



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS and APPEALS**



In the matter of:)
)
) ISCR Case No. 14-01424
)
Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

01/29/2015

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense's (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. The four collection accounts alleged in the Statement of Reasons (SOR), totaling more than \$25,000, have not been resolved. The financial security concerns remain. Clearance is denied.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on June 13, 2014, the DoD issued an SOR detailing security concerns. DoD adjudicators could not find that it is clearly consistent with the national interest to grant or continue Applicant's security clearance. On July 8, 2014, Applicant answered the SOR and requested a

¹ 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 within the DoD on September 1, 2006.

hearing. On August 28, 2014, I was assigned the case. On October 2, 2014, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for the hearing convened on October 21, 2014. I admitted Government's Exhibits (Ex) 1, 2, 4 and 5² and Applicant's Exhibit A, without objection. Applicant testified at the hearing. No additional material was received following the hearing. On October 29, 2014, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, he admitted owing the collection accounts and stated he could not afford to pay them. I incorporate Applicant's admissions as facts. After a thorough review of the pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 24-year-old aircraft mechanic who has worked for a defense contractor since July 2013, and seeks a security clearance. (Ex. 1, Tr. 18) His salary recently increased to \$15.53 per hour. (Tr. 23) From May 2013 until July 2013 and July 2011 until February 2013, he was a self-employed seismic permit agent. He worked in the oil fields in the upper Great Plains. (Ex. 4) From February 2012 until May 2013, he worked as a laborer for a construction company. (Ex. 1) In February 2009, he obtained his General Education Development (GED) certificate. (Ex. 4) In 2011, his gross income was approximately \$17,000 and in 2012 his gross income was approximately \$58,000. (Tr. 24) He had no taxable income for either year. (Ex. 5)

Applicant called no witnesses other than himself. He provided one letter of character reference from his supervisor stating his supervisor believes Applicant to be trustworthy and deserving of hold a security clearance. (Ex. A)

In June 2012, Applicant purchased a four-year-old 2008 Ford pickup truck for \$26,113 (SOR 1.a). (Ex. 2) For six months following the purchase, he made the \$544 monthly payments on the vehicle. (Ex. 2, Tr. 43) Then lack of work forced him to stop making payments. During his September 2013 personal security interview (PSI), he stated that after the truck was sold, he would know the balance owed on the loan. He asserted, but failed to document, that he owed \$10,000 following the sale and that the creditor offered to settle the debt for \$6,000. (Tr. 20) He intended to make monthly payments on the debt and offered to make \$20 monthly payments on the debt. (Ex. 4) The creditor demanded monthly payments of at least \$100. (Tr. 20) The debt remains unpaid.

In February 2010, Applicant opened a telephone account. He disputes that he owes \$338 (SOR 1.b) on a collection account and intends to reinvestigate the matter and resolve the debt. (Ex. 2) During his PSI, he stated he was disputing the amount of the debt. (Ex. 4)

² Department Counsel did not off Ex. 3. It was not admitted into evidence.

In 2011, Applicant was treated for kidney stones. He owes \$947 on a medical collection debt (SOR 1.c) that was reported in May 2011. He owes \$332 (SOR 1.d) on a second medical collection account reported in June 2011. (Ex. 2) During his PSI, he stated he intended to resolve the debts after negotiations. (Ex. 4) He asserts he could pay \$10 a month on the medical debts. (Tr. 20) Both debts remain unpaid. He asserted he is "way overextended." (Tr. 20)

In August 2013, Applicant sought the services of a credit restoration company to renegotiate his debts with affordable monthly payment plans. As of September 2013, during his PSI, he stated no debts had been renegotiated and no repayment plans had been established. (Ex. 4) He had paid the counseling service \$280 on an \$800 fee. In the PSI, he indicated he was to make \$109 monthly payments to the counseling service. (Ex. 4) At the hearing, he said the monthly amount was \$180. (Tr. 21) As of February 2014, the counseling service was working with him concerning the four SOR debts. (Ex. 5) He made his monthly payments to the credit service for four or five months before he stopped making payments. (Tr. 21) The credit service received payment, but the creditors received nothing. (Tr. 21)

In February 2014, Applicant answered financial interrogatories, which indicated that his monthly net remainder (monthly income less monthly expenses and monthly debt payments) was a negative \$1,319. (Ex. 5) In his response to written interrogatories, he indicated his monthly expenses were around \$1,500 and not \$3,400. At the hearing, he stated his wife was no longer working, which reduced his monthly income by 1,200. (Tr. 35) With these corrections, his net remainder is approximately a negative \$1,000 monthly.

