



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



In the matter of:)	
)	
)	ISCR Case No. 12-10808
)	
Applicant for Security Clearance)	

Appearances

For Government: Charles Hale, Esq., Department Counsel
For Applicant: *Pro se*

06/20/2016

Decision

CURRY, Marc E., Administrative Judge:

Applicant’s divorce led to his financial problems. The steps that he has taken to resolve them just began after the hearing. Under these circumstances, it is too soon to conclude that he has resolved the financial considerations security concern. Clearance is denied.

Statement of the Case

On June 6, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant 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) implemented by the DOD on September 1, 2006. On October 19, 2015, Applicant answered the SOR, admitting the allegations and requesting a hearing. The case was assigned to me on March 3, 2016. DOHA issued a notice of hearing on March 15, 2016, scheduling the hearing for April

14, 2016. The hearing was held as scheduled. At the hearing, I received five Government exhibits (GE 1 - GE 5), and one Applicant exhibit (AE A). Also, I took administrative notice, at Department Counsel's request, of one exhibit (Hearing Exhibit (HE) 1). At the close of the hearing, I left the record open, at Applicant's request, to allow him the opportunity to submit exhibits. Within the time allotted he submitted one exhibit that I admitted and incorporated into the record as AE B. DOHA received the transcript (Tr.) on April 25, 2016.

Findings of Fact

Applicant is a 38-year-old married man with two children from his previous marriage, ages 16 and 12, and one child, age four, from his current marriage. His first marriage ended in divorce in 2012 and he has been remarried since 2014. He and his ex-wife share joint custody of their children. Applicant has finished high school and has earned two years of college credits. Since 2011, he has worked for a defense contractor as a senior network engineer. (Tr. 15) His duties include developing satellite networks. (TR. 15)

Applicant has four delinquent debts totalling approximately \$45,000, as alleged in the SOR. Three are credit card accounts (SOR subparagraphs 1.a - 1.c), and one is a utility (SOR subparagraph 1.d). Subparagraph 1.a totals \$23,893. Subparagraphs 1.b and 1.c are different accounts owed to the same creditor totalling approximately \$21,000. Applicant attributes these delinquencies to his spendthrift ex-wife who abused their joint credit cards. (Tr. 23)

Applicant and his ex-wife executed a separation agreement in April 2012. Under the agreement, Both Applicant and his ex-wife were represented by attorneys. Applicant agreed to pay her graduated alimony payments for three years, beginning with \$950 monthly for year one, and ending with \$800 monthly payments in year three. (AE A at 6-7) Applicant also agreed to assume liability for the credit card debt. (AE A at 11)

As of the SOR date, Applicant had not made any payments towards the satisfaction of his credit card debt. He asserts that he mistakenly thought that his wife, under the separation agreement, was to assume liability for these credit cards. (Tr. 11) Each page of the separation agreement is initialled by both Applicant and his wife. (AE A) Both parties signed the agreement. (AE A at 21-22).

SOR subparagraph 1.d is an electric bill totalling \$59. This bill relates back to the period Applicant and his ex-wife shared a home. (Tr. 30) In April 2016, Applicant contacted the utility company to pay this bill and was referred to their "dead accounts department." (AE B) He is waiting for them to identify the name of the creditor to whom they transferred the debt, so that he can pay the bill. (AE B)

After the hearing, Applicant consulted his tax advisor, who helped him develop a budget. Since 2011, Applicant's annual salary has increased by \$34,000, from \$81,000 to \$115,000. (Tr. 18) Moreover, he no longer has to pay alimony, saving him

approximately \$9,600 annually. (Tr. 21) In sum, Applicant has approximately \$2,000 of monthly discretionary income. (Tr. 22) He plans to use this discretionary income to begin paying the SOR debts. Specifically, he will repay the creditor, alleged in subparagraph 1.a, \$300 per month, and the creditor alleged in subparagraph 1.b, \$200 monthly. (AE B at 2) He will satisfy the debt owed to the creditor, alleged in subparagraph 1.c, in its entirety through two \$635 monthly payments. (AE B at 2)

Policies

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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 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 national security.”

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 for obtaining a favorable security decision.

Analysis

Guideline F, Financial Considerations

The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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; and

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

Applicant's spendthrift ex-wife incurred these debts, using their joint credit cards, during their marriage. However, approximately four years have passed, and Applicant is just beginning to take steps to address them. Applicant contends that he thought, per the separation agreement, that these credit cards were his ex-wife's responsibility. This does not mitigate the negative security ramifications of his delay in addressing the debts because the signed agreement, which he initialed on each page, clearly identifies the debts and states that they are his responsibility.

Applicant attributes his failure to address these delinquencies earlier to a good-faith oversight of the relevant language of the separation agreement. Given that the separation agreement was a document that Applicant introduced at the hearing, I do not conclude that Applicant's testimony regarding the delinquencies was dishonest. However, it was irresponsible of him not to double check the separation agreement at some point during the investigative process, particularly since it was an issue of interest as early as his investigative interview in July 2012. AG ¶ 20(b) is only partially applicable.

Per Applicant's budget that he organized with the assistance of a tax advisor, he has \$2,000 of monthly discretionary income to apply to these debts, and his salary has increased significantly since his divorce. Conversely, he has neither made any payments yet, nor provided evidence substantiating the agreements reached with the creditors. Under these circumstances, AG ¶ 20(d) partially applies, but it is too soon to ascertain whether the problem is being resolved or is under control. AG ¶ 20(c) does not apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They are as follows:

- (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.

Applicant was unaware that he was responsible for the debts that his ex-wife incurred. He has developed a payment plan to satisfy them, and he submitted a budget that indicates he has sufficient income to adhere to the payment plan. Conversely, he knew at least as early as October 2015, when he answered the SOR, that these debts were his responsibility, yet, he did not provide a payment plan until after the hearing. This fact, alone, is not disqualifying, as I extended the record to afford him the opportunity to submit this information. However, the post-hearing documents include no

evidence of any initial payments, and no projection of when the payments will be completed. Under these circumstances, Applicant has not carried the burden.

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

Subparagraphs 1.a-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 eligibility for a security clearance. Eligibility for access to classified information is denied.

MARC E. CURRY
Administrative Judge