



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
)	ISCR Case No. 14-00174
)	
Applicant for Security Clearance)	

Appearances

For Government: Philip J. Katauskas, Esq., Department Counsel
For Applicant: *Pro se*

12/19/2014

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. Applicant was delinquent on a judgment and six collection accounts totaling more than \$14,000. In July 2014, his debts were discharged in bankruptcy. Clearance is granted.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on February 14, 2014, the DoD issued a Statement of Reasons (SOR) detailing security concerns. DoD adjudicators could not make the preliminary affirmative finding that it is clearly consistent with the national interest to grant or continue Applicant’s security clearance.

¹ Executive Order 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 within the DoD on September 1, 2006.

On May 31, 2014, Applicant answered the SOR, and he elected to have the matter decided without a hearing. Defense Office of Hearings and Appeals (DOHA) Department Counsel submitted the Government's case in a File of Relevant Material (FORM), dated October 2, 2014. The FORM contained seven attachments. On October 20, 2014, Applicant received a copy of the FORM, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. Applicant had 30 days in which to submit any material in response to the FORM. A response was due on November 19, 2014. As of December 8, 2014, no response had been received.

On December 15, 2014, I was assigned the case. Department Counsel was asked to provide information related to Applicant's bankruptcy. That material was included as Ex. A.

Findings of Fact

In Applicant's Answer to the SOR, he admitted owing the judgment and six collection accounts listed in SOR. He asserted, but failed to document, that the debts were included a Chapter 7 bankruptcy. After a thorough review of the pleadings, and exhibits, I make the following additional findings of fact:

Applicant is a 29-year-old electrician who has worked for a defense contractor since October 2010, and seeks to obtain a security clearance. He was unemployed² from January 2010 through June 2010 and June 2003 through November 2006. (Item 5) The FORM contains no documentation of work or character references. He provided no documents concerning his delinquent accounts.

In September 2013, Applicant had a Personal Subject Interview (PSI). In March 2011, a \$4,712 judgment (SOR 1.a) was entered against him on a truck loan. (Item 6) The judgment appeared on his September 2009 credit bureau report. (Item 7) He stated the vehicle had continuous problems, and he voluntarily returned it. (SOR Answer) He asserted he was also making monthly payments this debt until he filed for Chapter 7 bankruptcy protection, but, again, provided no documentation showing payments.

Applicant had an \$8,435 collection account (SOR 1.f) for a car debt. He asserted he was unable to make payments due to a garnishment of his wages and he voluntarily returned the car. (SOR Answer) He provided no additional information about the garnishment. He stated he was making payments on this debt prior his bankruptcy filing, but provided no documentation.

During the PSI, Applicant was asked about and admitted each of the SOR debts except for the \$145 medical collection account (SOR 1.c), about which he was never questioned in his PSI. The \$41 library collection debt (SOR 1.g) was delinquent in December 2008, prior to the start of his current employment. He asserted the library debt had slipped his mind, but was included in his Chapter 7 filing. (SOR Answer) He

² Applicant worked in the marine industry and was laid off in January 2010 and November 2006. The layoffs were not caused by work performance or issues at work. (Item 6)

asserts he “was not financially stable to take care of [these] debts at the time” for four collection accounts (SOR 1.b, \$225; SOR 1.c, \$145; SOR 1.d, \$779; and, SOR 1.e, \$151). (SOR Answer) Each of the four debts became delinquent after Applicant was employed at his current job. (Item 7)

Applicant provided no documentation establishing the amount of payments he made on the debt prior his bankruptcy filing. He provided no bankruptcy documents to establish which debts were included in the bankruptcy or showing the debts had been discharged. However, court records indicate Applicant and his wife had a standard no-asset Chapter 7 bankruptcy discharge. The Discharge of Debtors Order was issued in July 2014. (Ex. A)

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered in evaluating an applicant’s eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as 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 interests of security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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 to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard

classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order (EO) 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

Applicant had a judgment and six collection accounts totaling more than \$14,000. Disqualifying Conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

(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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's seven SOR debts included a judgment and six collection accounts. The judgment (SOR 1.a, \$4,712) and a collection debt (SOR 1.f, \$8,435) resulted from vehicle loans. These represent more than 90% of the SOR debts. The other five debts total just over \$1,300. The other collection debts included two medical debts (SOR 1.b, \$225 and SOR 1.c, \$145), a telephone service debt (SOR 1.d, \$779), and a library debt (SOR 1.g, \$41). The only SOR debt related to credit card accounts is a \$151 debt (SOR 1.e).

