



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



In the matter of:)
)
) ISCR Case No. 13-00464
)
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Esq., Department Counsel
For Applicant: Curtis Charles Van de veld, Esq.

November 27, 2013

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant had five delinquent debts totaling \$35,221.39, identified on the Statement of Reasons (SOR). Applicant has repaid one debt. He is making payments on another. A third is being satisfied through involuntary garnishment. Two other debts remain delinquent. Despite having means to satisfy all of his accounts, he has filed for Chapter 13 bankruptcy. Applicant has not mitigated the Financial Considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted his electronic Security Clearance Application (e-QIP) on September 7, 2012. On June 10, 2013, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under the guideline for Financial Considerations. The action was taken under Executive Order (EO) 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 after September 1, 2006.

Applicant answered the SOR (Answer) on August 7, 2013, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on September 13, 2013. A notice of hearing was issued to Applicant on October 15, 2013, scheduling a video-teleconference hearing for November 5, 2013. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 5. Applicant's Counsel objected to GE 1, GE 2, GE 4, and GE 5 as not relevant or probative of Applicant's suitability for a security clearance. I overruled the objections. Applicant testified on his own behalf, called one witness, and offered Applicant's Exhibits (AE) A through O, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on November 15, 2013. The record was left open for receipt of additional documentation and Applicant's closing statement. On November 14, 2013, Applicant presented a written closing statement and AE P through AE T. On November 23, 2013, Applicant presented AE U. Department Counsel had no objection to AE P through AE U and they were admitted into evidence. The record was then closed.

Procedural Ruling

Amendment to the SOR

Pursuant to Additional Procedural Guidance ¶¶ E3.1.2, E3.1.3, E3.1.7, and E3.1.13 of the Directive, the SOR was amended by stipulation of the parties to correct a typographical error. The original SOR identified two different debts as ¶ 1.d. The SOR was amended to reflect the second ¶ 1.d to be identified instead as ¶ 1.e. (Tr. 71-72.)

Findings of Fact

Applicant is 43 years old. He is married and has a son, age 4, and a 21-year-old stepson. He testified he has held a security clearance in connection with his employment since 2005. (GE 1; Tr. 128.)

Applicant produced performance evaluations from 2006 to 2012 that show he is a "hardworking and dedicated employee." He "far exceeds" and "exceeds" all of his evaluation criteria during this time period. (AE P.)

Financial Considerations

The Government alleged that Applicant is ineligible for a clearance because he made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness, and ability to protect classified information. The SOR identified five delinquent debts totaling \$35,221.39. Applicant's debts appear in credit reports entered into evidence. Applicant admitted the debts as alleged in subparagraphs 1.a through 1.e. (Answer; GE 3; GE 4; GE 5.)

Applicant attributed his debts to his wife's mismanagement of their accounts. Applicant gave his wife power of attorney to act for Applicant in creating and discharging

debts in 2004. Unbeknownst to Applicant, his wife developed a gambling addiction that she hid from him and caused her to go into debt. In 2007, she was arrested for theft from her employer. She lost her job at that time and was unemployed until 2010. During her unemployment, she gave birth to Applicant's son. She told Applicant about her gambling problem at the time of her arrest, but continued to hide the extent of their indebtedness created as a result of her gambling problem. Applicant's wife continued to maintain their family's finances after her incarceration because Applicant wanted to give her a second chance to "prove herself." Applicant only became aware of their debts when he completed his security clearance background reinvestigation in September 2012. He indicated in his e-QIP that he intended to file Chapter 7 bankruptcy to resolve these delinquent debts. Applicant acknowledged during his testimony that he needed to pay more attention to his finances. (GE 1; GE 2; Tr. 53-58, 96-102, 117-124.)

