



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 20-03673
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*
11/15/2022

Decision

MASON, Paul J., Administrative Judge:

With no good-faith attempt to resolve his delinquent debts, Applicant has not mitigated the continuing security concerns raised by the guideline for financial considerations. Eligibility for security clearance access is denied.

Statement of the Case

On October 8, 2019, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to retain a security clearance required for a position with a defense contractor. On April 6, 2020, he provided an interview (PSI) with an investigator from the Office of Personnel Management (OPM). The Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Facility (CAF) could not make the affirmative findings required to continue a security clearance, and issued to Applicant a Statement of Reasons (SOR), dated January 19, 2021, 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 answer on February 16, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 18, 2022, for a hearing on October 17, 2022. The hearing was held by TEAMS video teleconference as scheduled. I entered the Government's seven exhibits (GE) 1-7 and Applicant's five exhibits (AE) A-E into evidence without objection. DOHA received the transcript (Tr.) on October 22, 2022. The record closed the same day.

Findings of Fact

There are 19 delinquent accounts alleged in the January 2021 SOR. All the accounts except for SOR ¶ 1.m are credit card or credit accounts. The total amount of debt is about \$26,000. The debts became delinquent between June 2015 and November 2019. Applicant admitted that he owed the debts, and the Government credit bureau reports confirm his admission. (GE 3, 4, 5, 7; Answer to SOR; Tr. 32)

Applicant is 32 years old. He earned some community college credits between September 2008 and January 2012. From March 2013 to September 2013, he received training in electronics while in United States Navy Reserve (USNR). He has been married since February 2015 and has three stepchildren, 26, 23, and 14 years of age. The 23-year-old still lives with Applicant and his wife. (GE 1 at 12; Tr. 30)

Since February 2017, Applicant has been employed by a defense contractor. Before his current employment, he worked at a national discount store and a pet store. He has been in the USNR since January 2013, where he received advanced training that qualified him for his current position. Applicant has held a security clearance since November 2015. (GE 1 at 13-21, 37; Tr. 28)

Applicant indicated that his wife became seriously ill in July 2015. The illness caused several of her internal organs to stop working. She was hospitalized for four weeks in July 2015, followed by various stages of care and recovery until October 2015. Since she had to stop working, the household went from two incomes to one, with Applicant shouldering all the financial responsibility. He was unable to keep abreast of the bills. His wife still has some of the same lingering medical problems that her mother suffered from and died recently. (GE 3, 4, 5, 7; Tr. 7, 32-34)

According to his April 2020 PSI, before his wife became ill in 2015, Applicant claimed that he paid his bills on time. In November 2016, the last time Applicant attempted to address the listed creditors, a bankruptcy firm advised him that they had received his final payment to allow them to file a bankruptcy petition. After he began working for his current employer in February 2017, he had to discontinue the petition because he was earning too much income. He also claimed he was monitoring his financial obligations and discussing different payment options with the creditors. At the hearing, he testified that he never contacted any of the creditors. He was unable to explain what the listed debts represented except for SOR ¶ 1.m, a utility. Regarding his attitude about repaying the past-due debts, Applicant testified, "A lot of these

[delinquent debts] are from a long time ago. I don't remember. I was trying to put the past of negativity behind me." (GE 2 at 2-3; Tr. 35, 50; AE D)

SOR ¶ 1.a became delinquent in August 2015. (GE 4 at 2) SOR ¶ 1.b became delinquent in February 2016. (AE E at 32) SOR ¶ 1.c became delinquent in October 2015. (GE 4 at 2) SOR ¶ 1.d switched to a delinquent status in August 2015. (GE 4 at 2) SOR ¶ 1.e became delinquent in June 2015. (GE 5 at 1) SOR ¶ 1.f transitioned to a delinquent status in February 2017. (GE 5 at 3) SOR ¶ 1.g became delinquent in September 2015. (GE 5 at 2) SOR ¶ 1.h became delinquent in August 2015. (GE 4 at 3) SOR ¶ 1.i became delinquent in September 2015. (GE 5 at 2) SOR ¶ 1.j became past due in August 2015. (GE 5 at 2) SOR ¶ 1.k became delinquent in February 2016. (GE 5 at 2) SOR ¶ 1.l became past due in November 2019. (GE 5 at 2)

SOR ¶ 1.m became overdue in July 2017. (GE 4 at 4) SOR 1.n cannot be independently verified and is withdrawn. SOR ¶ 1.o became delinquent in May 2016. (GE 4 at 4) SOR ¶ 1.r became delinquent in April 2019. (GE 3 at 7) SOR ¶ 1.s became delinquent in March 2017. (GE 3 at 10)

Concerning the issue of changes Applicant and his wife have made to avoid similar financial problems from reappearing in the future, he pointed to a change in his "mindset." (Tr. 48) When the debts became delinquent back in 2015, Applicant was inexperienced in managing finances. He believed that his budget skills have improved, redirecting his focus on family needs and not wants. He explained that his budget is not in writing, but a verbal agreement between Applicant and his wife that encourages ongoing discussions about his income and expenditures. He has a full-time career that pays all the bills, rather than part-time employment. Even with the financial help from his 23-year-old son and his mother, who moved into his residence in 2019, he has not begun addressing the delinquent debts because he does not earn enough money. Applicant has never participated in financial counseling, but has read books on the subject. (Tr. 45-50, 54)

Character Evidence

On February 4, 2021, Mr. S stated by character reference that he has known Applicant since November 2018, when Mr. S became Applicant's immediate supervisor. Based on his regular evaluations of Applicant's job performance, Mr. S considers him an honest and reliable person. He recommends Applicant for a security clearance because he knows of nothing in his professional or personal life that will prevent him from performing his responsibilities. (AE A) Mr. S did not address Applicant's financial issues.

