



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 20-03092
)
Applicant for Security Clearance)

Appearances

For Government: Daniel O’Reilley, Esq., Department Counsel
For Applicant: *Pro se*

10/07/2022

Decision

MASON, Paul J., Administrative Judge:

Unemployment from July 2019 to June 2020 was a contributing factor that partially explains Applicant’s financial problems. However, mismanagement of his financial responsibilities was a major cause of his fiscal troubles. The lack of responsible habits to monitor his earnings and expenditures results in a formal finding against Applicant under the financial considerations guideline. Eligibility for classified information is denied.

Statement of the Case

On July 20, 2020, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for a position with a defense contractor. On August 19, 2020, he provided an interview (PSI) to an investigator from the Office of Personnel Management (OPM). Subsequently, he provided three or four short interviews, with the last one occurring on August 26, 2020. The purpose of the subsequent interviews was to clarify information concerning contacts and financial accounts. After reviewing the results of the security background investigation, the Department of Defense (DOD) Defense Counterintelligence Security Agency (DCSA) could not make the affirmative findings required to grant a security clearance, and issued to Applicant a Statement of Reasons (SOR), dated April 22, 2021, detailing security concerns under 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 on June 8, 2017.

Applicant provided his notarized answer on May 7, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 22, 2022, for a hearing on May 13, 2022. The hearing was held as scheduled. The Government's four exhibits (GE) 1-4 were entered into evidence without objection. Applicant did not seek admission of exhibits during the hearing. The record remained open until May 30, 2022 to allow Applicant an opportunity to submit post-hearing documentation about his assertions of resolving some of the delinquent debts and his tax obligations. I received no post-hearing documentation from Applicant. The record in this case closed on May 30, 2022. DOHA received the hearing transcript (Tr.) on June 1, 2022.

Findings of Fact

The SOR alleges six delinquent accounts totaling almost \$97,000. The accounts include a mortgage, a personal loan, two installment loans, and two credit card accounts. Applicant admitted all the accounts except for SOR ¶ 1.c. His primary reason for the overdue debts was his sudden loss of employment for 11 months beginning in July 2019. (Tr. 33-34)

Applicant is 55 years old. He has owned his own home since 2005. His first marriage ended in divorce in July 2004; his second marriage came to an end in November 2015. He has three adult-aged children, 26, 26, and 23. Applicant served in the United States Navy from February 1987 to his honorable discharge in January 2011. He received a bachelor's degree from an aeronautics university in 2011. Applicant has held a security clearance for 30 years. After varying periods of employment in analyst positions, and a few earlier periods of joblessness, Applicant was suddenly unemployed for 11 months from July 2019 to June 2020. He found employment as computer engineer II from June 2020 to December 2020. Then, he was hired by his current employer in January 2021. (GE 1 at 20-26; Tr. 11, 19-23, 38, 49)

SOR ¶ 1.a – This is a delinquent mortgage account that is past due in the amount of \$13,847 with a total balance of \$235,526. The account became delinquent in the amount of \$11,000 in the summer of 2018, so Applicant's mother loaned him \$11,000 to bring the account current. He indicated that he repaid his mother within a year. In September 2019, Applicant used \$18,000 of a second \$22,000 loan from his mother to bring the mortgage current. The record does not reveal whether Applicant repaid the \$22,000 loan to his mother. Although he did not explain why he made three attempts to "to recover and reestablish" his mortgage loan, it appears that Applicant tried three times to modify his home mortgage loan. However, his applications were rejected because the mortgage company was dissatisfied with the documents he presented them. The mortgage company also wanted him to change his future method of payments to wire transfers, which were too costly. (GE 3 at 3; GE 4 at 3; Tr. 30-31, 40, 46-48, 55-56)

Applicant did not explain why he needed his mother's help in 2018 to keep the SOR ¶ 1.a mortgage current. When asked where his money was going, he replied that he had obligations like a boat, a four-wheeler, and other luxury items to pay for. Applicant then testified, "I work hard. I play hard." (Tr. 41) Applicant sold the boat, the four-wheeler, two jet skis, and a replica tractor collection in approximately October 2019, while he was unemployed. Based on the fact that several of the listed debts are paid off or reduced in amount, Applicant must have

used some of the sale proceeds to pay on the listed debts. Applicant still owes \$51,576 for the past-due mortgage. (GE 2 at 5; GE 4 at 3; Tr. 41-43)

Applicant testified that he plans to vacate the home in 180 days. He has not tried to sell the property and is aware that foreclosure proceedings have begun. A realtor neighbor advised him to stay in the home and make no mortgage payments “because of the COVID-type situation.” No additional information was provided. (Tr. 54-56) SOR ¶ 1.a is unresolved.

SOR ¶ 1.b – This is an installment sales account that became delinquent in June 2020. The account was opened in 2016, and closed in January 2022 after Applicant’s payments brought the account to a zero balance. (GE 4 at 5; Tr. 59) This account is resolved.

SOR ¶ 1.c – This installment account was opened in 2018, and became delinquent in June 2020. Applicant indicated that he called the creditor who replied they had no record of the account. It was recommended that Applicant file an identity theft report. At hearing, Applicant repeated his claim of having no knowledge of the account, but provided no documentation that shows he is not responsible for the account. (GE 3 at 7; GE 4 at 5; Tr. 57-58; May 2021 answer to SOR) The account is unresolved.

SOR ¶ 1.d – This is a credit-card account that opened in 2013. The account became delinquent in July 2020. Applicant was sent a payoff offer from the creditor that he is unable to pay. (GE 4 at 5; Tr. 59) The debt is not paid.

