



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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ISCR Case No. 21-02441

Applicant for Security Clearance

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

01/25/2023

Decision

MASON, Paul J., Administrative Judge:

Applicant receives mitigation for eliminating most of his federal tax issues. However, the mitigation is insufficient to overcome the remaining security concerns raised under the guideline for financial considerations Eligibility for classified information is denied.

Statement of the Case

On May 4, 2021, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for a position with a defense contractor. On November 120, 2021, he provided an interview (PSI) to an investigator from the Office of Personnel Management (OPM). After reviewing the results of the security background investigation, the 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 December 15, 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 furnished his answer on December 21, 2021, without comment. In an email dated December 22, 2021, Applicant provided a supplemental explanation for the listed debts, his youngest daughter's drug problems, and his shoulder injury. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 15, 2022, for a hearing on November 30, 2022. The hearing was held as scheduled by via MICROSOFT TEAMS. The Government's five exhibits (GE) 1-5 were entered into evidence without objection. Applicant did not offer any exhibits. He testified.

The record remained open until December 22, 2022, to allow Applicant an opportunity to submit post-hearing documentation about his assertions of resolving his delinquent tax obligations. Applicant submitted post-hearing exhibit AE A documenting payments to the Internal Revenue Service (IRS). I have also marked and admitted into evidence AE B (email documentation from November 23 through December 2, 2021) between Applicant and one of the DOHA adjudicators related to SOR ¶ 1.b. (AE B at 1-4) This documentation includes a December 1, 2021 payment of \$508 to the state tax agency identified in SOR ¶ 1.b. The documentation was included with Applicant's interrogatory answers supplied on November 20, 2021 (GE 2 at 1-29), and resubmitted by Applicant to the Government as part of his answer to the SOR. The record in this case closed on December 13, 2022, when Department Counsel indicated that he had no objection to AE A. DOHA received the hearing transcript (Tr.) on December 12, 2022. References to the pages of the Government and Applicant's exhibits cite the handwritten page number located in the lower right hand corner of the page. At the beginning of the hearing, Department Counsel's video transmission was lost, but he proceeded with the remainder of the hearing by audio. (Tr. 34)

Findings of Fact

The SOR alleges three delinquent federal and state tax allegations, two past-due student loans, and eight delinquent commercial debts, including one medical account. The delinquent federal tax debt (SOR ¶ 1.c) amounts to \$4,198. The student loan debt (SOR ¶¶ 1.e and 1.f) totals \$55,264. The total amount of commercial debt (SOR ¶¶ 1.d, 1.g-1.l), including one medical account (SOR ¶ 1.m), comes to \$5,461. The sum of the ten listed accounts is \$60,725. Applicant admitted all SOR allegations. He had no objection to the Government exhibits, although he did not bring all the exhibits to the hearing because he did not know he needed the exhibits. The student loan and commercial debts became delinquent between February 2014 and October 20, 2020. (GE 3, 4, 5; Tr. 17-24)

Applicant is 58 years old. After 25 years of marriage, he separated from his wife in January 2021 because of her poor financial decisions, and is anticipating a divorce. He has two daughters, ages 26 and 22, from this marriage. He also has a 37-year-old son from his first marriage; his 36-year-old stepdaughter passed away due to drug problems. Applicant has two associate's degrees in electronics and electronic motors that he received in 2006 and 2010. He has been working as a heating and air conditioning technician for a defense contractor since January 2021. He spent the last three months of 2020 working as a maintenance technician. From September 2010 to June 2020, he was employed as a journeyman electrician for a transportation company. He has never held a security clearance. (GE 1 at 9-24; AE 2 at 9; Tr. 7, 30-37)

Applicant believes his financial problems were caused by trusting his wife to pay the bills. While he was working for the transportation company (2010-2020), he commuted between work and his home on the weekends. Applicant was 45 to 55 years old during the period. Regarding management of the family's financial obligations, he earned the money and his wife paid the bills. He met her weekly to talk about paying the bills. They used a notebook to track the bills. He directed his wife to set aside \$100 a week to pay the delinquent taxes. He claimed he was deceived because she did not pay the taxes. His youngest daughter's drug problems between 2016 and 2018 required the expenditure of several thousand dollars for her treatment and recovery. After her recovery, she became a nurse. Applicant was on disability for about a year (circa 2017) due to a shoulder injury followed by two failed surgeries before doctors fully repaired the shoulder. During this period, he was on disability leave drawing 70% of his regular salary. (December 22, 2021 supplemental email-statement submitted the next day following his answer to the SOR; GE 2 at 8-9; Tr. 36-38, 41-45)

SOR ¶ 1.a – Applicant testified that he filed a federal tax return for tax year 2017 and taxes were paid. (Tr. 24) The record contains no federal tax account transcript for tax year 2017 to verify that Applicant filed a 2017 federal tax return. I find this allegation against Applicant.

SOR ¶ 1.b – Applicant provided documentation of paying the state tax agency \$508 on December 1, 2021. Though the record contains no evidence of a filed 2017 state tax return, the record does show that conflicting information supplied by state tax officials to Applicant foiled his attempts to obtain a 2017 state tax return for DOHA adjudicators. (AE B 1-2) This allegation is resolved in Applicant's favor.

SOR ¶ 1.c – The posted delinquent federal tax totals \$4,198 for 2017, 2018 and 2019. No documentation was produced to indicate how much Applicant paid to bring down the delinquent Internal Revenue Service (IRS) balance to \$2,200. He provided documentation showing that his payment of \$2,619 on December 12, 2021, was applied to federal tax years 2018 and 2019. (AE A) Whether this amount eliminates the entire balance in delinquent taxes for federal tax years 2017, 2018, and 2019, is impossible to determine without supporting documentation of the original amount that he owed the IRS. For tax year 2021, Applicant claimed that he filed federal and state tax returns, but

still owes \$800 for the year. (Tr. 49-51) Based on the evidence, I find in his favor under this allegation, even though there is no indication of any payments for federal tax year 2017.

