



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



In the matter of:)
)
) ISCR Case No. 13-00989
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel

For Applicant: *Pro se*

03/27/2014

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, I conclude that Applicant has mitigated the security concerns raised under the guideline for Financial Considerations. His request for a security clearance is granted.

Statement of the Case

On October 22, 2013, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) that cited security concerns under Guideline F (Financial Considerations). This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992) as amended; and the Adjudicative Guidelines (AG) implemented by the DOD on September 1, 2006.

In his November 13, 2013 Answer to the SOR, Applicant admitted six of the seven SOR allegations, with explanations, and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) issued a

Notice of Hearing on February 6, 2014. At the hearing on February 19, 2014, I admitted three Government exhibits (GE 1-3), and five Applicant exhibits (AE A-E). I held the record open, and Applicant timely submitted six additional documents, which I admitted as AE F-K. DOHA received the transcript (Tr.) on February 27, 2014.

Findings of Fact

After reviewing the pleadings and the record evidence, I make the following findings of fact.

Applicant is 42 years old. He married in 1998 and has two children, six and seven years of age. He earned a bachelor's degree in biology in 2002. In 2006, he began his current employment with a defense contractor as a facility services supervisor. He holds a top secret security clearance. (GE 1; Tr.34-37, 73)

Applicant purchased a condominium in 2006, but it soon became too small for his family, which included his wife, son, and mother-in-law. He purchased a second house in 2007, where he and his family currently live. He kept the condominium as a rental property. Subsequently, during the real estate market crash, the condominium's value dropped below the loan balance. His first tenant, from 2007 to 2010, paid about \$300 less than Applicant's mortgage payment. The second tenant did not pay the \$1,500 monthly rent for about six months and Applicant was forced to evict the tenant. He has been renting to his current tenant since 2011. The tenant pays the \$1,600 rent regularly, but Applicant remains about \$200 short on his monthly mortgage of \$1,800. He is in the process of re-financing the condominium and expects to reduce the mortgage payment to about \$1,600. His plan is to sell the condominium because values have risen, and comparable condominiums now sell for about \$20,000 more than he owes on the mortgage. (AE K; Tr. 23-26, 28, 37, 44)

Shortly after purchasing his current residence in 2007, Applicant's wife was laid off from her job of 10 years. She was unemployed for the next three years. As she had provided the majority of their income, her unemployment had a major impact on their financial status. By the time his wife was able to obtain employment in about 2010, they had accrued significant delinquencies. Applicant testified he did not realize he could seek financial counseling. They made the mortgage loans their priority. (Tr. 23-26, 58) Applicant testified,

[S]ome of my friends say walk away from it, but I knew that I held a security clearance. I knew that I couldn't just walk away from it. That was the very thing I was trying to protect. (Tr. 26)

Applicant also testified that although he worked with the lenders and obtained loan modifications, his mortgage payments increased. His properties have been close to foreclosure more than once, but he was able to work with the lenders to avoid it. He has

first and second mortgage loans on each property. The only delinquent loan is the second mortgage on his primary residence. (Tr. 25-28, 45)

Applicant stated he takes responsibility for the financial problems, and he has “learned some very hard lessons. . . .” but has tried “. . . not to walk away from these things but to take care of them by trying to work extra or whatever.” While working full-time in his current position, he also worked part-time as a security officer from 2007 to 2008 to increase their income. Applicant’s documentation and his 2013 credit report show accounts that he voluntarily closed or paid in 2006 and 2012. He has also paid medical and other bills that do not appear in the SOR. Applicant has filed his tax returns timely, and does not owe income tax. (GE 1, 2; AE B, J; Tr. 25-28, 55)

Applicant's current gross annual salary is \$60,000. His wife earns approximately \$65,000. He testified that he has a positive monthly remainder of a “few hundred dollars” after paying his monthly bills.¹ He and his wife each have 401(k) retirement accounts, with approximately \$25,000 in his plan. To meet his debt payments, he has “downsized on everything.” He does not have cable, and his car loans are paid off. (Tr. 37, 55, 58)

The SOR alleges delinquent debts totaling \$58,424. The debts appear in credit reports dated December 2012 and September 2013. (GE 2, 3) The status of Applicant's SOR debts follows.