Applicant stated he had "continuous problems" with the one vehicle. The mitigating condition listed in AG ¶ 20(e) does not apply because he provided no documented proof to substantiate the basis of the disputed account. The other car was surrendered when a garnishment made continuing with his payments impossible. From the amount of delinquent obligations alleged, it does not appear Applicant was living beyond his means.

Applicant indicated he had been unemployed from January 2010 through June 2010 and June 2003 through November 2006, which were events beyond his control. He provided no information as to how the unemployment financially impacted his ability to pay his delinquent debts four and a half years later or how the unemployment led to his filing for bankruptcy protection.

The mitigating condition listed in AG ¶ 20(c) does not apply. There is no documentation Applicant received counseling as part of his bankruptcy filing. The mitigating condition listed in AG ¶ 20(d) does not apply because Applicant has failed to document payment on any of the delinquent accounts. He asserted he made monthly on the two largest delinquent debts until he filed for bankruptcy, but failed to provide any documents showing payment on this debt.

A bankruptcy filing does not preclude an administrative judge from making an adverse security clearance decision. Nor does bankruptcy preclude consideration of the

overall history of financial problems, including evidence indicating that he had been less than diligent in addressing his financial problems.³ Furthermore, a discharge in bankruptcy does not, in itself, prove that an applicant has changed the financial habits that led to the debts discharged in bankruptcy or that his past financial difficulties are not likely to recur." Cf. *Marshall v. District of Columbia Government*, 559 F.2d 726, 729-30 (D.C. Cir. 1977)

In July 2014, Applicant's debts were discharged. There is no showing which debts were included in his bankruptcy. However, in a no-asset Chapter 7 bankruptcy failure to list the debts does not affect their discharge. Absent fraud, in a no-asset bankruptcy, all unsecured, nonpriority debts are discharged when the bankruptcy court grants a discharge, even when they are not listed on a bankruptcy schedule. See *Judd v Wolfe*, 78 F.3d 110, 114 (3d Cir. 1996); *Francis v. Nat'l Revenue Service, Inc.*, 426 B.R. 398 (Bankr S.D. FL2010), but see *First Circuit Bucks Majority on Discharge of Unlisted Debt in No-Asset Case*, American Bankruptcy Institute, 28-9 ABIJ 58 (Nov. 2009). There is no requirement to re-open the bankruptcy to discharge the debt. *Collier on Bankruptcy*, Matthey Bender & Company, Inc. 2010, Chapter 4-523, ¶ 523(a3)(A). Some categories of priority obligations are not discharged by bankruptcy, such as tax debts, student loan debts, and child support obligation.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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.

³ While a discharge in bankruptcy is intended to provide a person with a fresh start financially, it does not immunize an applicant's history of financial problems from being considered for its security significance. See, e.g., DISCR Case No. 87-1800 (February 14, 1989) at p. 3 n.2 ("Although bankruptcy may be a legal and legitimate way for an applicant to handle his financial problems, the Examiner must consider the possible security implications of the history of financial debts and problems that led to the filing of bankruptcy.").

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The debts incurred were not the type that indicates poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. Money was not spent frivolously. Two of the debts were for medical treatment, one was a telephone bill, one for an overdue library book, and two related to vehicle purchases. Only a \$151 debt appears to be related to a credit card account. There is no indication of misconduct or irresponsible behavior.

Applicant works at a shipyard. Following the receipt of the SOR he filed for bankruptcy protection, and his debts were discharged in July 2014. The amount of delinquent debt was modest -- \$14,000. There is no showing he has incurred additional debts since his discharge.

The issue is not simply whether all her debts are paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2 (a)(1).) Overall, the record evidence leaves me without questions or doubts about Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his 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, Financial Considerations: FOR APPLICANT

Subparagraphs 1.a - 1.g: 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 a security clearance. Eligibility for access to classified information is granted.

CLAUDE R. HEINY II
Administrative Judge