



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



In the matter of:)
)
) ISCR Case No. 14-00180
)
)
Applicant for Security Clearance)

Appearances

For Government: Philip J. Katauskas, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

10/15/2014

Decision

MASON Paul J., Administrative Judge:

Applicant exercised good judgment in obtaining a loan modification agreement that reduced his mortgage payment to a reasonable level, and allowed him to responsibly address and resolve nearly all his delinquent debts. Eligibility for access to classified information is granted.

Statement of the Case

Applicant completed and signed an Electronic Questionnaire for Investigations Processing (e-QIP), Government’s Exhibit (GE) 1, on December 24, 2012. On March 13, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline (Guideline F). The action

was taken pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the Department of Defense on September 1, 2006.

Applicant's answer to the SOR was notarized on May 19, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 11, 2014, for a hearing on September 4, 2014. The hearing was held as scheduled. The Government's four exhibits (GE) and Applicant's 11 exhibits (AE) were admitted into evidence without objection. The record remained open until September 12, 2012, to allow Applicant an opportunity to provide additional documentation. No exhibits were submitted. The record in this case closed on September 12, 2014. The transcript (Tr.) was received on September 16, 2014.

Findings of Fact

The SOR alleges 18 delinquent accounts and one judgment (SOR 1.e) under Guideline F (financial considerations). The accounts and judgment are found in the 2013 and 2014 credit reports (GE 2; GE 3). In GE 1, Applicant indicated he had no delinquent accounts. Ten of the delinquent accounts represent speeding and parking tickets and a car impoundment. The total amount of debt is approximately \$8,000. Applicant admitted all the delinquent accounts except for the judgment.

Applicant, 39 years old, has been married since October 1998, and has five children. Four of his children still live at home. Recently, the oldest son moved out of the house and began working. Applicant served in the United States Marine Corps from 1994 to 1998, then the inactive Reserve until 2002. He has been employed as a systems administrator since September 2012. Before his current job, he was employed as a senior computer analyst for about five years. He has held a security clearance since 1994.

In February 2000, Applicant's financial problems surfaced after purchasing a house with a high monthly mortgage he had trouble paying. According to the credit reports, in approximately 2004, Applicant refinanced his home with an adjustable rate mortgage (ARM). When the interest rate of the ARM suddenly increased the amount of his monthly mortgage, he struggled to make regular payments on his other bills. After discovering his mortgage payments were still too high with his first loan modification agreement (LMA), he obtained a second LMA in early 2014. Even though he had to pay a large down payment and a higher interest rate, his monthly mortgage payment has decreased by about \$400 to \$2,400. Applicant is current on his mortgage. (GE 2; AE K; Tr. 22-24, 30-32)

Applicant's plan in addressing the delinquent debts was to contact each creditor and pay the full amount of the debt or settle the debt. The delinquent accounts which Applicant resolved will be discussed in the order they appear in the SOR:

SOR 1.a, \$1,717, automobile installment loan. The debt was reported delinquent in December 2012. On April 25, 2014, documentation verifies Applicant settled the installment loan debt for his 2003 automobile. (AE A)

SOR 1.b, \$1,163, collection account with the original creditor being a musical arts center. On May 5, 2014, Applicant was advised by letter that the collection agency records showed the account was settled. (AE B)

SOR 1.c, \$230, collection account showing the original creditor is an insect spray manufacturer. On May 6, 2014, Applicant was advised by letter the account was settled. (AE C)

SOR 1.d, \$435, credit card, collection account. The account was transferred for collection in June 2010. On May 14, 2014, the collection agency advised Applicant by letter that this account was settled. (AE D)

SOR 1.e, \$200, unknown type of account. The account became delinquent in August 2010. On April 25, 2014, Applicant was notified by email that the account was paid. (AE E)

SOR 1.f, \$800 judgment filed against Applicant in August 2007. The landscaping proposal, dated April 24, 2006, identifies Applicant's wife and the address where he and his wife have lived since 2000. Though Applicant's signature does not appear on the proposal, his name must appear on the judgment to explain why the judgment appears in his credit report. SOR 1.f has not been paid. (AE F)

SOR 1.g, \$1,011, cellular phone, collection account. The debt was transferred for collection in March 2012. On May 1, 2014, documentation reflects that Applicant settled the account for \$700. (AE G)

SOR 1.h, \$566, credit card, collection account. The account became delinquent in December 2012. On May 6, 2014, the creditor notified Applicant that his final payment on the settled the account. (Tr. 37; AE H)

