



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS and APPEALS**



In the matter of:)
)
) ISCR Case No. 12-06236
)
Applicant for Security Clearance)

Appearances

For Government: Caroline Heintzelman, Esq., Department Counsel
For Applicant: Greg Wicketts, Personal Representative

04/16/2015

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. The Statement of Reasons (SOR) alleges Applicant had five past-due, charged-off, or collection accounts totaling more than \$25,000. A creditor wrote off one delinquent account after Applicant paid approximately \$1,900 and asserts he paid \$1,200 on another debt. Even with payment of these two delinquent accounts, he has failed to mitigate the financial considerations security concerns. Clearance is denied.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on October 20, 2014, the DoD issued an SOR detailing financial considerations security concerns. DoD

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*

adjudicators could not find that it is clearly consistent with the national interest to grant or continue Applicant's security clearance. On November 10, 2014, Applicant answered the SOR and requested a hearing. On January 15, 2015, I was assigned the case. On January 28, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for the hearing convened on February 13, 2015. I admitted Government's Exhibits (Ex) 1 through 6 and Applicant's Exhibits A through Q, without objection. Applicant testified at the hearing as did three other Applicant witnesses, which included the facility security officer.

The record was held open for ten days to allow Applicant to submit additional information. No additional documents were received. Applicant was again informed to submit any documents he wished to have considered by April 14, 2015. No documents were received. On February 24, 2015, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, he indicated he had paid one debt (SOR 1.d, \$1,339), was making payments on one another (SOR 1.e, \$1,010), was attempting to settle another (SOR 1.b, \$1,403), and was disputing the two remaining debts (SOR 1.a, \$17,800 and SOR 1.c, \$4,211). (SOR Answer, Ex. G) I incorporate Applicant's admissions as facts. After a thorough review of the pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 52-year-old employed as a defense contractor working in systems administration and database administration. (Tr. 21) He has worked for a defense contractor since June 1998 and seeks to obtain a security clearance. Applicant was on active duty in the U.S. Air Force from 1984 until 1994. He separated with an honorable discharge at the rank of sergeant (E-4). (Tr. 22) Applicant's co-workers, supervisors, and friends state: Applicant is hard working, focused on the job, and shows commitment to excellence. (Tr. 48 – 53)

In 2007, Applicant's wife became unemployed from her job working in customer service. (Tr. 38) At the time, she was making \$5.50 per hour and working 20 to 30 hours per week. (Tr. 38) She is still unemployed. Applicant's annual salary is \$43,000. (Tr. 38) He has two children living with him. One is a high school senior and the other is a high school freshman. (Tr. 55) Up until three years ago, he had four or five children in the home. (Tr. 55)

In 2013, Applicant started working with a legal firm to assist him in resolving his financial matters. (Ex. E) He stayed with the firm until the one debt was paid. (Tr. 24) In 2013, Applicant entered into a repayment agreement to pay a past-due account (SOR 1.d, \$1,339). He paid the firm \$50 bi-weekly for 32 months. (Ex. 3, Tr. 42) As of January 2014, he had paid \$1,908 and had agreed to make eleven more \$50 monthly payments to pay the debt. (Ex. C) The debt has now been paid. (Tr. 23, 42)

(January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

In November 2013, Applicant was removed from the project he was a working on for his employer due to his lack of having a clearance. His salary then dropped from approximately \$80,000 to \$43,000. (Tr. 43, 59)

In February 2014, Applicant enlisted the services of a company to help him with his finances and debt. (Ex. 3, K, L, M, P) He entered into a debt-settlement agreement to assist him in eliminating debt and improving his credit. (Ex. M) All five SOR debts are listed in the agreement. (Ex. P) He asserted he pays the company \$228 monthly. (Tr. 44) He provided no documentation showing actual payment to the company. The company provides a financial counseling service, which he asserts has helped him to improved his credit score to above the city's average for the city in which he lived, annually saved \$1,400 in home insurance, \$540 in automobile insurance, and \$2,450 on television and cable services. (Tr. 31) He learned about budgeting and "wants and needs." (Tr. 32) The company sent letters to the credit reporting agencies asking that the debts listed in Applicant's credit reports be verified. (Tr. 32)

In March and April 2012, Applicant was asked about his finances during a Personal Subject Interview (PSI). At that time, he did not have any knowledge about a number of bills listed on his credit report, including the collection debt listed in SOR 1.a (\$17,800). (Ex. 3) At that time, he intended to order a copy of his credit report, find out about the debts, and take care of them as soon as possible. (Ex. 3) Three years later, at the hearing, he stated he was still trying to find out about this debt. (Tr. 25) On his September 2014 credit report, he disputed this debt. (Ex. 4, Tr. 25)

In February 2014, Applicant completed written financial interrogatories. (Ex. 3) At that time, his Personal Financial Statement (PFS) stated his net monthly income was approximately \$5,000. His net monthly expenses were approximately \$3,600, and his monthly debt payment was approximately \$1,200. (Ex. 3) His net monthly remainder (income less monthly expenses and debt payment) was \$170.

