



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 22-01879
)
Applicant for Security Clearance)

Appearances

For Government: Patricia Lynch-Epps, Esq., Department Counsel
For Applicant: *Pro se*

07/11/2024

Decision

MASON, Paul J., Administrative Judge:

Applicant’s evidence in mitigation dispels the security concerns arising from the guideline for financial considerations. Eligibility for security clearance access is granted.

Statement of the Case

On February 16, 2022, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for a position with a defense contractor. On April 18, 2022, he provided an interview (PSI) with 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 for security clearance eligibility, and issued to Applicant a Statement of Reasons (SOR), dated December 1, 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 DOD on June 8, 2017.

Applicant provided his answer on March 5, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 12, 2024, for a hearing on March 27, 2024. The hearing was held by Teams video teleconference as scheduled. The Government's seven exhibits were entered into evidence over Applicant's objection. Applicant presented no exhibits at the hearing. On April 11, 2024, Department Counsel had no objections to Applicant's 16 post-hearing exhibits. DOHA received the transcript (Tr.) on April 4, 2024.

Rulings on Procedure

As the Teams hearing was about to begin, Applicant discovered that he could not activate his video for the Teams hearing. I asked him whether he understood that the hearing would proceed by audio only. He indicated that he agreed to continue the hearing with only audio. (Tr. 4-5)

At different points in the hearing, Applicant stated that he might need an attorney because he did not fully understand some of the exhibits or words in the exhibits. (Tr. 35) After some discussion, I advised him to examine the discovery letter that Department Counsel sent him on March 23, 2023, more than a year before the March 2024 hearing. I briefly reviewed the contents of the letter with him and inquired why he waited a year to ask the questions about the exhibits and other questions regarding the security clearance investigation process. As to GE 1, Applicant indicated he did not understand some of the words in the exhibit, and he did not get the expected help in completing the application as he had in the past. I overruled his objections to GE 1 because he signed and certified the exhibit, and had filled out security clearance applications in the past. (Tr. 36-42)

Regarding Applicant's April 2022 PSI (GE 2), he testified that he did not understand parts of the exhibit. Department Counsel asserted that the exhibit be admitted into evidence because it was relevant to the issues in the case. I overruled Applicant's objections because he waited until the March 2024 hearing to ask questions about the exhibit or make clarifications to the exhibit. I note that the PSI contains delinquent debt information that is favorable to Applicant, including credible reasons for his financial troubles. (Tr. 42-46) See GE 2 at 4.

Applicant objected to GE 3 because it was not a current credit report that showed he paid off certain listed debts. I noted that changes in more recent credit reports showing that delinquent debts were paid could portray an improved financial picture. I explained to him that even though the dated credit report did not contain current account information, that does not preclude the admissibility of the exhibit. I admitted GE 3 into evidence. Applicant objected to GE 4 for the same reason as GE 3, and I admitted GE 4 into evidence for the same reason. (Tr. 46-48)

I also admitted GE 5 and 6 into evidence because these are lawful judgments that were filed even though Applicant may have satisfied the judgments. His affirmative answer to the April 2019 eviction action alleged in SOR ¶ 1.p (GE 7) supports the validity of the complaint even though he subsequently resolved the eviction by paying the damage claim. GE 7 is admitted into evidence. (Tr. 48-50) Considering Applicant's year-long delay in presenting questions concerning the exhibits and other phases of the security clearance process, and having filled out security clearance applications in past, I am denying Applicant's wavering request for an attorney because he never made a specific request for an attorney.

Findings of Fact

The SOR lists 13 delinquent accounts, two judgments, and one landlord-tenant eviction action. The delinquent accounts are credit cards, department store accounts, an electronic store account, a signature loan and personal loans, and an eviction. The total amount of debt is approximately \$50,765. The debts became delinquent between February 2011 and August 2021. Applicant admitted all listed delinquent debts except for SOR ¶¶ 1.i and 1.l. The Government's credit bureau reports (CBRs) at GE 3 and 4, and judgments (GE 5, 6, 7) confirm his admissions.