Applicant elected not to follow through with filing Chapter 7 bankruptcy because he thought it would disqualify him from possessing a security clearance. Instead, in June 2013, Applicant retained counsel to advise him on repayment options. Counsel began negotiating with Applicant's creditors on his behalf. Applicant also had discussions with his attorney on how to avoid debts in the future. (Tr. 125, 133.) The status of his debts, as listed on the SOR, is as follows:

Applicant was indebted to a credit union on a bad debt charged off in November 2008 in the approximate amount of \$9,751, as alleged in SOR subparagraph 1.a. This debt is being repaid through an involuntary payroll garnishment. Every two weeks, \$456.38 (or 25% of Applicant's pay) is garnished and applied toward the repayment of this debt. Applicant's earnings statements indicate he has repaid \$7,302 on this debt in 2013. (AE M; AE Q; Tr. 55, 64-65, 72-81, 83, 108-109.)

Applicant is indebted on a delinquent debt in the approximate amount of \$7,714.20, as alleged in SOR subparagraph 1.b. This debt was reduced to a judgment, but Applicant's wages cannot be further garnished because the garnishment would exceed the statutorily allowable amount. Applicant, through his attorney, initiated settlement negotiations with this creditor, but no payments have been made to this creditor. This debt is not resolved. (AE H; Tr. 72-74, 82-90, 106.)

Applicant is indebted on a delinquent account in the approximate amount of \$8,051.16, as alleged in SOR subparagraph 1.c. Applicant, through his attorney, initiated settlement negotiations with this creditor, but Applicant has not made any payments to this creditor. This debt is not resolved. (AE H; Tr. 72-74, 82, 90, 106, 108.)

Applicant was indebted on a delinquent account in the approximate amount of \$5,453.16, as alleged in SOR subparagraph 1.d. Applicant presented documentation that shows he settled this debt for \$2,710. This debt is resolved. (AE G; AE I; AE O; Tr. 75-76, 82, 91, 108.)

Applicant was indebted on a delinquent account in the approximate amount of \$4,251.40, as alleged in SOR subparagraph 1.e. Applicant's wife testified that she has been making \$200 payments per month to this creditor. Applicant's November 2013

account statement shows that this debt has been reduced to \$3,351.40. Applicant is addressing this account. (AE K; Tr. 76-77, 82, 91, 104-105, 108.)

Applicant's wife testified that she recently inherited \$35,500. She presented documentation showing that amount is available in her accounts. She testified that if Applicant receives his clearance and is permitted to continue in his position with the government contractor that she would use her inheritance to pay off their remaining debts. It appears, however, that Applicant and his wife have abandoned that plan and have filed Chapter 13 bankruptcy instead, as evidenced by their November 12, 2013 Chapter 13 bankruptcy filing. All of Applicant's remaining delinquent accounts are listed on the Chapter 13 petition. In total, Applicant listed 13 creditors claiming \$68,722 in debt. The documents provided with the Chapter 13 petition did not show Applicant's assets. It reflected that Applicant and his wife completed credit counseling on November 7, 2013. (AE A; AE B; AE D; AE F; AE J; AE L; AE O; AE S; AE U; Tr. 78.)

Applicant's personal financial statement indicates that he has approximately \$376.72 left after meeting his monthly expenses. He presented documentation to show that he has recently resolved several other large debts that were not listed on the SOR. (AE C; AE R; Tr. 65-68.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines 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, administrative judges apply the guidelines 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(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." In reaching the 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, the 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.” The applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. The 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 as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant has had financial problems since at least 2006 due to his wife’s mismanagement of their finances and her incarceration. Applicant has satisfied the debt in subparagraph 1.d for \$2,710 and has reduced his debt on subparagraph 1.e to \$3,351.40 through monthly payments. The debt listed in subparagraph 1.a is being satisfied involuntary through garnishment, not through voluntary action on Applicant’s behalf. This garnishment continues to contribute to his inability or unwillingness to satisfy other debts. The debts in subparagraphs 1.b and 1.c remain unresolved. Applicant has the means to resolve these remaining debts, given his wife’s recent

inheritance, but has elected to file Chapter 13 bankruptcy instead of managing the repayment of his remaining debts on his own. The evidence is sufficient to raise the above disqualifying conditions.

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.

