



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 14-00357
)
Applicant for Security Clearance)

Appearances

For Government: Ray Blank, Esq., Department Counsel
For Applicant: *Pro se*

09/02/2014

Decision

CURRY, Marc E., Administrative Judge:

Applicant’s delinquent debts, totaling approximately \$82,000, stemmed primarily from a 2009 marital separation. Since then, he has satisfied approximately half of the delinquent debt, and has incurred no new debt. Although he still owes in excess of \$75,000, his significant efforts thus far, together with his meticulous management of his budget, lead me to conclude that he has mitigated the financial considerations security concern. Clearance is granted.

Statement of the Case

On April 16, 2014, 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 March 10, 2014, Applicant answered the SOR, admitting subparagraphs 1.a, 1.c through 1.r, 1.z, 1.bb 1.cc, and 1.gg, and denying the remainder. He requested a hearing whereupon the case was assigned to me on June 12, 2014. DOHA issued a notice of hearing on June 25, 2014, scheduling the hearing for July 21, 2014. The hearing was held as scheduled. At the hearing, I received four Government exhibits (GE 1-GE 4) and nine Applicant exhibits (AE A - AE I), and considered Applicant's testimony.

At the close of the hearing, I left the record open at Applicant's request to allow him to submit additional exhibits. Within the time allotted, Applicant submitted one additional exhibit that I received as AE J. DOHA received the transcript (Tr.) on July 31, 2014.

Findings of Fact

Applicant is a 43-year-old man. He was married from 1993 through 2011. The marriage ended in divorce. (GE 1 at 15) He is a high school graduate and has earned approximately two and one half years of college credits. Applicant works in the information technology field. He is the chief engineer of a division of a company that provides help desk support to government agencies. He has worked for this company since 2004 and has held a clearance during the entire time.

In 2009, Applicant's then wife abruptly left him. Subsequently, he filed for a divorce. It became final in December 2011. (AE A) When Applicant and his wife separated, they had a combined income of \$200,000 and approximately \$150,000 of unsecured debt, together with two home mortgages totalling approximately \$264,000. (Tr. 26, 35) None of their bills were delinquent. Also, Applicant's wife's salary accounted for approximately 40 percent of their joint income. After she left him, she stopped helping him pay the bills. (Tr. 27) Applicant's debts gradually became delinquent.

The SOR includes \$103,000 of Applicant's delinquent debt that had become delinquent in 2009, consisting of the primary mortgage, together with delinquent consumer loans, credit cards, and medical bills.¹ Applicant also had incurred approximately \$31,000 of unlisted delinquent debt including \$10,700 in delinquent personal income taxes from tax years 2007 through 2009,² and \$20,475 of credit accounts. (Tr. 28, AE B-AE C)

Applicant initially consulted a credit consolidation company and sought a loan modification. He was unable to afford the credit consolidation company's repayment plan, and the bank rejected the loan modification. (Tr. 85)

¹Subparagraphs 1.a and 1.s are duplicates. Subparagraph 1.p is a duplicate of subparagraph 1.u, and subparagraph 1.w is a duplicate of subparagraph 1.gg.

²He incurred the debt because he under-withheld exemptions for those tax years. (Tr. 28)

Applicant then began working to satisfy his debts. In February 2010, he entered into an installment agreement with the Internal Revenue Service (IRS). (AE B at 2) By March 2014, he had satisfied the \$10,700 tax delinquency. (AE B at 15; Tr. 59)

At or about the time Applicant entered the IRS installment agreement, he contacted the law firm that represented an unlisted creditor with whom he had opened three accounts. (Tr. 28-29) He paid the first account, totalling \$8,097, by May 2011, the second account, totalling \$3,203, by August 2011, and the third account, totalling \$6,348, by April 2013. (AE C)

In 2010, Applicant began addressing his home mortgage delinquency, totaling \$4,613, as listed in subparagraph 1.aa. Since then, he has satisfied the delinquency and reduced the principal by \$17,000. (Tr. 35; AE H)

Applicant has a second mortgage on his property. Over the past four years, he has reduced it from \$15,000 to \$12,000. (AE H; Tr. 35)