SOR ¶¶ 1.d and 1.e – These are two delinquent student loan accounts. The accounts were opened in 2006 and 2010 by other lenders and were eventually transferred to the federal agency as collection accounts. The federal agency opened both accounts in August 2014, with the last payment activity on the accounts in September 2016. When Applicant opened the accounts, he used the student loan money to pay his bills rather than to pay for the two associate degrees. (GE 4 at 4-5; GE 5 at 5; Tr. 51-52) These two accounts are unresolved.

SOR ¶¶ 1.d, 1.g-1.m – These are seven commercial accounts and one medical account (SOR ¶ 1.m) The accounts became delinquent between February 2014 and October 2020. SOR ¶ 1.d, a credit-card account became delinquent in October 2020. SOR ¶ 1.g represents a past-due internet service account that became delinquent in June 2019. SOR ¶ 1.h is a mobile phone account that fell delinquent in August 2020. SOR ¶ 1.i, a credit-card account, became delinquent in May 2017. A car loan account (SOR ¶ 1.j) became delinquent in February 2014, after Applicant's daughter totaled the family car and the insurance company did not cover the full amount owed to the car company. SOR ¶ 1.k represents an unpaid insurance bill. SOR ¶ 1.l is an unpaid credit union account that became delinquent in December 2015. SOR ¶ 1.m is an unpaid medical bill for Applicant's treatment while on disability leave. The account became delinquent in December 2019. Applicant indicated that he has not acted on the ten debts (the seven commercial, one medical, and two student loan accounts) because he has been trying to clear his past-due federal and state taxes. (GE 2 at 9-10; Tr. 53-54) These ten accounts remain unresolved.

Applicant earns about \$74,880 a year with his current employer. (Tr. 40-41) His rent is \$1,050 a month. His car payment is \$252 a month. After payment of expenses, including \$100 a week in pre-divorce alimony, his monthly remainder is between \$1,100 and \$1,200 a month. He has \$3,200 in savings and \$800 in checking. He has \$11,000 in his retirement account. He has never participated in financial counseling, debt management, or debt consolidation services. (Tr. 46, 54-57)

At the hearing, Applicant testified that he did not discover that his wife was not paying bills and taxes until shortly before he submitted his May 2021 e-QIP. He defended this claim because he was living away from home on weekends between 2010 and 2020, and not always present to witness his wife manage the bills. He was not meeting with his wife over the bills (as he testified to earlier). Instead, she showed him her notebook entries of which bills she supposedly paid and did not pay. He never looked at the mail and she never showed him collection notices or bills. He testified that they had been utilizing this practice for 25 years. Between 2016 and 2018, he also was struggling with his youngest daughter's drug addiction and the cost of her recovery. Additionally, he was coping with his shoulder injury and surgeries. (Tr. 44-45, 58-60) I do not find Applicant's explanations credible. Directing his wife to pay \$100 a week

toward the taxes implies that he knew or should have known the taxes were delinquent. Further, the reason for his separation from his wife in January 2021 was due to her poor financial decisions. (AE 2 at 9)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines 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;

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

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

The Government's credit reports, Applicant's December 2021 answer to the SOR, and the record establish the Government's case under the guideline for financial considerations. Since the February 2014, Applicant has accumulated a history of not meeting his financial obligations. AG ¶¶ 19(a) and 19(c) apply to Applicant's inability to satisfy the accounts identified in SOR ¶¶ 1.d-1.m. AG ¶ 19(f) applies to his failure to file Federal and state tax returns and pay the corresponding taxes.

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

(f) 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 to the medical, student loan, and commercial debts. Though three debts became delinquent in 2014, seven of the debts changed to a delinquent status between 2017 and 2020. While Applicant has severed his relationship in January 2021 with the person he believes caused his financial problems, he still owes the debts. His inability to address the debts by some level of contact with the creditors

to set up payment plans, or at least advise the creditors why he cannot pay them presently, continues to cast doubt on his current reliability and judgment.

Applicant receives mitigation under the first prong of AG ¶ 20(b) because of his youngest daughter's drug problems from 2016 to 2018, and the cost associated with her treatment and recovery. Applicant's shoulder injury in 2017 and the surgeries required to fix the condition was the second unforeseen event that was largely beyond his control. However, to receive full credit, an applicant must act responsibly under the circumstances. I believe that when Applicant moved to the local area in January 2021, rather than in May 2021, he knew that his taxes and the other debts were not being paid. 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. Furthermore, there are no clear indications that the ten debts are being resolved or under control. AG ¶ 20(c) does not apply. AG ¶ 20(d) must be removed from consideration because Applicant has taken no action to repay the creditors or collection agencies.

Applicant's documented efforts in unsuccessfully trying to obtain the 2017 state tax return, combined with his documented payments to eliminate his federal tax obligations for tax years 2018 and 2019, entitle him to mitigation under AG ¶ 20(g), even though the record does not show tax payments for federal tax year 2017. The mitigating condition does not apply SOR ¶ 1.a because Applicant has submitted no proof that he filed the 2017 federal tax return.

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 58 years old and has two daughters from his current wife. He also has a son from his first marriage. Though he has taken documented action on his federal and state taxes, he has done nothing regarding his two student loans and the other listed debts. In Guideline F cases, the DOHA Appeal Board has repeatedly held that, for an applicant to successfully establish his case in mitigation, he 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, an 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) 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.d-1.m:	Against Applicant
Subparagraphs 1.b, 1.c:	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