SOR ¶ 1.e – This is a credit-card account that was opened in 2016, and became delinquent in July 2020. The credit bureau reports indicate the account was paid off in August 2020. (GE 4 at 6; Tr. 59) The account is resolved.

SOR ¶ 1.f – This installment car loan was opened in 2017 and became delinquent in February 2020. Applicant averred that he and the creditor negotiated a lump sum payment in November 2019 to bring the account current. He made the payment, then, the creditor repossessed the truck. (GE 4 at 5; Tr. 58; May 2021 answer to SOR) The debt has not been satisfied.

Applicant was asked what he has done to resolve the delinquent debts since his August 2020 PSI. (GE 2) He replied that he paid off his federal and state tax debt. He considered his recent discovery that he was able to borrow money as a sign that he was recovering from his financial problems. He was so confident that his other outstanding accounts were being maintained sufficiently that he purchased another car during the weekend before the hearing. However, he realizes that he needs to sell one or more of his four cars. (Tr. 44, 50-53, 56, 61)

Applicant has never had financial counseling. However, he does not believe that is the cause of his financial troubles. He considers the reasons to be: (1) not having money; and (2) being out of a job for 11 months between July 2019 and June 2020. Though Applicant indicated he would be able to submit post-hearing documentation concerning the resolution of his taxes and other debts within the time allowed, I received no documentation from him.

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

The security concerns of the guideline for financial considerations are set forth in 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 describes conditions that could raise security concerns and may be disqualifying:

- (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; and
- (e) consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other financial indicators.

The Government's August 2020 and May 2022 credit reports, Applicant's May 2021 answer to the SOR, and the record establish the Government's case under the guideline for financial considerations. Since the summer of 2018, Applicant has exhibited a history of not

meeting his financial obligations. AG ¶¶ 19(a), 19(b), and 19(c) apply to Applicant's inability to resolve SOR ¶¶ 1.a, 1.c, 1.d, and 1.f. AG ¶ 19(f) captures Applicant's frivolous spending on luxury items when his earnings should have been used to pay the debts listed in the SOR.

The pertinent mitigating conditions under AG ¶ 20 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

(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.

AG ¶ 20(a) does not apply. Though the listed debts did not become delinquent until June or July 2020, the debts were incurred under circumstances that are likely to recur, casting doubt on Applicant's reliability and judgment. He still owes more than \$89,000 to four listed creditors. Applicant receives some mitigation under the first prong of AG ¶ 20(b) because of several short periods of unemployment followed by 11 months of unemployment from July 2019 to June 2020. He receives limited mitigation under the second prong of AG ¶ 20(b) because he took action on SOR ¶¶ 1.b and 1.e leading to the repayment of both debts. Overall, Applicant receives limited mitigation under AG ¶ 20(b).

AG ¶ 20(c) applies when there is evidence of financial counseling and there are clear indications the problem is being resolved or under control. Applicant has never had financial counseling and has demonstrated little insight on whether he knows how to manage his money prudently. When asked to explain why he needed an \$11,000 loan from his mother in July 2018 (while he was working) to bring the SOR ¶ 1.a mortgage current, his reply was that he did not know, but that he played as hard as he worked. While there was more justification for the second loan of \$18,000 from his mother in 2019 to cover the delinquent mortgage, because of his extended unemployment, Applicant's earlier frivolous spending on luxury items like a boat, two jet skis, a four-wheeler, additional cars, and a replica tractor collection, clearly hampered his ability to address the listed debts responsibly. AG ¶ 20(c) has limited application to the circumstances of this case because Applicant has not shown that all the delinquent debts are being resolved or under control.

AG ¶ 20(d) applies to Applicant's successful resolution of SOR ¶¶ 1.b and 1.e. He still owes \$51,576 for the SOR ¶ 1.a mortgage and has no plan to resolve the mortgage without loans from his mother. In addition, he still owes for the debts identified at SOR ¶¶ 1.c, 1.d, and 1.f. Overall, Applicant is allocated limited mitigation under AG ¶ 20(d).

AG ¶ 20(e) is available for mitigation when: (1) the individual has a reasonable basis for the dispute; and (2) provides documented proof to substantiate the dispute of the SOR ¶ 1.c debt. It appears that Applicant may have a reasonable basis for the dispute. But, his uncorroborated claims of identity theft are insufficient to establish the mitigating condition until he furnishes independent proof that extinguishes his responsibility for the SOR ¶ 1(c) debt. Without documented evidence, the mitigating condition is inapplicable.

Whole-Person Concept

I have examined the evidence under the specific guideline (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 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 55 years old and divorced with three adult-aged children. He has owned his home since 2009. He served in the U.S. Navy for 24 years. He has held a security clearance since at least April 2010.

I have considered Applicant's periodic unemployment, specifically his unemployment between July 2019 and June 2020, when the listed accounts became delinquent. However, Applicant's financial problems began in the summer of 2018 when he obtained his first loan of \$11,000 from his mother to bring the SOR ¶ 1.a mortgage current. Surprisingly, he was unable to explain why he needed the loan until he listed the luxury items and cars he owned. The spendthrift habits of Applicant, coupled with the absence of financial counseling, provide the two persuasive reasons why he is not in control of his financial obligations. Judging by the totality of the evidence, Applicant has not mitigated 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.c, 1.d, 1.f:

Against Applicant

Subparagraphs 1.b, 1.e:

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 security interests of the United States to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

Paul J. Mason
Administrative Judge