



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



In the matter of:)	
)	
)	ISCR Case No. 14-01526
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: Robert A. Garrison, Esquire

03/27/2015

Decision

WHITE, David M., Administrative Judge:

Applicant incurred more than \$20,000 in delinquent debts that he could not afford to repay. He discharged over \$44,000 in debt through bankruptcy in September 2014, but failed to demonstrate changed circumstances that would preclude future delinquencies. The evidence is insufficient to mitigate resulting security concerns. Based upon a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SF 86) on June 18, 2013. On June 6, 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 for Determining Eligibility for Access to Classified Information*, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing (AR) on July 18, 2014, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on October 8, 2014. The case was assigned to me on October 9, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Video Teleconference Hearing on December 10, 2014, and I convened the hearing, as scheduled, on January 12, 2015. Applicant, his counsel, the witnesses, and the court reporter attended the hearing in person. Department Counsel participated from DOHA Headquarters by video teleconference. The Government offered Exhibits (GE) 1 through 10, which were admitted after I overruled relevance objections by Applicant's counsel to some of the older documents. Applicant testified on his own behalf, and five other witnesses testified for him. Applicant offered no documentary evidence. DOHA received the transcript of the hearing (Tr.) on January 21, 2015.

Findings of Fact

Applicant is a 58-year-old employee of a defense contractor. He has been continuously employed since 1995, when he retired at pay grade E-6 after 20 years of service in the Navy. He is married, for the second time, with four children, ages 17, 15, 12, and 9, and two adult stepchildren. He and his second wife are informally separated. He is a high school graduate. He has held a security clearance for most of his adult life. (GE 1; GE 2.)

In his response to the SOR, Applicant admitted the eleven allegations concerning delinquent debts set forth in SOR ¶¶ 1.a through 1.k. (AR.) Applicant's admissions are incorporated in the following findings.

I concluded after analysis of GE 8 through 10 that the two delinquencies alleged in SOR ¶¶ 1.a and 1.i represent reports of an original April 2010 debt from a returned check to a retail store that was placed for collection (¶ 1.i), and a subsequent judgment debt obtained by the collection agency on that debt (¶ 1.a). I further concluded that the two debts alleged in SOR ¶¶ 1.d and 1.j represent a charged off credit card account that was opened in February 2005, last paid in August 2010 (¶1.j), and reported in a larger amount by the collection agency that acquired the debt in May 2013 (¶ 1.d). It is also evident that the two allegations in SOR ¶¶ 1.c and 1.g represent reports by subsequent collection agencies on different dates of the same medical debt that originated in a distant state in March 2008.

Applicant's credit bureau reports substantiate the existence of all of the delinquent debts alleged in the SOR. After eliminating the duplicate allegations discussed above, these documented delinquencies comprise 8 debts totaling \$21,206, which he failed to pay during the past seven years. He did not document any payment toward, or basis to dispute, any of these debts. (AR; GE 2; GE 8; GE 9.)

Applicant testified that he did not remember having delinquent debts prior to and during the investigation in connection with his last security clearance application during 2002 and 2003. Government Exhibits 3 and 4 document the existence of several past-

due accounts totaling around \$8,000 that he claimed in August 2002 to have either settled or entered into repayment agreements that he intended to follow. One of these debts was later reduced to a judgment, for which the plaintiff obtained a writ of garnishment against Applicant in January 2003. During a January 2003 follow-up security interview to discuss financial issues, Applicant revealed that he also had a truck repossessed in 1999 for nonpayment of the loan. (GE 3 through GE 7; Tr. 103-104.)

Applicant and his wife testified that, by mutual agreement, she handled the family's budget, bill paying, and finances up until their separation in August 2010. They also testified that their delinquent debts resulted from her failure to pay the debts in question without his knowledge, and despite his provision of sufficient income into their joint bank account to make the payments. Neither explained where the money went that should have gone toward their bills, although his wife said that postpartum depression and serious problems involving her family members caused her to become unable to continue managing things. Applicant and others testified that he first became aware of his wife's failure to pay bills when he confronted her after discovering a foreclosure notice on his garage door while shoveling snow off their driveway during December of 2009 or 2010. (Tr. 50, 64, 73-81, 91-93, 98, 106-107.)

Applicant and his wife said that, as a result of this discovery, he took over the family financial management, moved into a separate rental accommodation, and initiated divorce proceedings. All evidence indicates that this separation and move occurred in late July or August 2010. After discovering the foreclosure notice, Applicant promptly negotiated a mortgage loan modification toward which he has consistently made timely payments and thereby avoided the foreclosure. His credit reports indicate that his mortgage loan was last delinquent in December 2010, and is currently paid as agreed. On July 9, 2013, Applicant told an interviewer from the Office of Personnel Management (OPM) that his separation from his wife, "was caused by infidelity on behalf of the separated spouse." He did not mention the financial issues being a reason for the separation and establishment of two households during that interview. (AR; GE 1; GE 2; GE 8; GE 9; Tr. 61, 89, 93-95, 98-99.)

