



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 21-01044
)
Applicant for Security Clearance)

Appearances

For Government: Kelly M. Folks, Esq., Department Counsel
For Applicant: *Pro se*
04/03/2023

Decision

MASON, Paul J., Administrative Judge

Applicant’s undocumented evidence is insufficient to overcome the evidence presented under the guideline for financial considerations. He provided a reasonable explanation for being unaware his child support payments were in arrears. However, his omission of the other delinquent accounts is not credible. The personal conduct guideline is unmitigated. Eligibility for security clearance access is denied.

Statement of the Case

On August 9, 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 September 16, 2019, he provided a personal subject interview (PSI) to 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 Applicant a Statement of Reasons (SOR), dated November 8, 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 an undated answer to the SOR. He admitted surrendering the deed in lieu of foreclosure and all the delinquent account allegations under ¶ 1 of the SOR. He denied ¶ 2.a, claiming that he was unsure about a child support arrearage when he submitted his e-QIP in August 2019. He admitted ¶ 2.b but contended that the omitted information was caused by not having his credit report available in August 2019.

The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 30, 2022, for a hearing on December 28, 2022. The hearing was held by TEAMS video teleconference as scheduled. The Government's four exhibits were admitted into evidence without objection at pages 9 through 13 of the transcript. (Tr.) The hearing was then continued at Applicant's request. Reasons for the continuance are addressed below in Rulings on Procedure. The hearing was completed on February 7, 2023. DOHA received the transcript (Tr.) of the first hearing on January 10, 2023, and the transcript of the second hearing on February 16, 2023. The record remained open until the close of business on February 22, 2023 to allow Applicant to submit additional information regarding his claims of paying on his debts. The record closed on February 22, 2023. Applicant submitted no post-hearing exhibits. (Tr. 55)

Rulings on Procedure

The reasons for Applicant's request for a continuance of the December 28, 2022 hearing were: he was unprepared; he wanted to investigate retaining counsel (Tr. 16); and, he could utilize the additional time to collect documentation that indicated that he was paying his debts. (Tr. 17-20) His request was granted.

On February 7, 2023, I received an email from Applicant dated February 6, 2023, requesting that the hearing be cancelled, and a security clearance decision in his case be made on the administrative record. I replied to Applicant's email on February 7, 2023, denying his request. Both emails have been marked as Hearing Exhibit (HE) 1.

Findings of Fact

There is one forfeited deed in lieu of foreclosure allegation and 11 delinquent accounts alleged under ¶ 1 of the November 2021 SOR. The accounts are in collection or charged off. The debts became delinquent between April 2014 and May 2020. The total amount of debt is \$64,537, including a balance Applicant owes to the mortgage company for mortgage fees related to the SOR ¶ 1.a account. Applicant admitted all financial accounts under SOR ¶ 1. (Undated answer to November 2021 SOR) The Government credit bureau reports dated September 2021 (GE 2) and March 2021 (GE 3), and Applicant's September 2019 PSI (GE 4), confirm the validity of the listed delinquent debts.

Under SOR ¶ 2, Applicant denied that he falsified information about his child support. (¶ 2.a). Though he admitted ¶ 2.b, he answered “no” to the delinquent account questions because he did not have his credit report available. (Undated answer to November 2021 SOR)

Applicant is 40 years old. According to his August 2019 e-QIP, he served in the United States Navy (USN) from June 2001 to March 2009, when he was honorably discharged with a 30% disability that is currently 50%. In April 2003, he married his first wife. They had three children. He divorced his first wife in March 2014. He attended an aviation school from September 2014 to June 2016. He indicated that he did not receive a diploma. (GE 1 at 13) He married his second wife in December 2014. They have two children, ages four and three. Applicant has worked for his current employer since 2017. In September 2022, he was promoted to a quality assurance inspector after beginning his employment as a mechanic with this contractor. (Tr. 21-23) Before his current employment, he worked in jobs as an aircraft mechanic or mechanic. During his period of unemployment from September 2014 to June 2016, he was attending an aviation school. (GE 1 at 9-40)