Applicant explained in his April 2022 PSI that his financial problems were caused by loss of work during COVID-19 pandemic. (circa March 2020 to late 2022), and the approximate \$15,000 cost to transport his brother back to their home country. (GE 2 at 4) Applicant stressed that he paid or settled the majority of the listed debts. He filed disputes of one or two delinquent accounts. of certain debts. (March 2023 answer to SOR; AE 2 at 4; Tr. 21)

Applicant is 51 years old. He married in February 2009 and separated in June 2018. He has four children ages 6, 14, 16, and 21. (Tr. 50) He has been employed as a security officer by two security contractors, one from 2019 to the present, and one from May 2016 to the present. From January 2014 to June 2016, he was a security officer employed by two different security companies for different periods of time. From February 2012 to January 2014, his February 2022 e-QIP furnishes no information about his employment status. He took a trip and spent 21 to 30 days in his country of birth in April 2012 and September 2013. (GE 1 at 44-45) This gap in his employment is preceded by working as a security officer from September 2011 to February 2012, when he was terminated for sleeping on the job. Before his long career as a security officer, he was a custodian for a school system. (GE 1 at 11-24)

SOR ¶ 1.a – This account was a loan from a credit union. The account was charged off between 2012 and 2016 while Applicant was working for his employer identified in his April 2022 PSI. (GE 1 at 13; GE 2 at 2; GE 4 at 5) His explanation was that his security clearance had expired at some time during the period, and he was waiting for the clearance to be updated. Though he claimed he obtained insurance to cover this account and the one identified in SOR ¶ 1.b, he provided no additional

information regarding the insurance. Furthermore, the insurance never activated because both accounts were still delinquent until they were settled in October 2022. After Applicant made a final payment of \$4,280 on October 28, 2022, the agreed upon settlement amount of \$4,689 for SOR ¶ 1.a was deemed to be satisfied. (AE 1A)

SOR ¶ 1.b – This account was a loan from the same credit union identified in SOR ¶ 1.a that became delinquent in July 2013. (GE 2 at 2; GE 4 at 4) On October 4, 2022, the credit union confirmed a settlement arrangement calling for Applicant to pay \$150 a month starting on October 17, 2022, with subsequent payments every 30 days. The payment history reflects that Applicant has made 19 monthly payments on the SOR ¶ 1.b account from October 2022 through March 2024. (Tr. 61-64; AE 1B, settlement letter and payment ledger)

SOR ¶ 1.c – This credit-card account became delinquent in May 2017, and charged to profit and loss. (GE 3 at 2)

SOR ¶ 1.d – This was a signature loan that Applicant opened in April 2010 with the same credit union identified in SOR ¶ 1.c. The last date of payment activity was in July 2016. (GE 4 at 5)

In his April 2022 PSI, Applicant claimed he also had insurance on SOR ¶¶ 1.c and 1.d. He indicated that he was unable to make payments while he was waiting for his security clearance to be renewed, presumably during the period 2012 to 2016 as he explained under SOR ¶ 1.a above. (GE 2 at 3)

The subsequent court action filed by the credit union was dismissed because the collection agency and Applicant reached a settlement in February 2018. (AE 1C/1D) Though he agreed to a repayment plan of \$125 a month, before he could begin monthly payments, the Government shutdown in 2018. (GE 2 at 3) (Internet research reflects that the shutdown occurred between late December 2018 to late January 2019.)

