



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



In the matter of:)
)
) ISCR Case No. 14-00645
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

09/19/2014

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied. Applicant did not present sufficient information to mitigate security concerns for financial considerations.

Statement of the Case

On July 31, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for a position with a defense contractor. The Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. DOD issued Applicant a Statement of Reasons (SOR), dated March 27, 2014, detailing security concerns for financial considerations under Guideline F. The 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 (Directive); and the adjudicative guidelines (AG) effective in the DOD on September 1, 2006.

Applicant answered the SOR on April 17, 2014. He admitted eight of the ten delinquent debts in the SOR. Department Counsel was prepared to proceed on June

23, 2014, and the case was assigned to me on June 26, 2014. DOD issued a Notice of Hearing on July 11, 2014, scheduling a hearing for July 29, 2014. I convened the hearing as scheduled. The Government offered three exhibits that I marked and admitted into the record without objection as Government Exhibits (GX) 1 through 3. Applicant testified. He did not offer any exhibits. I left the record open for Applicant to submit exhibits but no exhibits were submitted. I received the transcript of the hearing (Tr.) on August 6, 2014.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is a 26-year-old high school graduate employed by a defense contractor in a shipyard for approximately one year. He married in September 2012 and has a stepson. This is Applicant's first application for eligibility for access to classified information. He and his wife have a combined monthly income of approximately \$3,900, with monthly expenses of approximately \$3,500, leaving a net remainder in discretionary funds of \$400 a month. (Tr. 51-53; Gov. Ex. 1, e-QIP, dated July 1, 2013)

The SOR lists, and credit reports (GX 2, dated July 31, 2013; GX 3, dated February 27, 2014) confirm, the following delinquent debts: a cable debt in collection for \$102 (SOR 1.a); a credit card debt in collection for \$2,162 (SOR 1.b); an unknown debt in collection for \$683 (SOR 1.c); a charge on a checking account charged off for \$2,093 (SOR 1.d); two student loans in collection for \$2,849 (SOR 1.e) and \$3,207 (SOR 1.f); another student loan charged off for \$2,043 (SOR 1.g); an automobile repossession debt charged off for \$10,795 (SOR 1.h); a tax lien on an unpaid traffic ticket for \$202; and an unknown debt in collection for \$684 (SOR 1.j). The total amount of the delinquent debt is approximately \$25,000. The credit reports show that most of the delinquent accounts were opened in 2008 or 2009. The credit reports also list some debts not on the SOR that have been paid or resolved.

Applicant graduated from high school on the west coast in 2006, and lived with his parents. His father was serving in the U.S. Air Force. He became engaged in 2007. He and his intended wife lived with his parents. He and his fiancée purchased items as a couple or individually on credit or using credit cards. Applicant cosigned some of the purchases for his fiancée. His fiancée left him without explanation in 2009. He has not heard any contact with her since she left him. He also believes that she had stolen his and members of his family's identity using the information to accumulate more debts.

Applicant moved with his parents to the east coast in August 2010 when his father was transferred. His parents divorced and he lived for a time with his mother. He was unemployed from August 2010 until March 2011, and was supported by his mother. He worked as a bartender from March 2011 until March 2012, and was a laborer and groundskeeper from March 2012 until July 2013 when he started employment at the shipyard. (Tr. 17-25, 60-63)

SOR debt 1.a is a cable debt from 2013 in collection. Applicant testified that the debt is paid. He did not provide a receipt for the payment but noted that he has service from the cable company and his bill is current. (Tr. 25-26, 57)

SOR debt 1.b is an electronics store credit card debt. Applicant is unsure of the debt. He admits to having a credit card from the store and purchasing some items. The credit report lists the debt as opened just before he moved to the east coast with his parents. The debt has not been paid. (Tr. 26-36, 57)

SOR debts 1.c and 1.j are duplicates. The credit reports list them as having been incurred in a city and area where Applicant has never been. He believes the debts were incurred because his former girlfriend used his stolen identity. He filed a fraud complaint with his local police department. The fraud complaint has not been resolved. (Tr. 37-40, 46-48, 57-60)

SOR debt 1.d is a charge on a checking account that may have been overdrawn check. The debt has not been paid. (Tr. 40-41, 57)

SOR debts 1.e and 1.f are student loans. Applicant used the loans to attend a community college after he graduated from high school. He did not receive a degree from the school. Applicant indicated he made one payment of \$500 on the loans. He did not present any documents to verify the payment. The debts have not been paid. (Tr. 41-42, 57-58)

SOR debt 1.g is for a joint loan he and his former fiancée incurred to pay some debts. The loan has not been paid. (Tr. 42, 58-59)

SOR debt 1.h is for his former fiancée's car loan that he cosigned. This was her car and she paid the expenses, such as registration and insurance, on the car. Applicant had his own car, and the car loan associated with that car has been paid in full. When his former fiancée left Applicant, she left the car in the driveway. He had the car repossessed, and it was sold at auction. The amount of the debt is for the remaining debt after auction. Applicant understands he is responsible for the debt since he cosigned for the loan. It has not been paid. (Tr. 42-45, 59-60)

SOR debt 1.i is a lien for a traffic ticket Applicant received when he lived on the west coast. He paid the debt so he could obtain a local driver's license when he moved to the east coast. Since he now has a local driver's license, the lien has been resolved. (Tr. 45-46, 60)

Applicant and his wife do not use credit cards. They are current with their taxes. They only have two debts which are car loan for their vehicles. The car loans are being paid as agreed. The credit reports do not list any new debt since 2011. Applicant stated he would contact his creditors to get details of his debts and attempt to establish payment plans. He did not present any information on any contracts made or payment plans reached. (Tr. 53-62)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered 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, these guidelines are applied in conjunction with the factors listed in 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 this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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 in seeking a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This 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 that 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.