1.a, Cable account: \$184. PAID. Applicant was charged for failing to return a cable box. He provided documentation showing he paid the debt in December 2013. (AE C; Tr. 20-21)

1.b, Retail purchase: \$299. PAID. Applicant has had payments deducted from his bank account for this computer purchase. He provided a letter from the creditor showing his payments had reduced the balance to \$153.10. He provided an additional letter dated December 2013 showing he paid off the remainder and has a zero balance. (AE D, F; Tr. 21-23)

1.c, Mortgage loan: \$32,000. PAYMENT PLAN. Applicant originally had an adjustable rate mortgage on his primary residence. About one year ago, he negotiated a modification of the loan and obtained a fixed rate loan that lowered the payment by approximately \$850 per month. That loan is current. Allegation 1.c refers to the second mortgage on the property. Applicant has been in touch with the lender. He provided documentation of past payment agreements, but the company has not sent him documentation related to their current arrangement. He is paying \$100 per month on his mortgage of \$600 per month, and he testified that the lender agreed to this arrangement. (AE G; Tr. 23, 28-31, 45, 48-50, 65)

¹ The record evidence does not include a personal financial statement detailing Applicant's monthly income and expenses. (Tr. 60)

1.d, Signature loan: \$13,000. PAYMENT PLAN.² Applicant's 2013 credit report shows he has arranged a payment plan with the lender for this loan. He provided documentation showing he has been making payments of \$50, and sometimes more, per month. (GE 2; AE E [pp. 1-2]; Tr.31, 41-43, 64)

1.e, Credit card account: \$8,626. PAYMENT PLAN. Applicant testified that he had established a payment plan in the past, with payments increasing every three months. He made payments for a year and a half. However, the original creditor did not credit his payments to the account, and the balance was never reduced. He contacted the current creditor and established a new payment plan, with deductions coming directly from his bank account. He provided a letter showing his December 2013 payment. He also provided a document showing payments of \$85 per month starting March 2014. (GE 3, 4; AE A, I; Tr. 32, 51-53)

1.f, Credit card account. \$3,901. UNRESOLVED. When Applicant completed his Answer to the SOR, he believed that he had a payment plan in place for this debt. However, he now believes he mistakenly sent the payments to the original creditor after the debt had been sold to a collection agency. He has spoken to two collections agencies and a law firm in an attempt to establish payments with the correct creditor, but has not found the company that holds the debt. (Tr. 32-34, 53-54)

1.g, Credit card account. \$414. DISPUTED. Applicant denies this debt and testified that he has paid it. He is uncertain why it continues to appear on his credit report as delinquent.³ He did not provide documentation showing it is not his debt, and has not formally disputed the debt with the credit agencies. (Tr. 34, 54-55)

Applicant did not provide character references or performance evaluations. He testified that he does not use alcohol or illegal drugs, and is active in his community. He has served on the board of directors of his condominium association. He has also served as a trustee for his son's public charter school. (Tr. 29-30)

Policies

Each security clearance decision must be an impartial, commonsense determination based on examination of available relevant and material information, and

² Applicant also has a home equity loan (HEL) with the same lender. He provided documentation showing that he has made timely payments on that loan from 2011 through 2014. The HEL is not alleged in the SOR. (AE E, H, K)

³ The debt is not listed in Applicant's 2012 credit report. It appears in Applicant's 2013 credit report, which shows the account was opened in 2007, with the last activity occurring in 2008, and the delinquency reported in 2009. It is unclear from the evidence why the debt does not appear in the earlier report. (GE 2, 3)

consideration of the pertinent criteria and adjudication policy in the AG.⁴ Decisions must also reflect consideration of the “whole-person” factors listed in ¶ 2(a) of the Guidelines.

The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the adjudicative factors addressed under Guideline F (Financial Considerations).

