



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 21-02018
)
Applicant for Security Clearance)

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *Pro se*

02/09/2024

Decision

MASON, Paul J., Administrative Judge:

Applicant failed to overcome the residual security concerns arising from the guideline for financial considerations. Eligibility for security clearance access is denied.

Statement of the Case

On July 27, 2020, and January 11, 2013, Applicant submitted two Electronic Questionnaires for Investigations Processing (e-QIPs), applying for a security clearance required for a position with a defense contractor. On September 22, 2020, 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 May 16, 2022, detailing security concerns raised by financial considerations (Guideline F). The action was taken under 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 Department of Defense (DOD) on June 8, 2017.

Applicant provided his answer to the SOR on June 3, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 23, 2023, for a hearing on July 17, 2023. A Case Management Order (CMO) was issued on June 29, 2023. A copy of the CMO is located in the orange folder of the court file. The hearing was conducted by Teams video teleconference. I entered the Government's seven exhibits (GE) 1-7 into evidence without objection. After the conclusion of the hearing, the record remained open until August 1, 2023. Applicant provided seven post-hearing exhibits (AE A-AE G). With no objection to the exhibits, they were entered into evidence. DOHA received the transcript (Tr.) on July 26, 2023. The record closed on August 1, 2023.

Findings of Fact

There are 3 delinquent accounts alleged in the June 2021 SOR. There are also tax allegations. SOR ¶ 1.d alleges that Applicant owes the Federal government for delinquent taxes totaling \$37, 253 for tax years 2010 through 2013. SOR ¶ 1.e alleges that Applicant owes the state tax agency \$5,200. The total amount of delinquent debt is about \$55,260. The debts became delinquent between 2013 and December 2017. Applicant admitted that he owed all the debts and taxes. The primary reason he has been unable to pay the debts is a lack of funds due to unemployment and underemployment. For example, while Applicant was employed by the senior citizens' organization for four years, he could only work 20 hours a week. (AE E)

Applicant's admissions, the 2020 Government credit bureau report (CBR, GE 5), the financial interrogatory answers dated July 2021 (GE 3) and November 2021 (GE 4), the July 2015 judgment (GE 6), and Applicant's June 3, answer to the SOR, confirm the existence of the delinquent accounts in the SOR.

Applicant is 65 years old and married. He has lived at his current residence since September 2015. His first marriage ended in divorce in May 2005. His second marriage ended in divorce in 2013. He married his current wife in 2014. He has two adult-aged sons, and one adult-aged stepson. (GE 1 at 23-25, 31; Tr. 14)

Applicant has been employed as a records specialist with a company since September 2021, and does not need a security clearance. (Tr. 9) He is awaiting the outcome of the security clearance hearing for a position with a defense contractor. He has submitted at least 500 employment applications for employment, realizing that he is over qualified for many prospective positions. Prior to his current job, he was an intake specialist for four years with a senior citizens organization that helps seniors find employment. From October 2016 to December 2016, he was unemployed. In addition to working as a front desk clerk, Applicant was a janitor and a grounds keeper for different periods. From October 1991 to July 2014, he was a civilian administrative technical specialist for the United States (U.S.) Navy. He received a security clearance when he got hired into the civilian position in October 1991. He was suspended from the position

in 2013, and then he retired in 2014. Applicant served in the Naval Reserve from 1978 to 1981, when he received an honorable discharge. (Tr. 7-10; GE 1 at 12-15, 20)

SOR ¶ 1.a – The cable account was opened in 2018 and transferred for collection in August 2020 for \$401. Applicant claims he was evicted from the residence in August 2015 (providing no forwarding address) before receiving what he believes was the last bill from the cable company. He maintains that he never received the bill. He intended to resolve the account when he received a higher salary. (GE 4 at 26; Tr. 21) The account is unpaid.

SOR ¶ 1.b - The auto account of \$8,551 was transferred for collection in December 2017. Applicant claimed that the car was repossessed in July 2014 after he lost his security clearance and stopped making payments. He contended that the car was sold through an auction at a price that covered the balance owed on the car. The car company supplied no paperwork to Applicant after the auction. He then indicated that the paperwork he received from the auto company was in a filing cabinet located in a storage unit. However, the storage unit manager would not permit him to retrieve the documentation from the unit because the storage company auctioned off his unit after he missed a \$174 payment. The date when the storage unit was auctioned off does not appear in the record. Applicant has not contacted the auto company since the auction sale to replace the paperwork that was supposedly lost when the unit was sold. (GE 4 at 26; Tr. 36-38, 39-41) The debt is unpaid.

SOR 1.c – In March 2014, Applicant was evicted from a rental (not alleged in the SOR) because he was behind on the rent. He fell behind because of a loss in income due to his suspended clearance. He appeared in court in June 2014 and resolved the judgment in August 2014. He obtained a loan from his retirement account and paid the account. In July 2015, he appeared in the same court for a second eviction (SOR ¶ 1.c) after he fell three months behind on rent. He plans on paying this judgment when he gets a better paying job. (GE 1 at 43; GE 4 at 26; GE 6; Tr. 36-37) The debt is unresolved.