Applicant's documentation reveals that he made regular monthly payments to the collection agency for the SOR ¶¶ 1.c and 1.d accounts from February 2018 to December 2018. He stopped payments until January 2023, when he resumed his monthly payments because he could not afford the higher amount. The payment statement shows that Applicant's most recent monthly payment was \$250 in March 2024. He has made a total of 24 monthly payments since February 2018. (Tr. 67-70; AE 1C/1D)

SOR ¶ 1.e – This account and the one listed at SOR ¶ 1.m are the same account. The amount in each allegation is the same. The account number in Applicant's April 2022 PSI matches the account number in the SOR. The SOR ¶ 1.e account was a store credit card that became delinquent in August 2017. When the creditor closed their business, Applicant believed that he no longer needed to pay. On October 17, 2022, the

collection agency notified Applicant that the account was settled with a zero balance. (GE 4 at 6; Tr. 71-72; AE 1E)

SOR ¶ 1.f – This was a credit-card account that Applicant used to buy a computer. (The same account appears at SOR ¶ 1.o) The account became delinquent in June 2017. The collection agency initially filed a lawsuit seeking payment, However, in October 2022, the agency notified Applicant the account was closed after they received his final payment. (GE 4 at 4; Tr. 73; AE 1F)

SOR ¶ 1.g – This account was a home improvement store credit card that Applicant used to purchase paint. The account became delinquent in May 2019. In October 2022, the collection agency notified Applicant that the account was settled with a zero balance. (GE 3 at 4; Tr. 73-77)

SOR ¶ 1.h – This is a debt that Applicant incurred in 2019 after his brother suddenly passed, and he had to spend over \$15,000 transport him to his home country in Africa, resulting in Applicant being two days late on the rent. He was evicted from his apartment and the landlord charged him over \$900 in damages that he did not feel he owed. On October 11, 2022, the collection agency representing the apartment, notified him that his full payment of the damage claim closed his account. (GE 2 at 2; GE 3 at 4; GE 4 at 2; Tr. 77-80; AE 1H)

SOR ¶ 1.i – This cable account became delinquent in August 2021. Applicant did not know why the account was being listed as delinquent because someone retrieved the cable equipment before he was evicted. The documentation shows that he was evicted in about June 2019. On April 9, 2024, Applicant claimed the account was settled for \$432. Without independent evidence of his claim, I am unable to accept this document (AE 1I). It is an applicant's responsibility to corroborate his testimony or typewritten claims with independent evidence, i.e., paid receipts, bank statements, or documentation from the creditor, that confirm the debt has been or is being paid. See track record evidence of AE 1C/1D.

SOR ¶ 1.j – This cable account became delinquent in August 2021. The collection letter to Applicant shows he paid the account on September 30, 2022, and he was notified on October 4, 2022. (GE 2 at 3; Tr. 81-87; AE 1.j)

SOR ¶ 1.k – This was a charge account for an electronics or a department store. In a final statement by the creditor dated October 3, 2022, Applicant was informed by letter that his account was satisfied on September 28, 2018. (Tr. 87-89; AE 1K)

SOR ¶ 1.l – This phone account became delinquent in January 2018. As with SOR ¶ 1.i, Applicant's unsupported April 2024 statement that this account being paid and settled (AE 1L) is insufficient to validate payment of the account.

SOR ¶ 1.m is the same account as SOR ¶ 1.e. (Tr. 94)

SOR ¶ 1.n – This account was originally held by a bank and sold to a collection agency. The action for recovery of the debt was filed in March 2019. A default judgment was made in May 2019. The judgment was satisfied on August 21, 2020. Applicant was notified by the collection agency that the debt was satisfied on June 23, 2020. (GE 5; AE 1N)

SOR ¶ 1.o – This judgment describes the same account that appears in SOR ¶ 1.f. See AE 1F.

SOR ¶ 1.p – This is the eviction that occurred in 2019, resulting in a civil action claim for damages. and Applicant satisfied the damage claim in October 2022. (GE 2 at 2; GE 3 at 4; GE 4 at 2; Tr. 77-80; AE 1H)

Applicant has never had his wages garnished. Though he has not had collection actions taken against his wages, judgments have been filed for non-payment of debts. He has received notices from creditors or collection agencies informing him of delinquent accounts and offers of settlement. (Tr. 55)

Applicant does not have a written budget and he does not keep track of his expenses. He has no savings account. He does have a checking account, but does not monitor the contents. He does not know how much is in his 401(k) account. He did not answer the question of whether he has ever had financial counseling. He explained that he manages his spending by using only one credit card. He stopped using the other credit cards and pays in cash. (Tr. 106-117)

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. Mismanaging his personal finances raises a disqualifying possibility that he may exhibit the same approach toward safeguarding classified information.