In May 2015, Applicant intends to start paying on the collection account listed in SOR 1.e (\$1,010). He will start making payments after a non-SOR bank debt has been paid. (Tr. 30) He asserts he has paid \$1,200 on this other debt, but provided no documentation. (Tr. 35)

In May 1994, Applicant purchased a home for \$94,000. He estimates he is about a month behind on the mortgage payments. (Ex. 3, Tr. 39) In mid-2012, he purchased a \$14,000 vehicle. He is current on the \$360 monthly payments. (Tr. 40) He is current on his utility bills. He has approximately \$20,000 in his company's 401(k) retirement plan. (Tr. 41) He has a \$3,000 to \$4,000 loan on that account which he took out a year ago to catch up on other bills. (Tr. 41)

At the point of closing arguments, Applicant was again informed of the need to provide documentation supporting any assertion of payment on his delinquent debts. (Tr. 63) No documents were received.

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 has a history of financial problems. Applicant had one past-due account, one charged-off account, and three collection accounts that totaled approximately \$25,700. 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.

None of the mitigating factors fully mitigate the financial considerations security concerns. All but one of the SOR debts remains unpaid. Applicant has not demonstrated that his financial problems are under control, or that he has a plan to bring them under control. He has not made a good-faith effort to satisfy his debts. He has failed to act aggressively, timely, or responsibly to resolve his delinquent debts.

Applicant's financial difficulties are multiple and remain unpaid. He has worked for the same employer since June 1998. In March and April 2012, he became aware of the Government's concerns over his finances and delinquent accounts. As of January 2014, he had paid \$1,900 on a past-due account and asserted he had paid \$1,200 on a non-SOR debt. Having paid approximately \$3,000 during the last three years fails to show responsible action in addressing the debts. Moreover, he failed to provide documentation proving he had made actual payment on his delinquent debts even though such documentation was specifically requested. He has failed to act timely or responsibly under the circumstances. He failed to resolve his debts and failed to reduce his delinquencies.

In 2007, Applicant's wife became unemployed resulting in the loss of an annual income of approximately \$8,500. In November 2013, his salary was reduced from \$80,000 to \$43,000 when a lack of a security clearance forced his removal from the project on which he was working. However, he knew of the Government's concern about his delinquent accounts a year and a half before the reduction in his salary.

"Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his or her control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. January 12, 2007)(citing ISCR Case No. 03-13096 at 4 (App. Bd. November 29, 2005); ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. December 1, 1999).

In 2012, Applicant was asked about the largest of the SOR debts (SOR 1.a, \$17,800). At that time, he had no information about the debt. Three years later, at the hearing, he still had no information about the debt.

The mitigating condition listed in AG ¶ 20(b) does not apply because, to date, Applicant's efforts to address his delinquent accounts have been minimal. As previously stated, his financial problems increased eight years ago when his wife became unemployed and further impacted a year and a half ago when his income was reduced by half. However, the small amount of payment he has made on his debts does cast doubt on his current reliability, trustworthiness, or good judgment. His wife's unemployment and his sizable decrease in salary were events beyond his control. But for the reasons already stated, he has not acted responsibly under the circumstances to address his delinquent accounts.

Under AG ¶ 20(c), Applicant has received financial counseling which has enabled him to improve his credit score, lower his insurance bills, and reduce his monthly television and cable bill. However, his finances are in such a state that he is still runs late on making his mortgage payments. He paid the debt listed in SOR 1.d.and AG ¶ 20(d) applies to that debt. The mitigating condition listed in AG ¶ 20(e) does not apply because he failed to provide documented proof to substantiate the basis of any disputed account.

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.

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. There is some evidence in favor of mitigating Applicant's conduct. Eight years ago, his wife became unemployed and in November 2013, his salary was sizably reduced. Additionally, he had ten years of honorable service with the U.S. Air Force, and he has had 15 years of service in his current DoD contractor position.

The disqualifying evidence under the whole-person concept is more substantial. While his wife's unemployment and his salary reduction were circumstances beyond his control, he has made minimal payments on his delinquent accounts during the past three years. His failure to repay his creditors, at least in reasonable amounts, or to arrange payment plans, reflects traits which raise concerns about his fitness to hold a security clearance.

The concept of "meaningful track record" for financial progress includes evidence of actual debt reduction through payment of debts. However, an applicant is not required to establish that he has paid off each and every debt listed in the SOR. All that is required is for him to demonstrate he has established a plan to resolve his delinquent debt and has taken significant action to implement that plan. I must reasonably consider the entirety of Applicant's financial situation and his actions in evaluating the extent to which that plan is credible and realistic. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan may provide for payment on such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

The issue is not simply whether all Applicant's debts have been paid – they have not – 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 with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial considerations.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a security clearance. The awarding of a security clearance is not a once-in-a-lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under Applicant's current circumstances, a clearance is not warranted. Should Applicant be afforded an opportunity to reapply for a security clearance in the future, having paid the delinquent obligations, established compliance with a repayment plan, or otherwise addressed the obligations, he may well demonstrate persuasive evidence of his security worthiness. However, a clearance at this time is not warranted.

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: **AGAINST APPLICANT**

Subparagraphs 1.a –1.c:	Against Applicant
Subparagraph 1.d:	For Applicant

Subparagraph 1.e:

Against Applicant

Conclusion

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

CLAUDE R. HEINY II
Administrative Judge