On February 2, 2021, Mr. C submitted a character endorsement indicating that Applicant has worked for him since February 2017. He is a conscientious employee who achieves results in a timely and responsible manner. He is a dedicated family man, having spent his vacation hours at home caring for his sick wife. Mr. C recommends

Applicant for a security clearance. (AE B) Mr. C did not address Applicant's financial issues.

On February 10, 2021, Mr. P wrote that he has known Applicant for four years. Mr. P views Applicant as a qualified worker who efficiently completes tasks on schedule without sacrificing quality. He is a problem solver. (AE C) There is no mention of Applicant's financial issues in Mr. P's character reference.

AE E is a credit report dated January 20, 2021. SOR ¶ 1.a appears on page 14 of the report. SOR ¶ 1.l appears on page 15 of the report. SOR ¶ 1.g appears on page 16 of the report. SOR ¶ 1.i appears on page 17 of the report. SOR ¶ 1.j appears on page 18 of the report. SOR ¶ 1.c appears on page 20 of the report. SOR ¶ 1.f appears on page 23 of the report. SOR ¶ 1.k appears on page 30 of the report. SOR ¶ 1.d appears at page 31 of the report. SOR ¶ 1.b appears on page 32 of the report. SOR ¶ 1.p appears on page 35 of the report. SOR ¶ 1. n appears on page 36 of the report. SOR ¶ 1.o appears on page 37 of the report. (AE E)

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

Guideline F, 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.

A person's practice of paying his voluntarily incurred debts is a private matter until evidence reveals that he is not paying his debts in a timely fashion. Adverse evidence from credit reports can usually meet the Government's obligation of proving delinquent debts. See, e.g., ISCR Case No. 14-02403 at 3 (App. Bd. Aug. 18, 2015); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) The Government credit reports establish that the most of the debts listed in the SOR have been delinquent since between 2015 and 2017. Applicant's most recent documented attempt to resolve the delinquent debts was in November 2016. Applicant has demonstrated by five years of inaction that he is unwilling to fix his financial indebtedness. AG ¶¶ 19(a) and 19(c) apply. AG ¶ 19(b) applies because Applicant has done nothing to address the delinquent accounts since November 2016. Trying to distance himself from the listed debts because of their age and the negative circumstances resulting in their creation signals his unwillingness to resolve them.

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;

(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; and

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

AG ¶ 20 (a) does not apply since Applicant still owes about \$26,000 in delinquent debt to 18 creditors or collection agencies. With no discernible changes in his financial practices, they will probably persist in the future. Applicant's failure to take charge of his delinquent debt responsibilities continues to raise doubts about his reliability and judgment.

The serious medical problems that Applicant's wife encountered in July 2015, rendering her unable to work and requiring a long period of medical treatment, acute care, and recovery, were unforeseen conditions beyond Applicant's control. The loss of her income and his part-time income until February 2017 had an adverse impact on his bill-paying ability. However, for the mitigating condition to fully apply, an applicant must provide credible documented evidence that he acted responsibly under the circumstances. Applicant receives limited mitigation under AG ¶ 20(b). Hence, Applicant should have taken some action to contact and negotiate payment plans with the creditors, or at least inform the creditors of his financial plight.

The lack of financial counseling or evidence of a written budget negates applicability of the first and second prongs of AG ¶ 20(c). Applicant's delinquent debts are not being resolved or under control. AG ¶ 20(d) does not apply because Applicant is not engaged in a good-faith effort to repay his creditors.

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 commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

Applicant has been married since 2015 and has three adult children, with one of his sons still living with him. He has been in the USNR since February 2013. He has been employed as an electronics technician since February 2017. I have considered the glowing comments of two supervisors and one coworker who are impressed with Applicant's job performance and productivity over the last four years.

Applicant has not furnished sufficient evidence to establish that his delinquent debts are being resolved or under control. Assuming that Applicant is relying on a limitations statute to avoid responsibility for the SOR debt because it has been removed from his credit report and is no longer enforceable, the debt is still significant for security clearance purposes. See ISCR Case No. 15-02326 at 3 (App. Bd. Oct. 14, 2016) Relying on the statute of limitations does not constitute a good-faith effort to eliminate financial troubles. See ISCR Case No. 15-01208 at 3 (App. Bd. Aug. 26, 2016) In Guideline F cases, the DOHA Appeal Board has repeatedly held that, to establish his case in mitigation, an applicant must present a "meaningful track record" of debt repayments that result in debt reduction. See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007) While an applicant is not required to show that every debt listed in the SOR is paid, the applicant must show that he has a plan for debt resolution and has taken significant action to implement the plan. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006) From the record presented, Applicant has no plan in place and furnished no evidence of even sporadic payments on the past due accounts. After a full review of the entire record from an overall common-sense point of view, Applicant's ongoing financial problems have not been mitigated.

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.m:	Against Applicant
Subparagraph 1.n:	Withdrawn
Subparagraphs 1.o-1.s:	Against 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