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 credit reports (GE 3, and 4) establish that the debts listed in the SOR have been delinquent since between February 2011 and August 2021. AG ¶¶ 19(a) and 19(c) apply because all the listed debts became delinquent and languished in delinquency for significant periods. I conclude that AG ¶ 19(b) does not apply because I believe Applicant has demonstrated that he wants to satisfy his delinquent debts, but several tumultuous events occurred to stifle his efforts. First, he lost work during the time (2012-2016) he was waiting for his security clearance to be renewed. Second, in 2019, he had to pay over \$15,000 to transport his brother back to an African country for burial. Third, he lost more work during the COVID-19 pandemic between 2020 and 2022.

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) has limited application due to the lengthy periods which most of the listed debts were delinquent. The debts occurred under circumstances that could recur due to the lack of financial counseling and other financial tools to successfully manage his finances, thus casting continuing doubt on Applicant's reliability and good judgment.

The three events discussed above were unforeseen and beyond Applicant's control. The loss of work because his security clearance expired, experiencing an unexpected death of a brother, then spending more than \$15,000 to transport his brother for an overseas funeral, and then confronting additional loss of work due to the Covid-19 pandemic, entitle Applicant to substantial mitigation under the first prong of AG ¶ 20(b).

Though three of the creditors or collection agencies had to file civil actions before Applicant initiated action, and he did not pay off or settle other accounts until after he received the SOR, he furnished a documented record of 24 payments to the SOR ¶¶ 1.c and 1.d began in February 2018.

Applicant provided documentation showing that he settled the SOR ¶ 1.a account in October 2022. Regarding the SOR ¶ 1.b account, he negotiated a settlement in October 2022, and has provided documentation of monthly payments from October 2022 to March 2024. In sum, based on his documented record of payments to SOR ¶¶ 1.a and 1.b, Applicant receives some mitigation for acting responsibly under the circumstances. He also is entitled to mitigation under AG ¶ 20(d) for negotiating

settlements with several of the creditors or collection agencies, while complying with the payment plans in a good-faith manner with other creditors. While there is no independent evidence of resolution of SOR ¶¶ 1.i and 1.l, the debts do not detract from Applicant's good-faith efforts in resolving all the other listed debts in the SOR.

Applicant's use of only one credit card to limit his spending is not the most effective way of monitoring and managing his finances. A written budget gives an applicant an opportunity to determine where he is spending his money and avenues to reduce spending in those areas. Another way of curbing spending is to rely on cash which can curtail the impulse to overspend. Should Applicant continue to handle his finances as he has done in the past, he will likely invite future financial problems that will put his security clearance eligibility in jeopardy. Applicant is entitled to limited mitigation under the second prong of AG ¶ 20(c) for resolving his debts.

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 four children. He has been employed as a security officer since January 2014.

Applicant had three major events in his life that resulted in financial problems. The events substantially extenuate his overdue action in addressing the delinquent debts. However, the record demonstrates that he began resolving several of the debts at least two years before he received the SOR. His track record of payments to SOR ¶¶ 1.b, 1.c, and 1.d collection agencies establishes persuasive evidence that he intends to satisfy all his debts. 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 credible 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 demonstrated consistency in repaying his debts, and has he been truthful about the action he has taken to pay his past due debts. Judging by the totality of the entire record under the specific conditions and general conditions of the whole-person concept, Applicant has mitigated the concerns generated by 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: | FOR APPLICANT |
| Subparagraphs 1.a-1.p: | For Applicant |

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is granted.

Paul J. Mason
Administrative Judge