SOR 1.i, 1.j, 1.k, 1.m, 1.n, 1.o, 1.p, 1.q, 1.r, and 1.s, are citations that Applicant indicates are for speeding, parking, and an auto impoundment. The citations are posted by number, not by offense violated. Therefore, there is no way of matching the numbers to the offense. All the citations occurred between October 2009 and October 2012. The identifying numbers in the SOR allegations, which also appear in GE 2, do not match the document

numbers that appear in AE I. One way to determine whether the traffic accounts have been paid is to match the actual amounts in the SOR to the amounts appearing at AE I. Some of the individual amounts are the same in the SOR and AE I while other individual amounts are different. The total amount of delinquent traffic citations listed in the SOR is \$1,690. AE I indicates that on July 13, 2013, Applicant paid the motor vehicle division a total of \$2,160 in fines. (AE I)

SOR 1.I, \$290, car insurance. The account became delinquent in October 2012. Applicant's documentation shows he paid the account on May 2, 2014. (AE J)

To avoid similar financial problems from recurring in the future, Applicant has implemented direct payment plans for several creditors. He schedules creditor payments with his bank and goes online to ensure the payments are made. He reduced his credit cards from five to two. Handling his finances online is one component of his revised financial management. An equally important tool is a financial budget to maintain continuing accountability over his earnings, his spending, and his savings. (AE K; Tr. 40-44)

Applicant and his wife earn about \$150,000 a year. His personal financial statement (PFS) dated April 21, 2014, indicates that he and his wife have combined net earnings of \$8,844 a month. His monthly payments total \$7,741. His monthly remainder should increase by \$400 from \$1,103 to approximately \$1,500. Instituting a budget into his financial practices will help Applicant use the extra funds more effectively. (AE K; Tr. 24, 43)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the potentially disqualifying and mitigating conditions of the AG. These conditions should be evaluated in the context of nine general factors known as the whole-person concept to bring together all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision regarding security clearance eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to the potential, rather than actual, risk of compromise of classified information.

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. . . ." An applicant has the ultimate burden of persuasion of establishing that it is clearly consistent with the national interest to grant him a security clearance.

Analysis

Financial Considerations

The security concern for financial considerations is set forth in AG ¶ 18:

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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

The applicable disqualifying conditions under AG ¶ 19 are:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

An individual's financial obligations to his creditors are generally personal matters unless the evidence indicates that the individual is not repaying his debts as agreed. Applicant's delinquent debts, that are established by the 2013 and 2014 credit reports and his admissions, raise security concerns under the financial guideline. Applicant accumulated approximately \$8,000 in delinquent debt. He accumulated these past-due accounts between October 2009 and December 2013. His inability to satisfy the debts demonstrates a history of not meeting financial obligations within the purview of AG ¶¶ 19(a) and 19(c).

Four mitigating conditions under AG ¶ 20 are potentially pertinent:

- (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 reliability, trustworthiness, and good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control 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; and

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

AG ¶ 20(a) does not apply because of the large number of Applicant's delinquent accounts and recency in which those accounts became delinquent. He receives limited mitigation under AG ¶ 20(b) even though his financial problems were caused by matters within his control. When he considered purchasing a house in 2000, he should have exercised better judgment in buying a less expensive house that would still give him more discretionary funds to pay his other household bills. Moreover, he should have carefully weighed the impact of a spike in his ARM interest rate on his monthly mortgage. While it took some time, he was finally able to obtain a lower mortgage in the second LMA. He acted responsibly by resolving his traffic citations in July 2013, about eight months before he received the SOR. Though he did not pay the debts at SOR 1.a through 1.h until two months after he received the SOR, he has implemented fundamental changes in the way he pays his debts. He has instituted direct payment plans between several creditors and his bank. He receives some mitigation under AG ¶¶ 20(c) and 20(d) because his satisfaction of most of his debts, except for the judgment, demonstrates that almost all his debts are under control. There is sufficient evidence to conclude the landscaping debt judgment is his responsibility.

Whole-Person Concept

I have examined the evidence under the disqualifying and mitigating conditions of the financial guideline. I have also weighed the circumstances within the context of nine variables known as the whole-person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors:

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 the participation was 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 a security clearance must be a commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

Applicant is 39 years old. When he discovered his mortgage prevented him from paying his other bills, he took action. Though his first LMA was not successful, he was able to obtain a second LMA in early 2014 and apply the extra funds from reduced monthly mortgage payments to other financial obligations. He contacted the creditors and paid all delinquent debts except for the judgment. He reduced his credit cards from five to two. He has executed a “meaningful track record” of debt reduction. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) Having weighed the disqualifying and mitigating conditions under Guideline F, and in the context of the whole-person concept, Applicant has mitigated the security concerns arising from the financial considerations guideline.

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:

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|----------------------------|---------------|
| Paragraph 1 (Guideline F): | FOR APPLICANT |
| Subparagraphs 1.a-1.s: | For Applicant |

Conclusion

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

Paul J. Mason
Administrative Judge