Applicant made a financial decision to give his wife power of attorney to manage their finances. After she was arrested and incarcerated, as a direct result of her theft of her employer's funds, he again elected to place his trust in her. Unbeknownst to Applicant, she continued to incur delinquent debt. Applicant testified that he would monitor their finances henceforth, but failed to offer proof that he has taken any concrete steps to insure future financial difficulties would not occur. He demonstrated little actual knowledge of their financial situation at the present time during his testimony. As a result, his decisions cast doubt on his judgment. Applicant's conduct does not warrant application of AG ¶ 20(a).

AG ¶ 20(b) does not apply. Applicant may have encountered financial difficulties due to his wife's mismanagement of their funds prior to her incarceration and her subsequent unemployment, but he did not produce evidence to show he acted responsibly once he was aware of her gambling habit. Applicant was placed on notice of their financial problems in 2007 when his wife was incarcerated. However, he placed misguided trust in his wife after her incarceration and let her manage their finances without any oversight. Applicant bears responsibility for neglecting his financial situation at that point. The Appeal Board has held "Even if an applicant gets into financial

difficulties because of circumstances beyond the applicant's control, the Judge must consider whether the Applicant dealt with his or her financial difficulties in a reasonable manner."¹ Applicant has not dealt with his finances in a timely and reasonable manner.

The Appeal Board opined:

A Judge is not required to accept an applicant's statements at face value merely because they are not rebutted by Department Counsel. It is reasonable for a Judge to consider the record as a whole and use common sense in evaluating the absence of corroborating evidence. Failure to present documentation in support of an applicant's claims about financial matters is a factor to be considered by a Judge in evaluating such claims. . . . Furthermore, some of Applicant's claims concerning his debt resolution efforts were, on their face, based on commitments made by Applicant to perform various acts in the future. Promises to take actions in the future, however sincere, are not a substitute for a documented track record of remedial actions. The possibility that Applicant might achieve resolution of his outstanding debts at some future date does not constitute evidence of financial reform or rehabilitation in the present. ISCR Case No. 99-0012 (App. Bd. Dec. 1, 1999).

While Applicant testified that he was prepared to resolve his remaining delinquent accounts with funds that his wife inherited, this reflected only a promise to take action on his remaining debts in the future. After making this promise, he changed his mind and decided to file Chapter 13 bankruptcy. Applicant received financial counseling pursuant to his bankruptcy. He submitted documents showing he filed under Chapter 13, but the documents contain no plan approved by the court. He has not started on the repayment of the debts through Chapter 13 bankruptcy. The process is not sufficiently advanced at this time for a finding that there are clear indications that the problem is being resolved. AG ¶ 20(c) is only partially applicable.

The Appeal Board has indicated that good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation."² While I acknowledge that he has satisfied a number of debts that do not appear on the SOR, his actions on his remaining accounts are not yet sufficient to qualify as a good-faith effort to repay overdue creditors or otherwise resolve debts. He first planned to file Chapter 7 bankruptcy, but failed to file. Then, he indicated he would repay the debts with his wife's inheritance. He did not follow through on that promise, but instead decided to file Chapter 13 bankruptcy. He has yet to establish a repayment plan under Chapter 13. His actions fail to show reasonableness, prudence, honesty, and adherence to duty or obligation. AG ¶ 20(d) is not applicable to his remaining delinquencies.

Applicant failed to present documentary evidence to show that he was in the process of formally disputing any of his debts. AG ¶ 20(e) is inapplicable.

¹ ISCR Case. No. 99-0012 (App. Bd. December 1, 1999).

² ISCR Case No. 99-0201 at 4 (App. Bd. October 12, 1999).

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 the 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 pertinent facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a hardworking and dedicated employee who performs well on the job. However, Applicant failed to produce sufficient documentation that his delinquent debts have been addressed or are otherwise satisfied. He has not mitigated the Financial Considerations security concerns. He has gone through the security clearance process in the past, as he has held a clearance since 2005, and has been on notice that financial delinquencies are a concern to the government. However, he chose to disregard this concern until very recently and leave the management of their finances to his wife. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the Financial Considerations security concerns.

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:	Against Applicant
Subparagraphs 1.b:	Against Applicant
Subparagraphs 1.c:	Against Applicant
Subparagraphs 1.d:	For Applicant
Subparagraphs 1.e:	For 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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Jennifer I. Goldstein
Administrative Judge