



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 20-02930
)
Applicant for Security Clearance)

Appearances

For Government: William H. Miller, Esq., Department Counsel
For Applicant: *Pro se*
05/03/2023

Decision

MASON, Paul J., Administrative Judge:

Given the lack of financial counseling and a written budget to monitor his income and expenses, Applicant’s current financial problems are likely to persist in the future. Eligibility for security clearance access is denied.

Statement of the Case

On July 12, 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 5, 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 Services (CAS) could not make the affirmative findings required to continue a security clearance and issued to Applicant a Statement of Reasons (SOR), dated September 10, 2021, detailing security concerns raised by financial considerations (Guideline F). 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 to the SOR on September 29, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 19, 2022, for a hearing on January 26, 2023. The hearing was held by Teams video teleconference as scheduled. I entered the Government's six exhibits (GE) 1-6 and Applicant's four exhibits (AE) A-D into evidence without objection. The exhibit originally marked and admitted into evidence as AE C at the hearing was divided into two exhibits: federal tax year 2018 (AE C); and federal tax year 2019 (AE D). Applicant's post-hearing exhibit (AE E), unopposed by Department Counsel, was entered into evidence on February 10, 2023. DOHA received the transcript (Tr.) on February 3, 2023. The record closed on February 10, 2023.

Findings of Fact

The SOR contains two allegations pertaining to delinquent federal and state taxes. (SOR ¶¶ 1.a and 1.b). Applicant denied both allegations. SOR ¶ 1.c alleges that he did not file federal tax returns for tax years 2018 and 2019. He admitted this allegation. SOR ¶¶ 1.d and 1.e allege delinquent credit-card accounts. Applicant admitted SOR ¶ 1.d, but denied SOR ¶ 1.e, indicating that the account was settled.

Applicant is 47 years old and single. He was married from 1996 to April 2008, when he divorced. He has no children. He has owned his residence since 2015. He took college courses at several academic locations between 2000 and 2017, but received no degree. He recently received a bachelor's degree from a local university and is five credits short of attaining a master's degree in business administration. (GE 1 at 9-16, 24, 32-40, 44; Tr. 7-8, 36, 38)

Applicant has been working for a defense contractor at his current deputy-lead position since June 2021 and earns about \$130,000 annually (\$120,000 salary plus a \$10,000 military pension). In his previous job from 2020 to June 2021, in a similar task-lead position, he also earned about \$130,000 a year. From June 2015 to 2020, Applicant earned about \$80,000, then \$90,000 a year, as a task lead. Apparently, his temporary move to another state in 2020 or 2021 to reduce his chances of catching the COVID virus did not interrupt his consistent employment since 2015. Applicant was honorably discharged from the United States Navy (USN) in March 2015, after 20 years of service. He has held a security clearance since 1995. (GE 1 at 21; Tr. 8-11, 41-43)

Applicant was asked several times to explain the reasons for his financial problems. In his September 2019 PSI, he initially claimed that he forgot to file his 2018 federal and state tax returns. Then he claimed he was waiting on his mortgage company to provide a document so that he could file the returns. He informed the OPM investigator that he intended to file the missing returns in September 2019. That did not happen. He admitted procrastination for not filing his tax returns. He also told the investigator that he owed \$6,000 in federal taxes for 2016, but he predicted that the Internal Revenue Service (IRS) would keep his 2018 refund to pay 2016 delinquent taxes. He claimed the refund he received for federal tax year 2019 will be applied to his

2015 tax bill. Documented information related to his 2019 federal tax return appears in AE D. (GE 2 at 9-11; Tr. 50-51; AE D)

Applicant began paying on the 2015 federal tax debt in 2020. (SOR ¶ 1.a) When asked why he waited five years to establish a repayment plan, he replied that he did not have an answer. There was no reason why he could not have initiated the plan sooner. Applicant's federal tax payment-plan documentation indicates that his last \$300 payment was received by the IRS on January 1, 2023. The remaining balance was \$1,014, with the next payment due on February 1, 2023. (GE 2 at 6-7; Tr. 45-48; AE D)

For the delinquent state taxes (SOR ¶ 1.b), which have been delinquent since tax year 2015, Applicant made two payments totaling \$5,926, on January 24, 2023. He has no remaining tax liability with the state. He provided the same reason for the delay in not paying his state taxes as he expressed for the delinquent federal taxes. He conceded that when he moved into his house in December 2015, he did not understand that his mortgage payments would fluctuate because no one fully explained the disadvantages of his mortgage. (GE 2 at 6-7; Tr. 45-48; AE E)

SOR ¶ 1.c –Applicant provided answers to interrogatories indicating that he filed his 2018 and 2019 federal tax returns on December 8, 2020. The account transcript for tax year 2018 indicates that the 2018 return was filed on March 21, 2022. Applicant provided no explanation for the discrepancy between the dates in his answers to interrogatories (GE 2 at 6-7) or testimony and the 2018 account transcript. (AE C)

The tax account transcript for tax year 2019 (AE D) shows that no tax return was filed. Instead, Applicant submitted a 2019 Form W-2 wage and tax statement, a Form 1098 mortgage interest statement, a Form 1098-T information, and a Form 1098-R Distributions from pensions. A portion of a federal tax return for tax year 2019, time-stamped February 8, 2023, was included in Applicant's post-hearing submission. (AE E)

Regarding the SOR ¶ 1.d credit-card account, Applicant used the credit card to purchase furniture. He stopped making payments on the account in January 2017, as he could no longer afford the payments. The creditor extended a settlement offer of \$8,900, which Applicant was unable to accept because he did not have the money. His last contact with the creditor was in 2022. (GE 2 at 9-10; GE 2 at 4; GE 6 at 5; Tr. 52-53) The account is still unresolved.