Applicant is in a custody battle concerning his five-year-old daughter from a prior relationship and is incurring attorney fees. (Tr. 21, 25-27) His five-year-old daughter and his two-month-old daughter live with him and his wife. (Tr. 26) His wife is not currently working outside the home. Even though his daughter lives with him, he pays \$87 weekly in child support. (Tr. 28)

In January or February 2014, Applicant returned his \$59,000 home to the seller. (Tr. 59) He states he, "just walked away from it. It was owner-finance." (Tr. 38) He now pays \$300 monthly for rent and lives with his grandparents. (Tr. 39, 46)

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 interests of 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 to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order (EO) 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding 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 as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

Applicant has four collection accounts totaling approximately \$25,000. Two of the debts are less than \$350 each. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Five Financial Considerations 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 current reliability, trustworthiness, or good judgment;

(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.

Applicant meets none of the mitigating factors for financial considerations. His financial difficulties are both recent and multiple. He has been full-time employed with his current employer since July 2013. The only evidence of circumstances beyond his control is his assertion he is currently involved in a custody determination concerning his five-year-old daughter. He provided no documentation showing costs related to that litigation. Even the two smaller debts of less than \$350 each remain unpaid. He was asked about the four debts during his September 2013 PSI. He stated he offered to pay \$20 monthly on the truck repossession and could pay \$10 monthly on the medical obligations. He has not acted responsibly in addressing his debts. He provided no evidence he has received credit or financial counseling. For six months he made payment to a credit service, but none of the money paid went to any of the four creditors. He has not demonstrated that his financial problems are under control or that he has a plan to bring them under control. He has not made a good-faith effort to satisfy his debts.

AG ¶ 20(a) does not apply because the delinquent debts remain unpaid, and because they remain unpaid, they are considered recent. Applicant has been asked about these obligations starting in September 2013. Given sufficient opportunity to address his financial delinquencies, Applicant has failed to act timely or responsibly under the circumstances. Failing to pay the debts casts doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) does not apply. The custody litigation is an event beyond his control; however, he failed to establish how this litigation impacted his current ability to pay his debts. His self-employed income, which ended in February 2013, was minimal. He has been full-time employed since July 2013. The mitigating condition listed in AG ¶ 20(c) does not apply. He has not received financial counseling. Additionally, there is no clear showing that his financial obligations are being addressed.

The mitigating condition listed in AG ¶ 20(d) does not apply because Applicant has failed to make payment on any of the delinquent accounts. The mitigating condition listed in AG ¶ 20(e) does not apply because Applicant has not provided documented proof to substantiate the basis of any disputed account.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance 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 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. The majority of the debt set forth in the SOR is a repossessed truck. He financed \$23,613 on the vehicle and asserted, but failed to document, the creditor offered to settle the debt for \$6,000. He has been aware of the Government's concern about his delinquent debts since his September 2013 PSI, which was reinforced in the February 2014 financial interrogatories and the June 2014 SOR. Although aware of the Government's concern, no payments have been made on the delinquent debts.

Applicant failed to mitigate the financial considerations security concerns. He failed to offer evidence of financial counseling or provide documentation regarding his past efforts to address his delinquent debts. Even the two smaller collection debts of less than \$350 each have yet to be paid.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a security clearance. The awarding of a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under Applicant's current circumstances, a clearance is not warranted. In the future, if Applicant has paid his delinquent obligations, established compliance with a repayment plan, or otherwise substantially addressed his past-due obligations, he may well demonstrate persuasive evidence of his security worthiness. However, a clearance at this time is not warranted.

Overall, the record evidence leaves me with substantial doubt as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial considerations.

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, Financial Considerations: **AGAINST APPLICANT**

Subparagraphs 1.a – 1.d: **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 a security clearance. Eligibility for access to classified information is denied.

CLAUDE R. HEINY II
Administrative Judge

