



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



In the matter of:)
)
) ISCR Case No. 12-05376
)
)
Applicant for Security Clearance)

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: Alfred A. Lacer, Esq.

01/15/2013

Decision

MASON, Paul J., Administrative Judge:

When Applicant closed his business in July 2007, he defaulted on two mortgages and became delinquent on several other accounts including state personal and business taxes. He has repaid the state tax liens and other delinquent debts. However, given Applicant's failure to follow through with a payment plan to resolve the two mortgage accounts totaling almost \$85,000, he has not mitigated the disqualifying evidence under the financial considerations guideline. Eligibility for access to classified information is denied.

Statement of the Case

Applicant completed and signed an Electronic Questionnaire for Investigations Processing (e-QIP) on September 22, 2010. He was interviewed by an investigator from

the Office of Personnel Management (OPM) on two occasions: October 6, 2010, and January 6, 2011. The interview summaries appear in Government Exhibit (GE) 3. Under question #3 of GE 3, Applicant answered "yes" that the investigator's interview summaries (October 6, 2010 and January 6, 2011) accurately reflected information he provided to the investigator. In response to question #6 of GE 3, Applicant answered "yes" that he agreed with and adopted the investigator's interview summaries as accurately reflecting the interviews.

On June 11, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F). The action was taken pursuant to 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) implemented by the DOD on September 1, 2006.

Applicant's answer to the SOR was notarized on July 5, 2012. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a notice of hearing on October 15, 2012, for a hearing on November 8, 2012. The hearing was held as scheduled. At the hearing, without objection, seven exhibits (GE 1 through GE 7) were admitted in evidence in support of the Government's case. Applicant and four witnesses testified. Nine exhibits (AE A through AE I) were entered into evidence in his behalf without objection. DOHA received the transcript on November 16, 2012. The record in this case closed on November 16, 2012.

Findings of Fact

The SOR lists six allegations under the financial considerations guideline. SOR 1.a is a \$44,668 deficiency balance following an auction sale of Applicant's foreclosed home. SOR 1.b is a delinquent second mortgage of \$40,326 on his foreclosed home. SOR 1.c (\$185) and SOR 1.d (\$125) are two delinquent medical accounts. SOR 1.e and SOR 1.f are duplicate entries of the same credit card account (\$277). See GE 4, 5. The total amount of delinquent debt is over \$85,500. The two mortgage accounts total \$84,994. In his answer to the SOR, Applicant admitted all allegations.

Applicant is 36 years old and has been married since May 2004. He has two children, ages eight and four. He attended college for one year.

Between May 2005 and July 2007, Applicant operated an audio-video business, contracting primarily with one builder to sell and install audio and video equipment in the builder's new homes. He employed his wife and two other individuals. He and his wife earned a total of about \$85,000 to \$90,000 a year from the business. (Tr. 62-64; GE 3 at

2) Applicant testified that he purchased a home in 2005 that he had been renting since 2003. (Tr. 66) The credit bureau reports show the first mortgage (SOR 1.a) on the home was opened in May 2006 and defaulted in October 2007. (GE 4, 5, 6, 7)

Some time in 2007, Applicant testified that the sale of houses in the area decreased dramatically because of a faltering economy. His primary builder, who supplied him with potential customers, was forced to close his business. (Tr. 27) Applicant testified that he took out a second mortgage (SOR 1.b) to keep his business operating and to pay two employees. (Tr. 27-28) The credit reports show the second mortgage was opened in May 2006, and defaulted in February 2007. (GE 4, 5, 6, 7)

Applicant testified that by the end of 2007, he determined the housing market was not going to turn around, so he accepted employment with a defense contractor. (Tr. 31-32) After two brief periods of employment as a low voltage technician and as a full-time sales consultant, Applicant began working for a defense contractor as an electronics engineer in November 2007. (e-QIP at 19-21) He received a security clearance in March 2008. From November 2009 to July 2010, Applicant's job position was electronic systems technician for another defense contractor. Since July 2010, he has been employed as a senior consultant for a defense contractor. (Tr. 18; e-QIP at 15)

As noted above, Applicant's wife worked in Applicant's business from May 2005 to July 2007. She has been employed by defense contractors continuously since November 2007 except for a seven-month period of disability ending in July 2009 when she developed complications associated with the birth of their second child. During the disability period, the family income was reduced by a third. (Tr. 33-35, 65) Applicant has been consistently employed since November 2007. (e-QIP, Second 13A) Currently, he has a salary of approximately \$75,000 and his wife's salary is \$70,000. (Tr. 64-65) On April 20, 2012, his personal financial statement indicated that he had a net monthly remainder of \$1,175. (GE 2)