Reasons for Financial Problems

Applicant was issued a child support order in April 2013. Following six years of making timely payments on his mortgage, his first late payment in September 2013 was due to the earlier child support order. After he could not achieve an adjustment of the mortgage in October 2013, he listed the property for sale in November 2013. When he could not execute a short-sale of the property, in June 2014, he relinquished the deed to the mortgage company. (SOR ¶ 1.a) He still owes the company late fees amounting to about \$35,000. The mortgage company filed a judgment in November 2016, which Applicant has not addressed to date. After his divorce from his first wife in March 2014, he moved to another state in September 2014 to attend an aviation school. While at the school, he planned to pay his expenses using his disability pay and his wife’s anticipated salary at the school’s location. He claims he graduated in June 2016, however, in his August 2019 e-QIP, he stated that he did not graduate. (GE 1 at 13; Tr. 10-18)

Applicant opened other credit-card accounts between 2014 and 2019 to cover day-to-day expenses (Tr. 23), moving expenses (Tr. 28), and utility bills (Tr. 35), that eventually became delinquent. He opened a cable account at a time not disclosed in the record. (Tr. 31) He purchased a car in March 2014 (Tr. 37-39). He fell behind in payments and the car was repossessed in late 2015. In sum, he opened new accounts while he had outstanding delinquent accounts.

SOR ¶ 1.a – Applicant owes approximately \$35,000 in late fees to the mortgage company. Though Applicant did not specifically explain reason for the late fees, I find the fees were assessed because failure to pay the mortgage payments on time. (Tr. 14-16) See GE 3 at 1.

SOR ¶ 1.b – This was a credit-card account that Applicant opened in early 2014 that became delinquent in the summer of 2014. (GE 3 at 2) Applicant informed the credit-card company that he was in school, and he would resume paying when he graduated. He claimed they told him to resume payments when he could. There is no evidence that Applicant has made any payments to the creditor since 2014. (Tr. 23-27)

SOR ¶ 1.c – Applicant used this credit card in the same manner as SOR ¶ 1.b. The account became delinquent in April 2014. The creditor advised Applicant in 2019 that they closed the account and requested the Internal Revenue Service (IRS) treat the delinquent balance as additional income. The IRS sent him a Form 1099-C to reflect that additional income. (GE 3 at 2; Tr. 27-28) The account is unresolved.

SOR ¶ 1.d – Applicant believes this account is a credit card. He used the card to pay for moving expenses after he supposedly graduated from school in June 2016. The account became delinquent in October 2017. He claimed he satisfied the debt in August 2020 and provided a confirmation number of payment. (GE 3 at 2; Tr. 28-29, 53; Undated answer) No documentation was presented to prove the account was paid. The account has not been paid.

SOR ¶ 1.e – This is a utility account that Applicant claims he satisfied in July 2020. The account became delinquent in July 2016. (GE 3 at 2) Applicant contended he satisfied the account in order to purchase a home. (Tr. 31) Applicant's testimony is not credible because he provided no documentation to support his pay-off claim.

SOR ¶ 1.f – This is a cable account that became delinquent in March 2019. (GE 3 at 2) The unsupported claim that he satisfied the account in April 2020, and has a confirmation number, is not sufficient to prove he satisfied the debt. (Tr. 31; Undated answer) The debt remains unresolved.

SOR ¶ 1.g – Applicant claimed without proof that his account was related to SOR ¶ 1.j. However, because the tracking comments under the SOR ¶ 1.j account indicate it was sold in September 2017 and the SOR ¶ 1.g account was opened in April 2018, I find the two accounts are the same. With no documentary proof of paying the account in January 2020 in bi-weekly payments, Applicant still owes the delinquent amount appearing in SOR ¶ 1.j. SOR ¶ 1.g is resolved in Applicant's favor. (GE 3 at 2; GE 4 at 3-4; Tr. 33-34; Undated answer)

SOR ¶ 1.h – This is a utility account that changed to a delinquent status in June 2019. Applicant indicated he satisfied the account in March 2020. He was not aware that he owed electricity for his house that he returned to the mortgage company. (SOR ¶ 1.a) The lack of corroborative documentation makes Applicant's payment claim not worthy of belief.