Analysis

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, thereby raising 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. (AG ¶ 18) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage finances in such a way as to meet financial obligations.

It is well-settled that adverse information in credit reports can normally meet the substantial evidence standard to establish financial delinquency. Applicant's history of delinquent debts is documented in his credit reports and his SOR response. Applicant's delinquent debts are a security concern. The evidence is sufficient to raise security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts), and AG ¶ 19(c) (a history of not meeting financial obligations). The information raises an inability and not an unwillingness to pay delinquent debt.

I considered the following Financial Consideration Mitigating Conditions under AG ¶ 20:

- (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 problems 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;
- (d) the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of a past-due debt which is the cause of the problem and provided documented proof to substantiate the basis of the dispute or provided evidence of actions to resolve the issue.

The mitigating conditions in AG ¶¶ 20(a), 20(b), and 20(d) do not apply. Applicant's debts may have been incurred in 2008 and 2009, but they are current since

they have not been resolved. He started to have delinquent debt in 2009 when he became engaged and he and his fiancée started living together and incurred debt. The fiancée left Applicant in 2011 and he was responsible for the debts. The financial issues were not beyond his control, since he willingly incurred the debt with his then fiancé. Her leaving him was beyond his control, but by that time he had incurred the debts. After moving to the east coast, Applicant had periods of unemployment or low employment that were beyond his control. He did not present any information to establish that these events affected his ability to pay his past-due debts. His mother was supporting him at the time, so he could have made some arrangements to make payments on his delinquent debts. Applicant testified that some of the debts have been paid or some payments made on the debts. However, he has not presented any information to establish that he made payments on his debts. He does not have a systematic plan to resolve debt. It is noted that his current bills seem to be paid as agreed. However, he has not presented information to establish that he has acted responsibly towards his debts.

For AG ¶ 20(d) to apply, there must be an “ability” to repay the debts, the “desire” to repay, and “evidence” of a good-faith effort to repay. A systematic method of handling debts is needed. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. Applicant must establish a "meaningful track record" of debt payment. A "meaningful track record" of debt payment can be established by evidence of actual debt payments or reduction of debt through payment of debts. A promise to pay delinquent debts in the future is not a substitute for a track record of paying debts in a timely manner and acting in a financially responsible manner. Applicant must establish that he has a reasonable plan to resolve financial problems and has taken significant action to implement that plan.

The specific circumstances, debts incurred with his fiancée, may not recur, but he will face other requirements for his finances in the future. He stated his intent to pay the past-due debts but has not taken decisive action to pay the delinquent debts. He has no established payment plans, and he has not established a meaningful track record of debt payment. He stated he would contact his creditors, but he presented no information to establish any agreement with the creditors. His promise to pay debts in the future is not sufficient to show an adherence to his financial obligations.

AG ¶ 20(g) applies. Applicant disputed the debts at SOR 1.c and 1.j. The credit reports show the debts originating in a state and city that Applicant has never been in or visited. He also indicated that his former fiancée may have used his identity to get credit. He filed fraud reports with his local police. Even though he did not present a copy of a local police fraud report, the circumstances establish actions he has taken steps to resolve the debts.

I also considered AG ¶ 20(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). Applicant did not present any information that he sought or received financial counseling, and his financial situation is not under control.

Since Applicant has not established that most of his delinquent debts listed in the SOR are being resolved, his lack of financial action does not show he acted in good faith with adherence to his financial obligations. He has not established a “meaningful track record” of debt resolution. He has not established that he has or will act responsibly and reasonably to resolve his financial issues. With evidence of delinquent debt and no documentation to support responsible management of his finances, it is obvious that his financial problems are not under control. Applicant's lack of documented action is significant and disqualifying. Based on the acknowledged debts and the failure to make arrangements to pay his debts, it is clear that Applicant has not been reasonable and responsible in regard to his finances. His failure to act reasonably and responsibly towards his finances is a strong indication that he will not protect and safeguard classified information. Applicant has not presented sufficient information to mitigate security concerns for financial considerations.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for access to classified information by considering the totality of the applicant's conduct and all relevant 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 access to classified information 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 the facts and circumstances surrounding this case. Applicant has not provided sufficient credible documentary information to show reasonable and responsible action to address delinquent debts and resolve financial problems. Even though his present debts seem to be paid as agreed and current, Applicant has not demonstrated responsible management of his finances or a consistent record of actions to resolve past-due financial issues. Overall, the record evidence leaves me with questions and doubts about Applicant's judgment, reliability, and trustworthiness. He has not established his suitability for access to classified information. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial situation. Eligibility for access to classified information is denied.

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.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d -1.h:	Against Applicant
Subparagraphs 1.i – 1.j:	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 Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

THOMAS M. CREAN
Administrative Judge