SOR ¶ 1.d – Applicant did not pay Federal taxes totaling \$37,253 for 2010 through 2013. He discovered that it was impossible to obtain the Federal account transcripts or reach the IRS, particularly during the COVID pandemic. As with the delinquent debts listed in SOR ¶¶ 1.a through 1c, his inability to pay occurred because of his 2013 suspended clearance. The IRS placed Applicant on a non-collectible status because he is living at the poverty level according to the Department of Labor. He was unable to utilize the advice of the tax advocate service because Applicant and his wife believed they had been deceived by the tax defense network. They were requesting a \$204 refund and an email confirming cancellation of their enrollment in the service. (GE 4 at 2-11, 23, 26; Tr. 22, 27-28; AE C) The taxes are still unpaid.

When the IRS confers a “currently non-collectible status” (CNC) on a taxpayer, they are temporally stopping their attempts to collect taxes. The IRS has generally 10

years to collect taxes, (Collection Statute Expiration Date), then the tax obligation is extinguished. See Internal Revenue Manual (IRM), 5.1.19, 5.16.1, 5.19.17. Because of his difficulties in contacting the IRS, particularly during COVID pandemic period, Applicant does not know whether the federal taxes, penalties, or liens for 2010 and 2011 have been extinguished or released. (Tr. 27-28)

Though unalleged in the SOR, Applicant and his second wife owed taxes for 2008 and 2009. They were in a payment plan. He claimed that he was not involved in her tax issues. The IRS imposed a levy on his income in 2009, and he claims that he satisfied the levy in September 2012. (GE 2 at 33)

SOR ¶ 1.e – Applicant owes \$5,200 in state taxes which he has not paid due to low income resulting from a suspended security clearance license and low paying jobs. Applicant planned to pay the state taxes once he receives a higher paying job. From July 2017 to November 2018, he made regular payments of \$160 a month. At the end of the payment period, the state notified him that he completed the plan. He claimed that he had documentation proving that he made the payments to the agency. However, the documentation was in the same storage unit that was auctioned at an unidentified date after he missed a payment. Applicant did not know what he owed the state agency. At a subsequent time, he called the state agency and left a message to set up a small payment arrangement, but insufficient funds caused him to change his mind. (Tr. 23-24, 31-32)

Though Applicant implied that his financial problems arose after his security clearance was suspended in 2013, the record demonstrates that he had financial issues before he received a conditional security clearance in 2007. Documentation shows that OPM had completed their investigation on November 3, 2006. He was granted the clearance on condition that he continue payments of five debts in a debt management plan. Applicant explained that the financial issues occurred because he was experiencing his first divorce. Further, there were accounts he was not aware of because he was traveling a majority of the time, and the debts were opened in his name. Applicant paid all those debts with a loan from his retirement account. As noted earlier, documentation indicates that he also had federal tax issues in 2008 and 2009. (GE 7; Tr. 25)

In August 2013, Applicant's security clearance was suspended because he failed to provide documentation related to a personal loan, a car loan, and the Internal Revenue Service (IRS). He was provided a 30-day extension. He claimed that because he was working in different buildings, and was deeply involved in an inventory review over several months, he forgot to read his emails. His department head informed him that his security clearance was suspended. After the 30-day period had expired, he received documentation from the IRS, but he received no documentation regarding his personal and auto loans. I do not find his explanation credible. Applicant was placed on indefinite suspension for failure to comply with documentation requests. The events leading to the conditional security clearance in July 2007 and the suspended clearance

in August 2013 were caused by financial delinquencies. Applicant has not had a security clearance since 2013, not 2017 as he stated in his employment history. (GE 1 at 40; GE 4 at 19, 25; Tr. 25-30)

Character Evidence

Applicant indicated that he was not going to seek character statements because he did not want anyone involved in his security clearance adjudication. (Tr. 43) He did not ask for any character statements from coworkers because they would want to know why he needs a character endorsement for a security clearance. He believes he has the respect of those that work with him. His performance evaluation for September 21, 2021 to June 2022 received a rating of 3.22, with 5 being the highest performance rating. The rating was signed by his supervisor and next level supervisor. (AE A)

Applicant received a letter of appreciation in 2002 and an award for dedication in 2003 while working as a civilian for the U.S. Navy. In 2021 or 2022, he received a letter of appreciation while working for his current employer. (AE B)

AE C contains the May 2021 letter from the tax service based on the state senator's inquiry into Applicant's federal tax debt. The letter provided options for resolving the SOR ¶ 1.d federal tax debt. Applicant's wife submitted a June 15, 2021 letter to the money solver organization and the tax service expressing her dissatisfaction with the organizations and requesting cancellation of their enrollment and a refund of payments they made to the tax organizations.

