



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 14-01080
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

02/26/2015

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 financial security concerns.

Statement of the Case

On May 3, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to receive 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 July 11, 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 in an undated response. He denied two delinquent debts (SOR 1.a, and 1.b). He thought that the debt at SOR 1.a. had been paid and that he returned the equipment that was the reason for the debt at SOR 1.b. He admitted the other four delinquent debts.¹ Department Counsel was prepared to proceed on November 10, 2014, and the case was assigned to me on November 14, 2014. DOD issued a notice of hearing on December 9, 2014, scheduling a hearing for January 27, 2015. I convened the hearing as scheduled. The Government offered three exhibits that I marked and admitted into the record without objection as Government Exhibits (Gov. Ex.) 1 through 3. Applicant testified. I kept the record open for Applicant to submit documents. Applicant timely submitted five documents that I marked and admitted into the record as Applicant Exhibits (AX) A through E. (AX A, e-Mail, dated February 6, 2015; AX B, e-Mail, dated February 21, 2015) Department Counsel had no objection to admission of the documents. (GX 4, e-Mail, dated February 23, 2015). I received the transcript of the hearing (Tr.) on February 5, 2015.

Findings of Fact

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

Applicant is a 51-year-old high school graduate who has worked as a systems administrator and storage specialist for a defense contractor since May 2013. He is divorced with two adult children. He served on active duty in the Navy as a yeoman (E-4) from June 23, 1981 until August 18, 1992. He was unemployed from June 2009 until December 2009, and from July 2011 until September 2012. His net monthly pay is approximately \$2,750. He receives \$500 in monthly Veteran's Administration (VA) disability for a total monthly income of \$3,250. His net monthly expenses are approximately \$2,635, leaving a net monthly remainder of approximately \$500. He uses his excess funds to visit and buy items for his grandchildren. (Tr. 15-17. 28-32; GX 1, e-QIP, dated May 3, 2013)

The SOR alleges, Applicant admits, and credit reports (GX 2, dated June 10, 2014, and GX 3, dated May 8, 2013) confirm the following debts for Applicant: a utility debt in collection for \$391 (SOR 1.a); a cable debt in collection for \$270 (SOR 1.b); an apartment rental debt in collection for \$3,768 (SOR 1.c); a telephone debt charged off for \$601 (SOR 1.d); an automobile loan charged off for \$30,244 (SOR 1.e); and four student loan accounts more than 180 days past due for \$2,021 (SOR 1.f). The total amount of the delinquent debt is approximately \$36,000. Most of the delinquent debt is for the charged off automobile loan.

The delinquent debts at SOR 1.a to SOR 1.d stem from Applicant's early departure in 2012 from an apartment he rented. Applicant was current with payment for the utilities service for the apartment when he vacated his apartment early. He did not

¹ At the hearing, Applicant changed his response and admitted SOR 1.a and SOR 1.b. After he responded to the SOR, Applicant learned that the debt at SOR 1.a. had not been paid. He did not have a receipt for the equipment he turned in leading to the debt at SOR 1.b. (Transcript 9-10)

arrange with the company supplying the utilities to turn off the utilities, so he incurred additional expenses until the utilities were terminated. (SOR 1.a) Applicant contacted the utility after the hearing and learned that the debt was valid. He paid the debt in full. (Tr. 18-19, 33-35; AX C, Receipt, dated February 21, 2015; AX D, Payment Record, dated February 21, 2015)

When Applicant left the apartment before the end of the lease, he did not return to the provider the equipment for his cable service. He was charged \$270 for the equipment that was not returned. (SOR 1.b) The debt has not been resolved. (Tr. 19, 35-36)

Applicant was current with the payment of his lease when he left the apartment before the end of the lease because he could no longer pay the amount of the rent. (SOR 1.c) He had been unemployed for over a year but was gainfully employed when he left the apartment. Applicant was charged with two additional months of rent. He was unsure if the apartment lease required either a two-month notice of early termination or a two-month penalty for early termination. This debt has not been resolved. (Tr. 19-20, 26-27)

Applicant left the equipment for his internet service in the apartment when he departed and did not return the equipment as required to the service provider. He incurred a debt of \$601 for the equipment. (SOR 1.d) Applicant stated that he disputed this debt to the service provider once by letter and once over the telephone. Applicant did not provide any documents to verify the dispute. This debt has not been resolved. (Tr. 20, 36-40)

Applicant is responsible for a car loan he cosigned for his son that was not paid by his son. (SOR 1.e) Applicant testified that his son signed Applicant's name on the car loan in May 2007. Applicant learned of the debt when the insurance company told him the car caught fire, was sold for \$500, and his son had stopped paying the loan. Applicant learned that his son signed Applicant's name to the loan after the car loan was in default. He was told by the creditor that unless he pressed charges against his son for signing his name, he was responsible for the debt. Applicant never pressed charges against his son. He received information from the creditor over three years ago about the amount of the original debt, the amount received for the car when it was sold, and the remaining amount owed on the debt. He was told the monthly payment on the car loan would be approximately \$700. Applicant did not have sufficient funds to make the payments. Applicant last talked to his son about the debt a few months ago and his son told him he was filing for bankruptcy. He does not think his son has yet filed for bankruptcy. The debt is not resolved. (Tr. 20-22, 38-40)

