded an associate's degree in January 2003 and a bachelor's degree in January 2006. Applicant served in the U.S. Navy from July 1986 to March 2010, when he received an honorable discharge. He had a security clearance for his entire military career. Following his military service in 2010, Applicant worked in pest control from June 2011 to June 2018. Later In the same month, he started his present job as a logistics specialist for a defense contractor. (Item 3 at 12-38)

In November 2018, Applicant began the security clearance application process by completing and certifying an e-QIP. Some of the information cited above comes from his e-QIP. Applicant filed a Chapter 13 bankruptcy petition in October 2012 that was converted to Chapter 7 in September 2013. In February 2014, he received a Chapter 7 discharge of all debts. He denied having any other delinquent accounts. Applicant's reason for filing were to save his house because his wife had lost her job, leaving him responsible for all household expenses. He was also paying the costs of sending two children to private school. During the pendency of the first bankruptcy, Applicant removed the car debt (SOR 1.b) from the bankruptcy by signing a reaffirmation agreement in October 2013, and resumed paying the installment note on the car. None of the delinquent debts listed in the SOR were linked to Applicant's Chapter 13 bankruptcy petition filed in November 2014. In addition, the petition was dismissed in July 2015 for inability to maintain plan payments. (Item 3 at 40-41; Item 5 at 3-4; Item 8, Journal Entries 50 through 52, with attached eight-page Reaffirmation Agreement signed by Applicant in October 2013; Item 9, Journal Entries 29 through 35)

SOR 1.a – This mortgage account was opened in January 2019 and the last payment activity on the account was August 2019. The credit bureau reports (CBRs) in 2019 and 2020 reflect account increased from \$3,183 to \$16,200. (Item 6 at 1; Item 7 at 11). Applicant claimed that he was unaware of the account or the company. (Answer to SOR)

SOR 1.b – This delinquent account is a car loan amounting to \$15,122. The debt was not included in Applicant's February 2014 Chapter 7 discharge because he executed a Reaffirmation Agreement in October 2013 with the credit union resuming payments on the car. (Item 8, Journal Entries 50 through 52, with attached eight-page Reaffirmation Agreement signed by Applicant in October 2013) The CBRs show a charge off of \$15,122 in November 2018. (Item 4 at 7-8; Item 6 at 2; Item 7, Trade Line debt #2). According to Applicant's explanation provided to the OPM investigator in February 2019, the car was repossessed during the pendency of the first bankruptcy (October 2012 to February 2014) so he returned the car to the dealer and began making monthly payments of \$350 toward an ultimate payoff of the balance due on the car. The term "charge off" means that the debtor is still obligated to resolve the debt. The information supplied by Applicant in his SOR answer validates the delinquent status of this debt. (Item 5 at 5)

SOR 1.c – This is a delinquent installment account for the same car in SOR 1.b. The account was opened in January 2016, with the last payment activity on the account in June 2019. The October 2019 CBR shows a past due amount of \$1,616. (Item 6 at 2) Applicant's explanation of the account in February 2019 (Item 5 at 5) and his April 2020 denial of responsibility for the account does not explain why the account still appears in the October 2019 CBR.

SOR 1.d – This is a delinquent collection account (\$2,508) with a bank as the original creditor. The account was opened in March 2016, with the last payment activity on the account in October 2016. Applicant agreed with the validity of the account information in February 2019 and requested additional time to speak with his wife. His unsupported denial of the account in his April 2020 SOR answer contradicts his earlier statements about the validity of the account and does not explain why the account appears as delinquent in his 2019 credit report. (Item 5 at 5; Item 6 at 2)

SOR 1.e – This is a delinquent credit-card account (\$425) opened in July 2015, with the last payment activity in March 2016. While Applicant claims he has an account with the same credit-card name with no arrears, the account listed in this paragraph of the SOR has a different account number. In the 2020 CBR, one credit card is current and this account as past due. (Item 4 at 8; Item 6 at 2; Item 7 at entries 6, 8)

SOR 1.f – This is a delinquent cable-television account of \$212. In February 2019, Applicant indicated he refused to pay the bill because the cable company damaged his roof and wall of his house when they installed the cable antenna. But he promised to pay the account in March 2019 if he could not convince the company to withdraw their delinquent account claim against him. He apparently forgot his February 2019 explanation because in his April 2020 answer to the SOR, he denied owing the company altogether, claiming that he had returned all the cable equipment. (Item 5 at 4-5; Answer to SOR)

When Applicant was interviewed by the OPM investigator in February 2019, he averred that he was not seeking the assistance of a credit counseling service or a debt consolidation service. It should be noted that Applicant could not file the bankruptcy actions in 2012 and 2014 unless he completed the bankruptcy court's credit counseling requirement. (Item 5 at 4-5; Answer to SOR)

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 "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 trust 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.

Managing one's finances is generally a private matter between a debtor and his creditors. However, legitimate security concerns are raised when information is uncovered showing that the debtor is not paying his bills in a timely manner. If a person who seeks a security clearance demonstrates irresponsibility in mishandling his finances, then there is a probability he may adopt the same kind of irresponsible attitude toward security rules and regulations.

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

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

Applicant has six delinquent debts totaling a little more than \$23,000. He began accumulating these debts in March 2016. AG ¶¶ 19(a) and 19(c) apply.

Applicant's PSI, the Government credit bureau reports, and Applicant's statements 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 warrants eligibility for 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; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Though the six SOR delinquent debts have been past due for two to four years, with no substantiating evidence of Applicant's financial practices in resolving his financial obligations, there is no reason to infer or suggest that this financial irresponsibility will not persist or recur in the future. Applicant's failure to address his delinquent debt continues to cast doubt on his judgment, reliability, and trustworthiness. AG ¶ 20(a) does not apply.

There is no evidence to establish that the indebtedness was due to events beyond Applicant's control. He has been consistently employed from June 2011 to the present time. The only connection that the six debts have to the February 2014 Chapter 7 bankruptcy discharge or July 2015 bankruptcy dismissal is Applicant's agreement in October 2013 to reaffirm and pay the balance due on the car debt identified at SOR 1.b. AG ¶ 20(b) does not apply.

Applicant indicated that he has not participated financial counseling. He may have forgotten about the credit counseling that he was required to complete before he could file his bankruptcy petitions in 2012 and 2014. Because there is no evidence showing a good-faith effort to bring his delinquent debts under control, Applicant receives no mitigation under AG ¶ 20(c) or 20(c). The court-mandated counseling has had little subsequent effect on how he manages his financial obligations. Significantly, in his February 2019 PSI (Item 3), Applicant acknowledged the debt identified in SOR 1.e, and indicated he would talk with his wife about the debt. In the same PSI, he promised to pay the SOR 1.f debt by March 2019. Lastly, Applicant still owes the SOR 1.b debt even though the debt is charged off.

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.

I have carefully evaluated the disqualifying and mitigating conditions in the context of the entire record. I have considered Applicant's military service spanning more than 24 years while holding a security clearance. I have examined the attachment to Applicant's answer describing the importance of his position. However, the attachment does not address his job performance and reputation for judgment, trustworthiness and reliability among his colleagues. Having weighed the evidence as a whole, 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 F:

AGAINST APPLICANT

Subparagraphs 1.a-1.f:

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 access to classified information. Eligibility for a security clearance is denied.

Paul J. Mason
Administrative Judge