A security clearance decision is issued only to resolve the question of whether it is clearly consistent with the national interest⁵ for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance. Additionally, the Government must prove controverted facts alleged in the SOR. If the Government meets its burden, it falls to the Applicant to refute, extenuate, or mitigate the Government’s case. Because no one has a “right” to a security clearance, applicants bear a heavy burden of persuasion.⁶ A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness to protect the national interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government.⁷

Analysis

Guideline F (Financial Considerations)

AG ¶ 18 expresses the security concern about financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds. . .

⁴ Directive. 6.3.

⁵ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁶ See *Egan*, 484 U.S. at 528, 531.

⁷ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

Applicant has had financial difficulties since 2007, and a number of his debts have become delinquent. Nothing in the evidence reflects debts related to gambling, or alcohol or drug abuse. The following disqualifying conditions apply under AG ¶ 19:

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

I have also considered the mitigating factors under AG ¶ 20, especially the following:

- (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.

AG ¶ 20(b) focuses on delinquencies that result from events or circumstances that an applicant could not control. Here, several events affected Applicant's ability to maintain financial solvency. His mother-in-law moved in to the family home. The family lost its primary income source when his wife was laid off. Applicant did not know that, shortly after he purchased his current residence, his wife would be unemployed for three years. The deep cut to their income resulted in numerous delinquencies. In addition, Applicant's tenant failed to pay the rent. Finally, the nationwide real estate crisis caused a steep drop in the value of his condominium. However, Applicant acted responsibly, and made a good-faith effort to meet his obligations. He contacted the lenders and requested to have his mortgage loans modified, managing to keep his properties from foreclosure. He negotiated a significantly lower payment on his primary residence loan, and it is current. He spent a year working two jobs to earn extra funds. He paid off the debts that he could, and closed several accounts. He set up payment plans, having the funds deducted automatically from his bank account. AG ¶¶ 20(b) and (d) apply.

Applicant and his wife are both employed. Real estate values have improved, and Applicant's condominium is now worth more than the balance of the mortgage. He plans to sell the property. Only one of his four mortgage loans is past-due, and he has a payment plan in place for it. Five of the seven SOR debts are either paid or have payment plans in place. Although Applicant has not had financial counseling, he has brought his financial situation under control. AG ¶ 20(c) applies.

Applicant believes he paid the \$414 debt at allegation 1.g. However, he has not provided documentation supporting his position, nor lodged a formal dispute with the credit agencies. AG ¶ 20(e) does not apply. However, the relatively small debt is not sufficient to raise a security concern.

Whole-Person Analysis

Under the whole-person concept, an administrative judge must evaluate the applicant's security eligibility by considering the totality of an applicant's conduct and all the circumstances. An 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Shortly after Applicant bought his current residence, his wife lost her job. She had provided most of the family income, and she remained unemployed for three years. Applicant tried to generate extra income at times by working two jobs, but delinquencies accrued. It has taken several years, but he has made progress in regaining his financial footing. He has stayed in touch with his creditors. Of his four mortgage loans, Applicant is current on three and has a payment plan in place for the fourth. He has paid two debts, and established payment plans for three others. He has closed accounts, and paid other non-SOR debts. His cars are paid off, he does not have cable, and he does not live extravagantly. He testified credibly about his financial problems, and accepted responsibility for them. I conclude that he will continue to resolve his debts. An applicant is not required to establish that he has paid off each

and every debt listed in the SOR. He must only show, as Applicant has, that he has a plan to resolve his debts and has taken significant actions to implement it.⁸

Overall, the record evidence satisfies the doubts raised about Applicant's suitability for a security clearance. For these reasons, I conclude he has mitigated the security concerns raised by the cited adjudicative guideline.

Formal Findings

Paragraph 1, Guideline F	FOR APPLICANT
Subparagraphs 1.a – 1.g	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to allow Applicant access to classified information. Applicant's request for a security clearance is granted.

RITA C. O'BRIEN
Administrative Judge

⁸ See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).