



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



In the matter of:)
)
) ISCR Case No. 13-00987
)
)
Applicant for Security Clearance)

Appearances

For Government: Pamela Benson, Esq., Department Counsel
For Applicant: *Pro se*

06/12/2014

Decision

MASON, Paul J., Administrative Judge:

Without a documented track record of payments of the listed debts, Applicant's evidence in mitigation is insufficient to overcome the Government's case under the financial considerations guideline. Eligibility for access to classified information is denied.

Statement of the Case

On October 24, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline. 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.

Applicant furnished his notarized answer to the SOR on November 14, 2013. A copy of the Government's File of Relevant Material (FORM), the Government's evidence in support of the allegations of the SOR, was sent to Applicant on February 19, 2014. In an attachment to the FORM, Applicant was advised he could object to the information in the FORM or submit additional information in explanation, mitigation, or extenuation. He received the FORM on March 17, 2014. He provided a response on April 28, 2014.¹ On May 5, 2014, the Government indicated it had no objection to Applicant's response to the FORM. The case was assigned to me on May 9, 2014.

Findings of Fact

Applicant is 38 years old and single. He received an honorable discharge after serving in the United States (U.S.) Marine Corps from October 1995 to September 2001. During his service, he received several medals and ribbons. He obtained an associate's degree in December 2008. He completed academic requirements for a bachelor's degree in May 2011, but did not receive a diploma because he did not pay the final semester's tuition. He has been employed in security and diplomatic security since June 2012. Before his current employment, he was attending school part-time while working as a bar tender. In 2008, he began attending school full-time financed by additional student loans. He received his first security clearance in the military in May 1999. His most recent security clearance was granted in November 2011. He has no criminal record. He has never engaged in illegal drug use and has never abused alcohol.

The SOR cites a February 2013 foreclosure plus 16 delinquent debt allegations totaling approximately \$72,000. Eleven of the delinquent accounts represent student loans. The other delinquent accounts include a foreclosed mortgage, credit cards, and a cellular telephone account. Applicant admitted all allegations in his answer, which he submitted about three days after he filed a federal consolidation loan and promissory note to consolidate student loans identified at SOR 1.h-1.n. His essential position of his submissions is that he wants his security clearance granted so he can resume working and continue to pay his bills.

In his Electronic Questionnaires for Investigations Processing (e-QIP) dated September 10, 2012, Applicant faulted a bad economy and depressed real estate market for his financial problems. He indicated that he hired a law firm online to resolve those problems and could see the positive results achieved in repairing his finances. As verification of resolving his debt difficulties, he cited a creditor's letter he received in July 2012, forgiving his \$49,000 equity line of credit debt related to the mortgage foreclosure in SOR 1.q. The debt is not listed in the SOR.

Applicant was interviewed by an investigator from the Office of Personnel Management (OPM) in October 2012. An OPM investigator re-interviewed Applicant on August 13, 2013. Using a August 2, 2013, credit report, the investigator obtained

¹ Applicant's response to the FORM was signed by [name], "Civilian Defense Counsel."

additional information about Applicant's debts and prepared an affidavit which Applicant signed the same day. After reviewing his August 2, 2013, credit report with the investigator, he acknowledged he had between \$45,000 and \$50,000 in delinquent student loans. Before 2008, when Applicant was working full-time as a bartender and attending school part-time, Applicant earned approximately \$40,000 to \$50,000 a year. When he began attending college full-time in 2008, his yearly earnings dropped from \$7,704 in 2008 to between \$1,200 and less by 2013. He provided tax returns from 2008 through 2011 showing a decline in yearly income. He noted that the law firm which he cited in his e-QIP never acted in his behalf in any financial issue with the creditors. Its sole purpose was to help him understand a credit report.

The affidavit also reflects that Applicant told the OPM investigator about his financial status in the last five or six years. He indicated that he used all his savings and retirement accounts to finance his college and living expenses. He only had \$800 in his checking account. He did not have any credit cards. He intended to establish payment plans and make payments to the creditors as soon as his future overseas assignment commenced.

The SOR debts will be addressed in chronological order.

SOR 1.a, \$8,682, student loan. The account was opened in 2009 and reported delinquent in July 2013. Applicant's claim in his response to the FORM that payments were being made through his credit union direct allotment account is undocumented. Account unresolved.

SOR 1.b, \$5,503, student loan. The account was opened in 2011 and reported delinquent in July 2013. On November 6, 2013, Applicant was advised that his proposal to begin making payments of \$469 a month, beginning on December 5, 2013, was acceptable. His documentation submitted in his response to the FORM shows a \$50 payment to the creditor on March 28, 2014, about seven days after he received the FORM. Applicant's March 30, 2014, credit report reflects a reduced balance of \$4,652, which implies that undocumented payments have also been made to the creditor.

SOR 1.c, \$8,600, student loan. The account was opened in 2009 and reported delinquent in May 2013. There is no supporting documentation of Applicant's claim that he has been making regular payments since before September 16, 2013. Account unresolved.