Applicant was diagnosed with, and successfully treated for cancer in 2011. The \$1,494 debt alleged in SOR ¶ 1.k was a medical bill for a biopsy that his medical insurance did not cover. He subsequently obtained more comprehensive medical insurance and the other medical debts listed on the SOR relate either to a dental bill incurred in 2011 (¶ 1.f), or to the 2008 debt in a distant state (¶¶ 1.c and 1.g). (GE 8; GE 9; Tr. 114.)

On his June 2013 SF 86, and during his July 2013 OPM interview, Applicant stated that he planned to resolve his delinquent debts by filing for bankruptcy before finalizing his divorce. He confirmed this intention in his February 18, 2014 response to financial interrogatories, and said that he would file within a month. He and his wife filed a Chapter 7 bankruptcy petition on May 23, 2014. In addition to more than \$4,000 in unpaid 2013 federal income taxes, the petition listed \$44,659 in unsecured debts, many

of which were apparently incurred after their 2010 separation. These debts were discharged on September 10, 2014. (GE 1; GE 2; GE 10.)

Applicant submitted a monthly Personal Financial Statement in February 2014, and filed May 2014 monthly income and expense schedules for the joint bankruptcy. The former showed his \$7,062 in income; \$5,220 in expenses; and a \$1,406 mortgage payment; with a net remainder of \$436. The latter showed Applicant with \$7,286 in income and \$7,400 in expenses (including the mortgage payment); as well as \$2,029 in income and \$1,751 in expenses for his wife (with whom their four children and his 21-year-old stepdaughter still reside); resulting in a joint net remainder of \$165. (GE 2; GE 10.) Applicant testified that he still plans to pursue divorce from his wife, but will have to either reopen his initial 2010 filing, if possible, or file a new action because the original 2010 filing has lapsed. (Tr. 89.)

Applicant's pastor, landlord, coworker, wife, and supervisor all testified for him. Each witness also considers him a good friend and excellent person. They described his dedication to supporting his family, his prompt rent payments since moving out of the marital home, and his efforts to continue paying all the other bills associated with maintaining separate households and five children ranging from ages 10 to 21. All described him as hardworking, thrifty, reliable, honest, and patriotic. (Tr. 33-85, 117-121.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions (DCs) and mitigating conditions (MCs), which are to be used 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, “[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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 protect or 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

Guideline F, Financial Considerations

The security concerns under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

The record evidence potentially raises security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

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

Applicant accrued more than \$21,200 in delinquent debts over the past seven years as alleged in the SOR. He was unable to satisfy any of those debts. This evidence raised security concerns under DCs 19(a) and (c), thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

(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's SOR-listed delinquent debts are recent and occurred under circumstances that have not improved. He remains essentially the sole source of support for his wife and their five children, ages 10 through 21, who live in their home. Applicant's financial situation was worsened by his move into rental accommodations after their 2010 separation, and he remains jointly liable for the family's debts. The living expense estimates in the record evidence are unrealistically low, particularly when including those of Applicant's wife and children. The evidence does not support a finding that recurrence of delinquent debts is unlikely. He therefore failed to establish substantial mitigation under MC 20(a).

Applicant also offered insufficient evidence to support significant mitigation under MC 20(b). He voluntarily separated from his wife, establishing a second household to support, yet has taken no effective steps toward divorce and remains liable for all family debt. He has been fully employed during the period he incurred substantial delinquent debts, but took no action to resolve them until loss of his security clearance was imminent. This was not responsible action under the circumstances, under Appeal Board precedent.

Applicant did not undergo financial counseling other than that required for the bankruptcy proceeding, or demonstrate improved financial practices. He obtained a Chapter 7 bankruptcy discharge of almost \$45,000 in unsecured debts that he could not

afford to repay in September 2014, but he did not demonstrate that the demands on his resources would be reduced to the point that he could remain solvent. Applicant also had financial problems in 2002 through 2003, resulting in garnishment of his wages at that time. Insufficient time has passed since his bankruptcy for him to demonstrate that his finances will come under control. He did not dispute any SOR-listed debts. These facts preclude significant mitigation under MC 20(c), (d), or (e).

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 pertinent facts and circumstances surrounding this case. Applicant is a patriotic, sincere, hardworking, thrifty, and mature individual who is well respected both personally and professionally. However, he has assumed large and increasing financial obligations that continue to exceed his income despite his best efforts. These circumstances create ongoing potential for pressure and duress. The evidence does not support a finding that continuation or recurrence of financial problems are unlikely, or that behavioral changes demonstrate rehabilitation. Overall, the record evidence creates substantial doubt as to Applicant's present eligibility and suitability for a security clearance, and the Directive requires that any doubt be resolved in favor of the national security.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: AGAINST APPLICANT

Subparagraphs 1.a through 1.k: Against Applicant¹

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.

DAVID M. WHITE
Administrative Judge

¹While found against Applicant, subparagraphs 1.a and 1.i; 1.c and 1.g; and 1.d and 1.j; are each duplicate allegations of only three underlying delinquent debts and are not considered to support separate concerns. They illustrate part of the "history of not meeting financial obligations," however.