



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 23-02859
)
Applicant for Security Clearance)

Appearances

For Government: Sakeena Farhath, Esq., Department Counsel
For Applicant: *Pro se*

11/06/2024

Decision

MASON, Paul J., Administrative Judge:

Applicant has mitigated the security concerns raised by the financial considerations guideline. Eligibility for a security clearance is granted.

Statement of Case

On May 3, 2023, Applicant certified and signed an Electronic Questionnaires for Investigations Processing (e-QIP, Item 3) to obtain or retain a security clearance required for employment with a defense contractor. On August 22, 2023, he provided a personal summary interview (PSI, Item 7) to an investigator from the Office Personnel Management (OPM). After examining the background investigation, the Defense Counterintelligence Security Agency (DCSA) Consolidated Adjudications Services (CAS) could not make the affirmative findings necessary to issue a security clearance. On March 8, 2024, the DCSA CAS issued a Statement of Reasons (SOR) to Applicant detailing security concerns under the guideline for financial considerations. (Guideline F). The action was taken by the Defense Industrial Personnel Security Clearance Review Program (January 2, 1992), as amended (Directive); and Security Executive

Agent Directive 4, establishing in Appendix A of the National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position (AGs), made effective in the Department of Defense (DOD) on June 8, 2017.

In his May 1, 2024, response to the SOR, Applicant admitted the single allegation under the financial considerations guideline and provided an explanation. He decided to have his case evaluated administratively on the written record in lieu of a hearing. On May 24, 2024, the Government sent a copy of its File of Relevant Material (FORM), the Government's evidence in support of the allegations in the SOR, to Applicant. He received the FORM on May 31, 2024. See Court file. His response, which is dated June 4, 2024, was received by the Defense Office of Hearings and Appeals (DOHA) on June 13, 2024. I was assigned the case on September 4, 2024. The Government's 7 items of proposed evidence and Applicant's nine-page response were admitted into the record.

Rulings on Evidence

Regarding Item 7 of the Government's evidence, Department Counsel explained at page 2 of the FORM, that Applicant could make corrections or modifications to clarify his PSI. Instead of making changes, he could object to the entire exhibit (item) because it is unauthenticated. Since Applicant made no modifications and did not object to the exhibit, Item 7 is admitted into evidence for all purposes.

Findings of Fact

The SOR lists one charged off credit-card debt. (SOR ¶ 1.a) Applicant admitted the debt totaling \$10,500. He explained that he incurred the debt by using a credit card to pay legal fees and did not have the funds to repay the debt.

Applicant is 33 years old and is a naturalized United States (US) citizen. He is single. He has owned his current residence since April 2023. He was awarded a bachelor's degree in September 2013. He earned a master's degree in October 2022 from a technical university located overseas. He has never been investigated or held a security clearance. (Item 3 at 13-14, 24, 42)

Applicant has been employed as an engineer for his current employer since August 2022. In the previous five years, Applicant was a student at a college overseas. Prior to June 2017, he was employed as a courier, an account executive, a salesclerk, and an insurance salesman.

Because of what Applicant labeled as a legal issue that arose in 2013, which he resolved in January 2023, he incurred \$10,500 in legal fees between 2015 and 2016. He paid the fees with a credit card but did not have the funds to repay the creditor. When he returned to the US from attending graduate school in October 2022, he

believed the credit-card debt was extinguished by the pertinent statute of limitations and removed from his credit report. (SOR ¶ 1.a) (Item 3 at 24, 42, 44-45)

The 2013 legal matter was a civil lawsuit filed against Applicant and three other defendants for causing bodily harm to a victim. Applicant pleaded guilty to the companion criminal case of probable misdemeanor battery because of the light sentence which included a fine and unsupervised probation. A \$50,000 civil judgment was awarded to the victim, and Applicant was required to pay \$500 a month until his portion of the award was satisfied. He became delinquent on payments. In late 2022, he received an inheritance following the death of his mother and paid the balance of the award in January 2023. He deposited the remainder in a brokerage account. His attempts to pay the SOR ¶ 1.a creditor by phone occurred in late March or April 2024, after the issuance of the SOR. He paid the SOR ¶ 1.a credit-card debt on April 18, 2024. (Item 7 at 9-10; Answer to SOR at 1-4; Response to FORM at 4-7, 8-9)

A review of Applicant's August 2023 PSI indicates that he may have intended to repay the SOR ¶ 1.a creditor but could not afford to at the time, probably in 2022, 2023, and early 2024. Applicant conceded that the SOR ¶ 1.a creditor contacted him, but he did not respond. I find his failure to act in 2023 and early 2024 was steered by the fact the debt was charged off and removed from his credit report. (AE 7 at 10) His response to the FORM persuades me that he has changed his mind about the continued significance of discharged debts for security clearance purposes.

Applicant presented no evidence of his financial practices. A careful review of his credit reports for May 2023 and May 2024 reveals that all of his student loan accounts, which were past due at one time, are presently current. His commercial accounts are current as well. due. See Items 4 and 5.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines, which should be applied with common sense and the general factors of the whole-person concept. All available and reliable information about the person, past and present, favorable and unfavorable, should be carefully reviewed before rendering 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 chance that he may exhibit the same attitude toward security clearance rules and regulations that he chooses not to follow.

Adverse evidence from credit reports, as well as an applicant's admissions, 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) In this case, Applicant acquired the SOR ¶ 1.a debt in 2015 or 2016 by paying attorney fees with a credit card. The creditor charged off the credit-card debt and it was removed from Applicant's credit report. To his credit, Applicant never denied the existence of the debt throughout the security investigation. AG ¶¶ 19(a) and 19(c) apply because the debt has been delinquent for about eight years. I conclude that AG ¶ 19(b) does not apply because of the convincing evidence Applicant has submitted to reinforce his willingness to satisfy the SOR ¶ 1.a creditor.

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 because the debt was incurred about eight years ago for conduct that occurred over 11 years ago when Applicant was about 22 years old. I do not believe Applicant will repeat this conduct in the future. He eliminated the debt within two months of receiving the SOR.

AG ¶¶ 20(b) and 20(d) have some application to the circumstances of this case. Though I conclude the financial problems were not caused by conditions beyond his control, he exhibited good judgment in resolving the debt in April 2024. In sum, he is entitled to limited mitigation under the second prong of AG ¶ 20(b) for acting responsibly to satisfy the delinquent attorney fees. Mitigation is also due under AG ¶ 20(d) even though it occurred after Applicant received the SOR.

There is no evidence of financial counseling. However, the two credit reports, which show that Applicant is current on all of his debts, establish strong signs that he is managing his financial obligations in a responsible manner. AG ¶ 20(c) applies.

Whole-Person Concept

I have examined the evidence under the guideline for drug involvement/substance misuse 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.

It took Applicant eight years to repay the SOR ¶ 1.a creditor. He candidly admitted that the creditor contacted him about the debt, but he did not respond. It is fair to conclude that in 2023, he believed that he was shielded by the statute of limitations because he was not aware that a security clearance aspirant has to repay his debts in a good-faith manner. His decision to pay the debt demonstrates good judgment enabling him to meet his burden of persuasion under 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 H:

FOR APPLICANT

Subparagraph 1.a:

For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security interest of the United States to grant Applicant eligibility for access to classified information or hold a sensitive position. Eligibility for access to classified information is granted.

Paul J. Mason
Administrative Judge