Applicant stated that the monthly required payments on his student loans are \$325. In the last year, he has been making monthly payments of only \$50 to \$60. He testified that last year he used a \$3,000 tax refund to make a large payment on the student loans. He believes the student loan debt has been reduced to less than \$900. Applicant did not provide a receipt for any payments, to include the tax refund payment,

or the remaining balance on the loan. After the hearing, Applicant contacted the student loan processing company and learned that the balance on the debt was \$2,207.40. He reached a settlement agreement with the student loan company agreeing to make monthly payments of \$5.00 on the student loan. The debt will increase to \$2,211.43 when his first payment of \$5.00 is due on March 1, 2015. (Tr. 22-25, 40-41; AX E, Agreement, dated February 5, 2015)

Applicant stated that his plan was to use his income tax refund to pay off the remainder of his student loans. He does not have any additional delinquent accounts than the accounts on the SOR. He has a small 401(k) account with his employer. He is current with his taxes and has very few cash assets on hand. He lives from paycheck to paycheck. He does not have a monthly budget and has not received financial counseling. (Tr. 26-29)

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, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. (AG ¶ 18) An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. However, the security concern is broader than the possibility that an individual might knowingly compromise classified information to raise money. It encompasses concerns about an individual's responsibility, trustworthiness, and good judgment. Security clearance adjudications are based on an evaluation of an individual's reliability and trustworthiness. It is not a debt-collection procedure. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her 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 at risk of acting inconsistently with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations. Applicant incurred debts when he left an apartment before the end of the lease incurring addition charges for the lease, utilities, and communication services. He has not paid a car loan he was responsible for as a co-signer. He is not current with payment of his student loans. The delinquent debts, as established by Applicant's admissions and credit reports raise 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 evidence indicates a history of both an inability and an unwillingness to satisfy debt.

I considered the following Financial Considerations 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;

(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 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 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 action taken to resolve the issue.

These mitigating conditions partially apply. Applicant encountered financial issues when he left an apartment before the terms of the lease expired and he did not return communication equipment as required. Applicant had been unemployed for some time before breaking the lease, but he was employed in his present job at the time he abandoned the lease. The debts did not happen under unusual circumstances but because of Applicant failure to take the actions required of him to terminate the lease and return the equipment. All of his debts are based on his failure to take the action required of him to manage the financial issues. He did not make payments on or seek payment arrangements for his debts until after the hearing. All of his financial issues were within his control to resolve and are likely to recur. AG ¶¶ 20(a) and 20(b) do not apply

Applicant established that he made only one payment on any of his delinquent debts. He paid the utility debt at SOR 1.a. He stated he was paying his student loans but he did not provide any documentation to verify the payments. After contacting the student loan company, Applicant was advised that the debt was much larger than he anticipated. He established a monthly payment plan of \$5.00 and his first payment is due soon. Under this monthly plan, his debt will be reduced very little each month. For a good-faith effort, there must be an "ability" to repay the debts, the "desire" to repay, and "evidence" of a good-faith effort to repay. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. A systematic method of handling debts is needed. 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. Applicant has only paid one debt. The payment plan for his student loans will only slightly reduce his debt each month. It is not a good-faith effort to reduce the debt. He has not established a plan to pay any of this other debts. The large majority of his delinquent debt is still outstanding. Applicant has not established a meaningful track record of debt payment. AG ¶ 20(d) does not apply.

Applicant does not have a budget and has not sought financial counseling. AG ¶ 20(c) does not apply.

Applicant stated he disputed the telephone equipment charge at SOR 1.d. Applicant has not presented any documented proof that he filed a dispute. In addition, there is no reasonable basis presented to substantiate the dispute. AG ¶ 20(e) does not apply.

Applicant has not shown that he manages his personal financial obligations reasonably and responsibly, and his irresponsible financial conduct is likely to continue. There is ample evidence of irresponsible behavior, lack of good judgment, and unreliability. Based on all of the financial information, I conclude that Applicant has not mitigated security concerns based on financial considerations.

Whole-Person Analysis

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

Under AG ¶ 2(c), 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant honorable four years of service in the Navy. Applicant did not present sufficient information to establish that he acted reasonably and responsibly towards his finances. His financial

track record does not establish confidence that he has or will responsibly manage his financial obligations. This indicates that he will not be concerned or act responsibly in regard to classified information. Overall, the record evidence leaves me with questions and doubts as to Applicant's judgment, reliability, trustworthiness, and eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant has not mitigated security concerns arising under the financial considerations guideline. 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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b – 1.f:	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 a security clearance. Eligibility for access to classified information is denied.

THOMAS M. CREAN
Administrative Judge