



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



In the matter of:)
)
) ISCR Case No. 12-09395
)
)
Applicant for Security Clearance)

Appearances

For Government: Caroline Heintzelman, Esquire, Department Counsel
For Applicant: *Pro se*

08/24/2015

Decision

DAM, Shari, Administrative Judge:

Applicant has a history of financial problems, dating back to 1998. In 2002 he filed a Chapter 13 bankruptcy that he did not complete. He has 27 delinquent debts totaling about \$24,000, which are not paid or resolved. Financial security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On May 11, 2012, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On February 4, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. The action was taken under 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) effective within the Department of Defense for SORs issued after September 1, 2006.

On March 11, 2015, Applicant answered the SOR (Answer), and requested a hearing. On April 27, 2015, the Department of Defense Office of Hearings and Appeals (DOHA) assigned Applicant's case to me. On June 5, 2015, DOHA issued a hearing notice, setting the case for June 30, 2015. At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 6 into evidence. Applicant testified and offered Applicant Exhibits (AE) 1 through 14 into evidence. All exhibits were admitted. The record remained open until July 20, 2015, to give Applicant time to submit additional information. Applicant timely submitted a revised AE 1, which was admitted without objection. DOHA received the hearing transcript (Tr.) on July 9, 2015.

Findings of Fact

Applicant admitted eight of the allegations contained in the SOR, and denied the remaining 20 allegations. His admissions are accepted as factual findings.

Applicant is 44 years old and married since 1998. He and his wife have three children, ages 16, 13 and 11. He has a bachelor's degree in engineering. He began his current position with a defense contractor in September 2011. Prior to that, he worked for a private company for 11 years. (Tr. 25-27.) He held a secret security clearance from about 1998 to 2002 while working for another defense contractor. (Tr. 9.)

Applicant has a history of financial problems. In a June 1998 personal statement, Applicant acknowledged that for the past two years he was having difficulty managing his financial obligations, including large medical bills that accumulated after the birth of his two older children. (GE 6, GE 1.) In another statement made in February 2002 he admitted that he had financial problems related to overspending and medical expenses. (GE 5.)

In October 2002 Applicant filed a Chapter 13 bankruptcy. It was dismissed in March 2003 because he moved and did not make any payments. Most of the debts included in the bankruptcy were eventually charged off. (Tr. 32-33.) In 2009 Applicant again began experiencing financial difficulties when his wife was diagnosed with cancer and underwent costly medical treatments, some of which was not covered by his insurance company. (Tr. 34-35.)

In June 2012 Applicant discussed his financial history and numerous delinquent debts with a government investigator. He said that he and his wife were unable to pay some debts because his salary was garnished for delinquent medical bills. He did not recognize many debts mentioned by the investigator, but said he would review a credit report within the next month or so, and begin contacting creditors to start resolving the debts. (GE 2.)

Based on credit bureau reports (CBR), dated May 2012 and October 2014, the SOR alleged Applicant's 2002 bankruptcy and 27 delinquent debts totaling \$23,747. None of the 27 debts are resolved. (AE 1.) Although Applicant stated he paid some of

them, he did not provide evidence to verify payments. For example, he said the \$10,511 debt alleged in SOR ¶ 1.a for an automobile repossession was resolved through gap insurance. However, he did not contact the insurance company or creditor to obtain proof of the resolution. (Tr. 37.) Applicant did not produce credible evidence to confirm that he disputed the \$2,294 debt owed to an apartment complex, as alleged in SOR ¶ 1.u.

Applicant submitted a monthly budget that he and his wife created a couple weeks ago. His annual salary is \$102,000. His net monthly income is \$5,500 and expenses are \$5,500. Included in the budget is \$495 for savings. He and his wife started following a financial strategy offered by the Dave Ramsey's program. (Tr. 50-51; AE 8.) Between 2012 and 2013 he borrowed about \$50,000 from his 401(k). He used the money to purchase a car; pay for his wife's schooling; pay some bills; and take a vacation. (Tr. 54-54.) He has repaid about half of it. (Tr. 59.) He acknowledged that his June 2015 CBR includes delinquent debts not included on the SOR. (Tr. 55-58.) He has never sought financial counseling or other pertinent assistance. (Tr. 63.) He admitted that he has "not done a good job handling the credit issue." (Tr. 67.)

Applicant submitted letters of recommendation. His first line manager is aware of this proceeding and the underlying security concerns related to finances. (Tr. 28.) He wrote that Applicant "holds himself accountable to high standards." (AE 4.) A lead designer of Applicant's team stated that he has not witnessed behavior by Applicant "that would cause any concern on my part." (AE 5.) His former employer wrote a letter noting that Applicant was always supportive of the company projects. (AE 6.) Another individual who has known Applicant for 20 years and worked with him in a previous position "found [Applicant] to be of good character." (AE 7.) The authors of the letters recommended Applicant for a security clearance.

Applicant provided performance evaluations for the years 2011, 2012, 2013, and 2014. All four evaluations note ratings in the met or exceeded expectation categories. (AE 9, 10, 11, and 12.)

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 (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable

guidelines in the context 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 national 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 the 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, “[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

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

Since before 1998, Applicant has accumulated delinquent debts that he has been unable or unwilling to resolve. The evidence is sufficient to raise both disqualifications, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's delinquent debts:

- (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 financial problems have been ongoing since at least 1998 and continue into the present. Hence, AG ¶ 20(a) does not provide mitigation. Applicant's wife encountered medical problems at the time two children were born prior to 1998. In 2010 she also required expensive treatment for cancer. Both of those circumstances, which created large medical bills, were beyond Applicant's control. However, he also admitted that some problems arose because of his poor financial management skills. He provided insufficient evidence that he acted responsibly while the debts were accumulating over the years. Hence, AG ¶ 20(b) provides limited application. He did not offer any evidence that he has received credit or budgetary counseling, and there are

no indications that his finances are under control. Only recently, did he establish a budget. AG ¶ 20(c) does not apply. Although he stated that he paid many SOR debts, he did not submit documentary evidence confirming a good-faith effort to pay or resolve debts. AG ¶ 20(d) does not apply. Applicant did not document that he has a reasonable basis to dispute any of the debts. Thus, AG ¶ 20(e) does not provide any mitigation.

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.

According to 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 pertinent facts and circumstances surrounding this case. Applicant is a mature 44-year-old employee of a defense contractor since 2011. His supervisor strongly recommends him for a security clearance based on his observations of Applicant's work ethic. Other colleagues also recommend him. His performance evaluations document four years of successful performance. While those are factors in favor of granting a security clearance, other factors outweigh them. Applicant has a long history of mismanaging his finances and debts. Until recently, he did not have a family budget nor is there evidence that he ever sought financial counseling or assistance over the years. In 2012 he spoke to an investigator about his delinquent debts and indicated that he would begin addressing them. For over three years, he has known that his financial situation created a security concern, but based on the record evidence, he has chosen not to address the problem. Until he establishes a track record of financial responsibility, the evidence leaves me with concerns as to Applicant's present eligibility and suitability for a security clearance. Applicant did not meet his burden to mitigate the security concerns arising from financial considerations.