After Applicant closed his audio-video business in July 2007, the state tax agency filed two tax liens against him for failure to pay business and personal taxes in 2006. Applicant did nothing to address the mortgage debts after his home foreclosure in 2008 until June 2012 because he did not have the money. In his view, the tax liens were more significant in that they were resolvable with the extra money he was earning from his current employer. (Tr. 68) Applicant paid the July 2009 business tax lien of \$10,448 in 10 monthly garnishment payments, with the last payment in October 2011. (Tr. 64; AE C) He believes he satisfied the May 2008 state personal tax lien of \$2,356 with his tax return for 2009 or 2010. (Tr. 73; AE E)

Applicant indicated that resolution of the two state tax liens impeded his efforts to negotiate a settlement with the mortgage lenders. (Tr. 51) After the state tax

lien was satisfied in October 2011, he did not start to address SOR 1.a and 1.b because he had not devised a plan or discussed the matter with counsel. (Tr. 69)

In June or July 2012, Applicant consulted an attorney about the SOR 1.a and 1.b debts. This attorney was unresponsive so Applicant contacted a second attorney in September 2012. Applicant indicated he received a \$6,000 settlement offer from the second mortgage lender, but he decided not to accept the offer after talking with the second attorney about how to resolve the two mortgages simultaneously. After drafting a certified financial statement with the second attorney,¹ and in trying to avoid bankruptcy while keeping any repayment proposal inside the parameter of his discretionary income of \$590, he was going to propose paying each mortgage lender \$250 a month for five years. The payments would cover the \$6,000 settlement offer from the second creditor. (Tr. 51-56, 76) Applicant's plan to repay both mortgage lenders is not in writing and the lenders are not aware of his plan. Except for the \$500 portion of his discretionary income, he has not set any money aside to apply to the mortgage accounts. (Tr. 70-71) After repaying the business tax lien in October 2011, Applicant could have applied money toward SOR 1.a and 1.b, but chose not to because "it was a very difficult period of time." (Tr. 72-73)

Applicant submitted documentation verifying that he paid the remaining delinquent accounts in the SOR. He provided proof that on August 15, 2012, he paid a medical account identified in SOR 1.c. (AE A). This debt had been delinquent since June 2007. He paid another medical account identified in SOR 1.d on August 16, 2012. (AE A) This debt had been delinquent since August 2011. The delinquent accounts identified in SOR 1.e and 1.f are the same. (GE 4) Applicant paid off this account on August 15, 2012. (AE A) This account had been delinquent since September 2007. (GE 4)

Applicant has never had financial counseling of any kind. (Tr. 76)

Character Evidence

Witness A, an electronics engineer for the Government, has supervised Applicant for the past two ½ years. Applicant designs the systems that witness A produces. Their regular contact with each other consists of e-mails, phone calls, and direct interchange. Applicant is an excellent team player who produces a quality product. (Tr. 80-86)

Witness B, a second engineer, who has been employed by the Navy for a year and has seven years of previous job experience working for a defense contractor, was Applicant's supervisor from July 2010 to July 2011. Witness B watched Applicant deliver a solid performance that met or exceeded all review categories in Applicant's performance

¹ Applicant did not have a copy of the certified statement to submit into evidence. (Tr. 76)

evaluation. (AE G) In witness B's opinion as project engineer, Applicant is a team player who warrants a position of trust. (Tr. 89-94)

Witness C was discharged from the Navy after serving 10 years as an electronics technician. After his discharge, he was employed by a defense contractor for 21 years. For the last two years, witness C has been a lead associate and Applicant's supervisor. In the integrated product team model, Applicant's job function is to develop designs for systems, do research and oversee production. After the systems are put together, Applicant travels to the location to put the systems together, ensure that they are tested, with adequate training at the site. In witness C's view, Applicant does an outstanding job and is respected by the clients because of his expertise and communication skills. On May 23, 2012, witness C received an email from a civilian employee of the U.S. Air Force. In the email, the employee praised Applicant's work product over the last year and commended Applicant's professional competence and team player attitude. (Tr. 99-106; AE I)

Witness D, a 14-year employee at Applicant's employer, is the senior manager for the contract Applicant is currently assigned. As the third level manager, he is responsible for the performance of the entire staff. He has known Applicant for two ½ years and provided input into his performance evaluation. (AE H) Witness D is aware that Applicant has developed a respected reputation with the Government client because of his performance, particularly in abbreviating the time needed to set up systems without affecting the quality of the system. Witness D recommends Applicant for a position of trust. (Tr. 113-122)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. Each guideline lists potentially disqualifying conditions and mitigating conditions that are useful in evaluating an applicant's eligibility for access to classified information.