In the next exhibit, Applicant provided a leave and earning statement indicating that he has a net income of the \$3,007 a month, with expenses of \$2,841 a month, leaving a monthly remainder of \$166 that he applies to savings. He is required to move from his current residence in December 2023, because the home owner is selling his current residence. (AE D)

Applicant has provided regular rental payments of \$1,700 a month at his current residence since December 2022. He paid \$111 in July 2023 to the state utility. Applicant's July 2023 CBR shows that he was current on his \$88 monthly payment to the credit union. From September 2015 to November 2022, Applicant always paid his rent on time. His wife suffers from a serious medical condition and has not worked in 10 years. (AE F through AE H)

Applicant's employment history and resume show that he has 30 years of combat systems experience in supporting warfare systems. The list of positions that he has occupied since 1991 as a civilian appears at GE 3 at 13 -20)

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 payment of his financial responsibilities 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) Applicant's June 2022 admissions and the Government's August 2020 credit report establishes that the listed debts became delinquent between 2010 and February 2013. Applicant's tax problems surfaced when he did not pay Federal taxes for 2010, and were compounded by Applicant's failure to pay additional taxes from 2011 through 2013. His most recent delinquent debt occurred in February 2018 when the cable account was transferred for collection. This is the same cable company that is listed in his conditional security clearance determination in 2007. AG ¶¶ 19(a) and 19(c) apply. AG ¶ 19(b) does not apply because Applicant is willing to pay his delinquent debts.

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 the total amount of delinquent debt to the five creditors listed in the SOR. The lack of documented evidence to support his claims of trying to pay on four of the five listed creditors continues to raise doubts about his reliability and judgment.

AG ¶ 20(b) recognizes that a person's financial problems can be caused by events beyond his control. Applicant's suspension from his Federal job in August 2013 was not caused by matters beyond his control, but because he did not comply with the required documentary requests of his command concerning two loans and federal tax issues within the 30-day time period. His lack of compliance was especially serious

because he had held a security clearance since 1991, so he should have used better judgment in executing his security clearance obligations. While Applicant experienced a two month period of unemployment in 2016, and a four-year period of underemployment at the senior citizen's organization until 2021, he has been consistently employed since December 2016. During the period, he reported no medical emergencies, no hospitalizations, and no disabilities that would have prevented him from gainful employment. Though his wife suffers from a serious medical condition and has not worked in 10 years, there is insufficient evidence to determine how her condition affected Applicant's inability to repay the creditors since their marriage in 2014.

Applicant receives limited mitigation under the first prong of AG ¶ 20(b), but no mitigation under the second prong because he did not act responsibly in settling the other debts. There is no substantiating evidence, i.e., cancelled checks, bank ledgers, receipts, or self-generated documents which establish the listed debts were paid or resolved in some manner. Likewise, there is no documented good-faith effort to repay creditors or otherwise resolve debts as required under AG ¶ 20(d).

AG ¶ 20(c) applies when financial counseling demonstrates that there are clear indications the financial problems are being resolved or under control. Though Applicant presented no evidence of financial counseling, he claimed that he was in a payment plan with the IRS and resolved the Federal tax problem in September 2012. In sum, the lack of unequivocal documented evidence that the Federal and state taxes are being resolved or under control renders AG ¶ 20(c) is unavailable for mitigation.

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 married and has two adult-aged sons and one adult-aged stepson. He has been recognized for his work contribution in 2002, 2003, and in 2021 or 2022.

His decision not to obtain character endorsements is based on his belief that the authors would want to know why he needs this this information for a security clearance.

After considering the evidence under the whole-person, the mitigating evidence is insufficient to overcome Applicant's history of financial problems that dates to 2006, and his attempts to minimize and deny the negative evidence so that it is viewed in his favor. In his explanation for the conditional security clearance in 2007, he seemed to be blaming his former wife for incurring financial problems during the period. He claimed that he was traveling a good deal of the period and several of the delinquent accounts were opened using his name. He claimed that he had nothing to do with the tax problems that emerged in 2008 and 2009.

Applicant attributes the reason for the SOR ¶ 1.a debt to being evicted before the final bill was mailed to him. He could have remedied the lack of a forwarding address by alerting the post office of his dilemma so that he would receive mail at the post office after his eviction and until he relocated to another residence.

Claiming that the SOR ¶ 1.b creditor recouped the full value of the car after the auction with no substantiating documentation other than a letter that was destroyed when the storage unit was sold, is not worthy of belief. Advancing the same claim concerning the purported payments to the state tax agency is also not credible.

Applicant has not furnished sufficient evidence to establish that his delinquent debts are being resolved or under control. In Guideline F cases, the DOHA Appeals 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. This includes any self-generated efforts to keep listed creditors aware of the reasons why an applicant is unable to address his delinquent debts. 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 has 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.e:	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