SOR ¶ 1.i – The installment car loan account became delinquent in July 2019. Applicant purchased a car in March 2014, coinciding with his divorce and a few months before his departure to another state for aviation school in September 2014. He

believed that he could keep abreast of payments with his disability pay and his wife's anticipated earnings at the school location. After his payments became delinquent in September 2015, the car was towed. Subsequently, he returned the car payments to a current status and the car company returned the car to him. He discovered a couple of months later that he could not sustain car payments, and the car company repossessed the car. (GE 3 at 5; Tr. 36-40)

SOR ¶ 1.k – This is a utility account that became delinquent in August 2019. He stated that he paid the account in August 2020. He provided no documentation confirming that the debt was paid. . (GE 4 at 2, 4; Tr. 40; Undated answer) The account is unresolved.

SOR ¶ 1.l – This is a mail-order account that became delinquent in May 2020, when a collection company purchased the account. With no documentation to support Applicant's claim of satisfying the account in November 2021, the debt remains unresolved. (GE 2 at 6; Undated answer)

Personal Conduct

SOR ¶ 2.a – Applicant answered “no” to all questions under Section 26 of his August 2019 e-QIP. He answered “no” to having any delinquency involving child support enforcement in the last 7 years. Applicant denied that he has ever been delinquent on his child support. He did not know that he was in arrears on child support because the payments have always been automatically withdrawn from his paycheck. The September 2021 credit report shows that Applicant was only one month behind on child support. (GE 3 at 5; Tr. 44-45; Undated answer) SOR ¶ 2.a is resolved in Applicant's favor.

SOR ¶ 2.b – Under the Section 26 of Applicant's August 2019 e-QIP, questions involving routine delinquent accounts in the past 7 years, Applicant answered “no” that he did not have any debts turned over to collection, or credit accounts suspended, charged off or cancelled. Applicant claims he answered “no” because he did not have a credit bureau report when he filled out the e-QIP in August 2019. (Tr 44-47) While lacking a credit report is a reasonable explanation for negative answers in the financial section, I do not find his claim credible because he knew in August 2019 that he had delinquent debts. He knew about the delinquent credit-card accounts in SOR ¶¶ 1.b and 1.c. He knew about the car he purchased in 2014, that was first towed then repossessed when he realized that he could not maintain the payments. The purpose of the e-QIP is to allow an applicant to make truthful responses to all e-QIP questions, including delinquent debts. When Applicant submitted his e-QIP, his “no” answers left the undeniable impression that he had no delinquent debts. Demonstrating compliance when confronted with the investigator's questioning regarding Applicant's delinquent debts in his subsequent September 2019 PSI does not cure Applicant's untruthful omissions of his delinquent debts from his August 2019 e-QIP.

Applicant has never had financial counseling but believes that he needs it. He does not have a written budget. He has about \$100 left over each month after he pays all his expenses. He enrolled in a debt consolidation company in November 2022. When he learned the company could not help him, he cancelled the enrollment. (Tr. 50-51)

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's credit reports establish that the debts listed in the SOR became delinquent between April 2014 and May 2020. The total amount of debt posted in the SOR is \$64,537. AG ¶¶ 19(a) and 19(c) apply. AG ¶ 19(b) applies because Applicant has provided no documentation verifying that he informed the creditors and collection agencies of his financial difficulties and his plan to fix them. When afforded opportunities to submit additional documentation showing that he paid off some debts, no documentary evidence, i.e., paid receipts, cancelled checks, or bank statements was submitted.