The disqualifying and mitigating conditions should also 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 for 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. . . ." The 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 two potentially pertinent disqualifying conditions are:

AG ¶ 19(a) inability or unwillingness to satisfy debts; and

AG ¶ 19(c) a history of not meeting financial obligations.

The Government has the responsibility of presenting sufficient information to support all allegations of the SOR. Based on the four credit reports, Applicant's October 2010 and January 2011 interview summaries, his April 2012 interrogatory answers, and the record, the Government's evidence supports all allegations of the SOR. In May 2005, Applicant opened an audio-visual business that he closed in July 2007 when the economy forced his primary builder to shutter his business. Applicant defaulted on his first and second mortgages and became delinquent on several other debts in 2007. By the time the SOR was issued in June 2012, Applicant had five delinquent accounts totaling more than \$85,500, with the two delinquent mortgage accounts totaling approximately \$84,994. AG ¶¶ 19(a) and 19(c) apply.

Five mitigating conditions under AG ¶ 20 are potentially pertinent:

AG ¶ 20(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;

AG ¶ 20(b) the conditions that resulted in the financial problem were largely beyond the person's control and the individual acted responsibly under the circumstances;

AG ¶ 20(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

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Although the record shows that Applicant satisfied three of the five delinquent accounts listed in the SOR, as discussed under AG ¶ 20(d), he has done little to nothing to resolve the two mortgage accounts that have been delinquent since 2007. His only action was to consult two attorneys, consider and reject one plan to resolve the second mortgage, and then consider a plan to pay both mortgages. Applicant's failure to implement the plan continues to cast doubt on his reliability and good judgment. AG ¶ 20(a) does not apply.

In 2007, the reduction in house sales had a rippling effect throughout the industry and economy. The primary builder of Applicant's audio-video business could not survive the economic downturn and closed his business. Applicant closed his business and defaulted on two mortgages. Between January and July 2009, the total income of Applicant and his wife was reduced by a third when his wife encountered medical issues related to the birth of their second child. These conditions were beyond his control and raise the application of AG ¶ 20(b).

However, in order for AG ¶ 20 (b) to be fully applicable, an applicant must act responsibly under the circumstances. The record indicates that Applicant has still not addressed the two mortgage accounts which became delinquent in 2007. While he resolved the two state tax problems (not listed in the SOR), he did not take action until after the state filed business and personal tax liens against him in 2008 and 2009. AG ¶ 20(b) has limited application.

Applicant has never had financial counseling. Because the two delinquent mortgage accounts have not been resolved, there is no basis to conclude that Applicant's financial problems are under control. AG ¶ 20(c) is inapplicable.

AG ¶ 20(d) only partially applies to Applicant's documented resolution of SOR 1.c, 1.d, and 1.e before the hearing, but after he received the SOR. AG ¶ 20(d) clearly is inapplicable to the unresolved mortgage accounts in SOR 1.a and 1.b. Given Applicant's failure to act on the two delinquent mortgage accounts, his evidence in mitigation, including his praiseworthy job performance, does not overcome the disqualifying evidence presented under AG ¶¶ 19(a) and 19(c) of the financial considerations guideline.

Whole-Person Concept

I have examined the evidence under the disqualifying and mitigating conditions of the financial considerations 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's financial problems in 2007 were caused by a general economic downturn in the housing market that forced his primary builder to close his business. Without an important source for potential customers of audio-video equipment, Applicant had to close his business. He found employment quickly, and he and his wife have been continuously employed since November 2007. Between January and July 2009, his wife could not work for medical reasons and their income was reduced by a third. The character witness testimony and supporting documentary evidence indicate that for the last 2 ½ years Applicant has demonstrated an outstanding job performance for his employer as well as Government clients.

The DOHA Appeal Board has held that an applicant must establish a meaningful track record of payment that represents actual debt reduction through payment of debts. An applicant need not show, as a matter of law, that he has paid off each debt listed in SOR. However, he is required to demonstrate he has a plan and has taken significant steps to implement the plan. ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) Although Applicant paid three of the accounts listed in the SOR and other unlisted debts, he has initiated inadequate action on the mortgage accounts that have been in default for at least five years. Considering a settlement agreement that the mortgage lenders are not aware of does not constitute a significant effort to implement a plan to repay. Having weighed and balanced the disqualifying and mitigating conditions under the financial considerations guideline, and considering the entire record in the context of the whole-person concept, I conclude that Applicant has not mitigated the security concerns under Guideline F.

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
Subparagraph 1.a and 1.b:	Against Applicant
Subparagraphs 1.c through 1.f:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Paul J. Mason
Administrative Judge