Applicant stopped paying on the SOR ¶ 1.e account in January 2017 for the same reason he gave for not paying the SOR ¶ 1.d account. He stated that he was using his credit cards too much and was living beyond his means. He indicated that he settled the account in 2021 for \$4,000. Applicant's documentation reflects that the account was "settled in full," though no payment date is posted in the exhibit. (GE 2 at 10; AE A)

In the financial record section of his July 2019 e-QIP, Applicant indicated he had not filed his federal tax returns for tax year 2018, and he was working with an accountant to resolve the issue. He disclosed the SOR ¶¶ 1.d and 1.e accounts as being in a delinquent status. He explained that he was receiving advice from an attorney about his financial problems. Applicant stated that he and the attorney were debating whether to file a Chapter 13 or Chapter 7 bankruptcy petition. No action was taken as of the date of e-QIP. It is difficult to correlate the discussions that Applicant had with the attorney concerning bankruptcy to fundamental elements of financial counseling. (GE 1 at 45-50)

In 2015 and 2016, Applicant took two one-to-five-day trips to Central America. (GE 1 at 37-40; Tr. 59) In May 2022, Applicant took a seven-day trip to Europe for vacation. The excursion cost a total of \$1,100, including air fare. Applicant's current discretionary monthly remainder after payment of his expenses is between \$2,300 and \$2,500. (Tr. 60-61)

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; and

(c) a history of not meeting financial obligations; and

(f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

A person's practice of paying his voluntarily incurred debts, and filing and paying his taxes, are private matters until evidence reveals that he is not fulfilling these obligations in a timely fashion. Timing is also a critical issue when an applicant does not begin to resolve his financial problems until after he has been notified that his security clearance is in jeopardy. ISCR Case No. 17-04110 at 3 (App. Bd. September 26, 2019); ISCR Case No. 16-03122 at 3-4 (App. Bd. Aug. 17, 2018)

Both aspects of the timing issue are present in the circumstances of this case. Applicant knowingly became delinquent on his federal and state taxes in 2015. He waited five years before addressing his federal taxes and about eight years before handling his state taxes. The fact that he did not pay his state taxes until two days before security clearance hearing indicates that he may lack the judgment and willingness to continually follow the rules, even when his personal interests (desire for a security clearance) are not threatened. He did not file his 2018 and 2019 federal tax returns on time. Though he settled one credit-card account for \$4,000 in 2021, he has not resolved the other delinquent credit-card account amounting to \$18,962. AG ¶¶ 19(a), 19(c), and 19(f) 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;

(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

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

AG ¶ 20 (a) does not apply since Applicant still owes about \$18,962 in delinquent debt to the SOR ¶ 1.d creditor. With no discernible changes in his financial practices, especially with his discretionary monthly remainder of between \$2,300 and \$2,500, the debt will probably persist in the future. Applicant's failure to take charge of his delinquent debt continues to raise doubts about his reliability and judgment.

Applicant's tax problems and credit-card delinquencies resulted from matters within his control. His purchase of the house in December 2015, even though he was unfamiliar with the mortgage rate fluctuations, exemplifies poor judgment. Applicant told the OPM investigator that he was using his credit cards too much and that he was living beyond his means. With no periods of unemployment or medical problems that would prevent him from working, no mitigation is available under AG ¶ 20(b).

The lack of documented financial counseling or evidence of a written budget negates the applicability of the first and second prongs of AG ¶ 20(c). Applicant's delinquent debts are not fully resolved or under control.

AG ¶ 20(d) applies to SOR ¶¶ 1.a because Applicant finally initiated a payment plan with the IRS in 2020, and has substantially reduced his IRS tax debt. He receives some mitigation under SOR ¶ 1.b, even though his payoff of the state tax debt was motivated by his desire to protect his security clearance. Applicant receives full mitigation under the condition for his favorable action in settling the SOR ¶ 19(e) debt in 2021. AG ¶ 20(g) fully applies to Applicant's substantial monthly compliance with the IRS payment plan (SOR ¶ 1.a) that was launched in 2020. He receives only limited mitigation under AG ¶ 20(g) for his satisfying his delinquent state taxes (SOR ¶ 1.b) because he waited eight years to address the debt, and his corrective action did not occur until after he received the SOR and two days before the security clearance hearing.

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 enjoyed uninterrupted employment since 2015. He served his country in the USN from 1995 to his honorable discharge in 2015.

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 taken documented action with regard to his taxes. He has paid off one credit-card debt. However, he has to address a much larger delinquent debt. I do not regard Applicant's bankruptcy discussions as actual financial counseling, particularly when there is no follow-up evidence that any action was taken. One successful method to avoid charging too much on credit cards so that an applicant can live within his means is to utilize a budget that helps him monitor and manage his earnings and expenses. 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.b, 1.e:
Subparagraph 1.c, 1.d:

For Applicant
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