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) is not available for mitigation because none of the financial debts have been resolved. The allegation involving the child support was alleged under personal conduct, not financial considerations. Several accounts were opened while others were already delinquent. An example is that after the SOR ¶ 1.a credit-card account became delinquent in 2014, Applicant opened several subsequent credit or utility accounts that ultimately became delinquent. The account at SOR ¶ 1.l became delinquent in May 2020. It is likely that Applicant's current debt issues will persist. AG ¶ 20(a) does not apply.

AG ¶ 20(b) applies to Applicant's child support order in September 2013, his divorce from his first wife in March 2014, and an inability to sell his house leading to forfeiture of deed in lieu of foreclosure in June 2014. These events were largely beyond his control. But his decision to move to another state in 2014 with only his disability pay and his present wife's anticipated earnings, without investigating the expense before his move, was a condition within his control. He should have examined the alternatives more carefully. Overall, the lack of evidence demonstrating responsible financial management of the listed debts results in limited mitigation under AG ¶ 20(b).

AG ¶ 20(c) does not apply as Applicant has not had financial counseling and does not use a written budget.

In Guideline F cases, the DOHA Appeal Board has repeatedly held that, to establish her 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). Applicant has done neither. AG ¶ 20(d) is unavailable for mitigation because he has not made a good-faith effort to repay the delinquent debts.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concerns related to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

AG ¶ 16. Conditions that could raise security concerns and may be disqualifying include:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant denies that the omissions of his delinquent debts in his August 2019 e-QIP were intentional, but resulted from not having his credit report available for reference when he filled out his e-QIP. Since a simple omission does not establish that the conduct was intentionally committed, I must consider the entire record to determine whether there is direct or circumstantial evidence that provides insight into Applicant's intent or state of mind when the omissions occurred. See, ISCR Case No. 03-09483 at 4 (App. Bd. Nov.17,2004); ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010) In view of the fact that Applicant was over 36 years of age when he filled out the August 2019 e-QIP, he had a substantial number of credits at an aviation school, and admitted the SOR ¶ 2.b allegation in his undated answer, I do not find the unavailability of his credit report as credible. The evidence satisfactorily supports AG ¶ 16(a).

AG ¶ 17. Conditions that could mitigate security concerns include:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and
- (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Applicant did not make prompt good-faith efforts to correct his intentional omissions of his August 2019 e-QIP until confronted with the delinquent accounts during his September 2019 PSI. AG ¶ 17(a) does not apply. Deliberately providing false information to the Government during the security clearance investigation, including the submission of fabricated confirmation numbers and dates when some of the listed debts were purportedly satisfied, cannot be considered minor and reflects negatively on Applicant's trustworthiness, reliability, and judgment. AG ¶ 17(c) does not apply. Applicant receives only partial mitigation under AG ¶ 17(d) for his brief but unsuccessful enrollment in a debt consolidation plan in November 2022.

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 is 40 years old and is raising two children with his current wife. Since 2013, he has been dutifully paying child support for the three children from his first marriage. He received an honorable discharge in March 2009 after almost nine years on active duty in the USN. Applicant has worked for his current employer since 2017. In September 2022, he was promoted to a quality assurance inspector after beginning his employment as a mechanic.

In August 2019, Applicant provided an e-QIP falsely certifying that he had no delinquent debts in the last 7 years when he knew that he had delinquent debts. His credibility is seriously undermined by his misrepresentations about paying bills which he initiated in his undated answer to the SOR, and perpetuated at the December 28, 2022 hearing, and the February 7, 2023 hearing. After a full review of the entire record from an overall common-sense point of view, in conjunction with the specific conditions and general factors of the whole-person concept, Applicant has not mitigated the security concerns arising under the guidelines for financial considerations and person conduct.

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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:

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|---------------------------------|-------------------|
| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraph 1.g: | For Applicant |
| Subparagraphs 1.a–1.f, 1.h-1.i: | Against Applicant |
| Paragraph 2, Guideline E: | AGAINST APPLICANT |
| Subparagraph 2.a: | For Applicant. |
| Subparagraph 2.b: | 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