SOR 1.d, \$325, cellular telephone account. The account was opened in 2012 and reported delinquent in March 2013. Applicant's claim in his response to the FORM that he was making payments through his credit union direct allotment account is not supported by the record. Account unresolved.

SOR 1.e, \$1,749, auto installment loan. The account was opened in 2006 and reported delinquent in July 2013. Applicant's claim in his response to the FORM that payments were being made through his credit union direct allotment account is

undocumented. The balance in Applicant's credit report dated March 30, 2014, posts the same balance that appears in the government's August 2, 2013, credit report. Account unresolved.

SOR 1.f, \$8,623, student loan. The account was opened in 2009 and reported delinquent in June 2013. Applicant's March 2014 credit report reflects that the balance has decreased to \$6,788. No documentation was presented to show how many payments have been made or for how long. The reduced account balance connotes that undocumented payments have been made to the creditor.

SOR 1.g, \$341, student loan. The account was opened in 2010 and reported delinquent in July 2013. The government's August 2013 credit report and Applicant's March 2014 credit report show the same balance. Applicant claimed the account was paid and provided a telephone number for confirmation. Account is unresolved.

SOR 1.h-1.m, \$19,907, six student loans. The accounts were opened in 2009 and reported delinquent in June 2013. Applicant's March 2014 credit report reflects that the loans were paid. On November 11, 2013, Applicant signed a federal direct consolidated loan application and promissory note. On the same day, he signed the repayment plan selection to repay the loans. The loans are paid by the organization that services the account (account holder), but Applicant still has to repay the loans.

SOR 1.n, \$4,179, student loan. The account was opened in 2012 and reported delinquent in July 2013. On November 11, 2013, Applicant signed a federal direct consolidated loan application and promissory note. The same day, he signed a repayment plan selection to repay the loans. The total amount of the seven student loans that were consolidated is \$24,086. As with the student loans in SOR 1.h-1.n, the loan is paid by the account holder, but Applicant still has to repay the loan.

SOR 1.o, \$6,325, credit card. The account was opened in 2008 and reported delinquent in May 2010. Applicant's claim in his response to the FORM that he is making payments through his credit union direct allotment account is not supported by the record. Account is unresolved.

SOR 1.p, \$7,724, credit card. The account was opened in 1998 and reported delinquent in October 2012. In one part of his response to the FORM, he pointed to the August 2013 credit report entries showing the accounts (SOR 1.o, 1.p) having zero balances. The zero balances refer to accounts not listed in the SOR. Applicant's claim at another location of his response to the FORM that he was making payments through his credit union direction allotment account are unsupported. Account is unresolved.

SOR 1.q, condominium foreclosure. Applicant's documentation in his response indicates that the property was sold on February 15, 2013, for \$123,400. The certificate of sale was officially witnessed and stamped by the clerk of courts on February 21, 2013. There is no evidence of a deficiency balance on the sale of the condominium. In 2007, Applicant opened an home equity line of credit (\$49,000) with the condominium

property as collateral. On July 23, 2012, Applicant's credit line was approved for forgiveness. The forgiven debt is not listed in the SOR.

Since the August 2013 affidavit, Applicant repeatedly indicated that he has worked hard to pay off or settle his debts. He stated that the result of his efforts "has been a much lower amount of debt, where much of it is no longer collectible." (Response to SOR) In his response to the FORM, Applicant claimed that the delinquent debt in the August 2, 2014, credit report should be reduced by \$9,000.

Character Evidence

In a letter dated February 26, 2008, an associate professor of social science recommended Applicant for admission to a university that Applicant attended. The associate professor based the recommendation on Applicant's academic record, his leadership ability, and his military service. In a letter dated April 11, 2000, during Applicant's military service, a foreign service officer commended Applicant's ability to bridge cultural issues with the local cultural community. The officer praised Applicant's professionalism as a U.S. Marine security guard. Applicant received several training certificates for completing: a foreign affairs counter threat course; a course instructing participants about the fundamentals of diplomatic security; an antiterrorist driving course; and a blue print reading course. These courses were completed in November and December 2012.

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, which 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 of the whole-person concept so that all available information, past and present, favorable and unfavorable, is a part of the decision for or against an applicant's security clearance application. 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.

There are two pertinent disqualifying conditions that are potentially applicable: AG ¶ 19(a) (*inability or unwillingness to satisfy debts*); and AG ¶ 19(c) (*a history of not meeting financial obligations*). The credit reports, substantiated by Applicant's admissions, raise security concerns under the financial considerations guideline. The SOR lists 16 delinquent debts totaling approximately \$72,000 and a property foreclosure. The accounts became delinquent between May 2010 and July 2013. AG ¶¶ 19(a) and 19(c) apply.