In approximately August 2011, Applicant contacted the creditor of the debt alleged twice in the SOR as subparagraphs 1.x and 1.hh. Working with this creditor, he initiated a payment arrangement. By August 2013, he had satisfied the \$10,191 debt through 24 monthly payments. (AE E)

In mid-2012, Applicant contacted a collection agent for the SOR creditors listed in subparagraphs 1.t, 1.y, and 1.dd. (Tr. 32) These debts totalled approximately \$4,100. By November 2012, Applicant had satisfied them. (AE F, AE J)

At or about the time Applicant was making payments towards the debts listed in subparagraphs 1.t, 1.y, and 1.dd, he was in the process of satisfying the debt listed in 1.ee. (Tr. 30) He satisfied it in July 2012. (AE D) The delinquency totalled \$1,263.

In September 2012, Applicant contacted the creditor listed in subparagraph 1.v and satisfied the debt. It totalled \$708. Applicant paid it in two payments of \$354 executed between September and November of 2012. (AE G at 2-3; Tr. 33-34)

Currently, Applicant is negotiating a settlement with the collection agent for the creditors listed in subparagraphs 1.q and 1.r. (Tr. 58-59) These debts total approximately \$20,000.

Applicant disputes subparagraphs 1.b and 1.ff. He has contacted their respective collection agencies. (Tr. 63) He did not provide documentation of the basis of these disputes. These alleged debts collectively total approximately \$675. The remainder of Applicant's SOR debts remain outstanding.

This past year, Applicant's father moved into an assisted living facility.(Tr. 60) Since then, Applicant has been helping him with nursing home costs, and paying for the upkeep of his father's home, while preparing to sell it. (Tr. 61)

Also this past year, Applicant incurred funeral expenses, totalling \$5,000, for his deceased sister. Applicant paid half when she died, and has been paying the other half in \$150 monthly increments. (Tr. 91-92) He anticipates satisfying these expenses by September 2014. Currently, the upkeep of his father's home and his sister's burial expenses total approximately \$550 per month (AE H)

Applicant maintains a budget. He earns \$141,000 annually, and he has \$755 of monthly discretionary income. (Tr. 81, AE I)

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

Under this guideline, "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." (AG ¶ 18) Between 2009 and 2010, nearly \$400,000 of Applicant's mortgage, consumer, and income tax debt became delinquent. AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

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;

(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.

Although Applicant's debt-to-income-ratio has been historically high, none, with the exception of some non-alleged personal income taxes, became delinquent until his 2009 marital separation. Since 2010, Applicant has satisfied approximately \$21,000 of SOR debt and \$29,000 of non-alleged delinquencies. Also, he has reduced the principal on his home mortgages by \$20,000. He has achieved this debt reduction while having to assume the costs related to his sister's death and the upkeep of his father's home together with his father's miscellaneous nursing home expenses.

Multiple SOR debts remain outstanding. However, so long as Applicant is satisfying delinquent debts in an orderly fashion, it does not matter which debts he pays first. (ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008)) Applicant earns \$141,000 annually and has no children. He has clearly adjusted to the loss of his ex-wife's joint income, and I am confident that he will continue to satisfy the delinquencies, as promised. AG ¶¶ 20(b) through 20(d) apply.

Applicant did not provide documentary evidence substantiating the basis of his dispute of two of the SOR debts. AG ¶ 20(e) does not apply. Given their nominal amount, the meticulous manner in which Applicant has identified the current collection agents for various debts, and the debt reduction progress he has made thus far, I conclude that the inapplicability of AG ¶ 20(e) has minimal probative value.

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 lost control of his finances after his marital separation in 2009. Since 2010, he has been organizing his finances, contacting creditors, and paying his delinquent debts. These facts constitute strong evidence of rehabilitation.

Applicant maintains a budget and has ample discretionary income to continue satisfying his delinquent debts. Under these circumstances the likelihood of recurrence of his financial problems is minimal. Upon considering this case in the context of the whole-person concept, I conclude Applicant has mitigated the security concern.

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:	FOR APPLICANT
Subparagraphs 1.a-1.ii:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

MARC E. CURRY
Administrative Judge