Five 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 reliability, trustworthiness, and good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control 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) 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 has delinquent debts that he is unable to satisfy. He consolidated seven of the delinquent student loans identified in SOR 1.h-1.n. He did not apply for the loan consolidation until after he received the SOR. While his credit report shows that balances in SOR 1.b and 1.f are less than the amounts set forth in the SOR, he provided no supporting documentation to bolster his claims of making regular payments for the debts identified in SOR 1.a, 1.c, 1.d, 1.e, 1.g, 1.o, and 1.p. AG ¶ 20(a) does not apply because the listed accounts became delinquent between 2010 and July 2013 and it is likely that Applicant's financial problems will continue in the future.

AG ¶ 20(b) applies when the financial problems were caused by conditions beyond an applicant's control and he acted responsibly under the circumstances. Applicant's actions in obtaining multiple student loans were voluntary choices and not caused by conditions beyond his control. He knew or should have known that he was accumulating a large amount of additional debt while earning steadily decreasing income in a poor economy and anemic real estate market. Conversely, He receives limited credit under the condition by consolidating some of his student loans, even though he waited until after he received the SOR. On the other hand, he has not responsibly managed the remaining accounts identified at SOR 1.a, 1.c, 1.d, 1.e, 1.g, 1.o, and 1.p. AG ¶ 20(b) is only partially applicable.

AG ¶ 20(c) partially applies. Except for the advice he received on how to read a credit report, there is no evidence of financial counseling. However, Applicant has consolidated seven student loans and successfully received forgiveness for his unlisted equity line of credit. Nonetheless, the elimination of the line of credit debt has little probative value to Applicant's overall financial responsibility in paying his debts. There are no clear indications that the accounts identified at SOR 1.a, 1.c, 1.d, 1.e, 1.g, 1.o and 1.p are being resolved or under control.

AG ¶ 20(d) is applicable to circumstances that demonstrate a good-faith effort to repay delinquent debts. The primary method of accomplishing this objective is to show a meaningful track record of debt repayment. An applicant must demonstrate he has established a plan to repay his debts (not necessarily all of them simultaneously) and has taken purposeful action to implement the plan. The record reflects that Applicant has consolidated seven of his student loans. However, the information he provided about regularly paying the remaining debts is uncorroborated by independent evidence. His promise to repay all debts when he receives his security clearance is not mitigating. His precarious employment situation is acknowledged. He will not receive his employment assignment until he obtains a security clearance. But the security concerns present cannot be mitigated by the potential adverse consequences of an applicant

losing his security clearance² or his promise to repay his debts in the future after he resumes his employment.³ AG ¶ 20(d) is inapplicable to this case.

Applicant claimed in his response to the FORM that the delinquent amount of debt in the credit report should be reduced by \$9,000. He did not identify the debts which he disputes. He did not identify the reason and basis for his dispute. AG ¶ 20(e) is inapplicable

Whole-Person Concept

I have examined the evidence under the disqualifying and mitigating conditions of the financial considerations guideline, and 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 listed in 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.

As set forth in AG ¶ 2(c), the final trustworthiness decision must be an overall commonsense judgment based upon careful consideration of the specific guidelines, each of which is to be evaluated in the context of the whole person.

Applicant is 38 years old and single. He received an honorable discharge from the U.S. Marines following his service from 1995 to 2001. In 2000, a foreign service officer praised Applicant's professionalism while in the service. He earned an associates degree in December 2008. An associate professor provided a glowing assessment of Applicant's qualifications for the university he attended. In addition to having no criminal record, Applicant has no drug or alcohol problems.

Under the Directive, the favorable evidence must be weighed and balanced against Applicant's delinquent debts. To his credit, he consolidated seven student loans. However, he will have to resume paying the loans at some time in the future. The unlisted forgiven equity line of credit debt reduces the amount of debt Applicant owes. However, it bears little relevance to his bill paying practices and managing his financial obligations in a responsible manner. Except for a reduction in Applicant's overall debt load, I am unable to give any probative weight to the sale after foreclosure of Applicant's

² See ISCR Case No. 08-10238 at 3 (App. Bd. Dec. 18, 2009), ISCR Case No. 08-10079 at 3 (App. Bd. December 10, 2009).

³ See, e.g., ADP Case No. 07-13041 at 4 (App. Bd. Sep 19, 2008), ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999).

condominium. In addition, there is no supporting documentation from Applicant's direct allotment account substantiating his regular payment claims of the accounts identified at SOR 1.a, 1.c, 1.d, 1.e, 1.g, 1.o, and 1.p. Considering the evidence presented under the disqualifying and mitigating conditions in the context of the whole-person concept, the security concerns associated under the financial considerations guideline have not been mitigated. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

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.b, 1.f, 1.h-n, 1.q:	For Applicant
Subparagraphs 1.a, 1.c, 1.d,1.e, 1.g, 1.o, 1.p:	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 access to sensitive information. Applicant's request for a public trust position is denied.

Paul J. Mason
Administrative Judge