



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



In the matter of:)
)
) ISCR Case No. 14-01677
)
Applicant for Security Clearance)

Appearances

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

02/04/2015

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. Applicant had two charged-off accounts and two collection accounts. He has taken insufficient action to resolve the financial considerations security concerns. Clearance is denied.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on June 23, 2014, the DoD issued a Statement of Reason (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 17, 2014, Applicant answered the SOR and requested a hearing. On October 2, 2014, I was assigned the case. On

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.

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 through 3 and Applicant's Exhibit A without objection. Applicant testified at the hearing. The record was held open to allow Applicant to submit additional information. Additional material (Ex. B through U) was submitted and admitted into the record without objection. On October 29, 2014, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, he admitted all of the factual allegations in the SOR, and his admissions are incorporated herein. After a thorough review of the pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 32-year-old aircraft engine mechanic who has worked for a defense contractor since mid-2013 and seeks a security clearance. Applicant served on active duty with the U.S. Air Force from July 2000 through July 2006. He was honorably separated at the rank of sergeant (E-4). (Ex. F) While on active duty he was twice awarded the Air Force Achievement Medal. (Ex. F) Although stationed at a stateside base, he spent approximately three of his six years in the Air Force deployed to the Middle East. (Tr. 25) He held a secret clearance while in the Air Force. (Tr. 31)

Applicant receives \$1,714 monthly from the U.S. Department of Veterans Affairs (VA). His disabilities are rated at ninety percent for injury to his back, knee, and neck. (Ex. M, Tr. 23)

After leaving active duty, Applicant was unemployed from 2006 to 2007. From 2007 to 2008, he worked as an aircraft mechanic for a DoD contractor at an overseas location. (Tr. 23) From 2008 until obtaining his current job, he had periods of unemployment and underemployment. In January 2009, he started school using his G.I. educational benefits, which paid him \$700 monthly. (Tr. 26) At the time, he did not work, did not receive unemployment, and was able to live on the money he received in educational and disability benefits. (Tr. 26) At that time, he was also able to provide money to his parents. (Tr. 26)

Applicant's current annual pay is \$55,000, but with overtime pay he anticipated making between \$68,000 and \$70,000 this year. (Tr. 24) His disability pay is slightly over \$20,000 annually, which would bring his anticipated income for the year to \$88,000 to \$90,000. His monthly net remainder (monthly income less monthly expenses and debt payment) is \$1,777. (Ex. M)

Applicant called no witnesses other than himself. His direct supervisor provided a letter stating Applicant is hard-working, motivated, prompt, dependable, volunteers for challenging jobs, is willing to work overtime whenever required, and his aircraft expertise and work ethics are exceptional. (Ex. C) He has received an employee monthly appreciation award for his superior performance. (Ex. D) Applicant was also team member of the month for his outstanding performance and dedicated service. (Ex.

E) In 2004, he received grateful appreciation for his outstanding participation in the Air Force Assistance Fund Campaign. (Ex. T)

Applicant is current on his \$625 monthly student loan payments. (Ex. K, L, P) Applicant's November 2013 credit bureau report (credit report) indicated payment on \$46,000 of student loans was being deferred. (Ex. 2) His December 2014 credit report (Ex. U) indicates he had been making \$50 monthly payments on a \$3,512 student loan in a timely manner since October 2012 and is making \$574 monthly payments on \$49,751 in student loans during the same period. (Ex. U)

In Applicant's October 2013 Electronic Questionnaires for Investigations Processing (e-QIP), he lists delinquencies on two mortgages (\$145,000 and \$80,000), a \$22,782 charged-off account (SOR 1.a), a \$5,000 delinquent credit card account (SOR 1.b), a \$15,892 credit card account in collection (SOR .1.d), and a \$3,400 telephone bill in collection. (Ex. 1)

In October 2006, after leaving the Air Force, he moved into his father's home. (Tr. 25) Although he did not have a job, he purchased a home for \$77,400 to be used as rental property. (Tr. 25, 26, 28, 29) When he purchased the house, he obtained a \$23,000 home equity line of credit (SOR 1.a), which he used to make home repairs and used part as the down payment on a second home. (Ex. M, Tr. 25) He purchased the house next door to his father's home. There was a \$143,925 mortgage with \$1,469 monthly payments. (Ex. 2, Tr. 25) After purchasing the houses, the real estate market in the state was greatly depressed. (Tr. 29)

Initially, Applicant was able to rent out both homes. He received \$700 to \$800 monthly rent on one of the houses, which was sufficient to pay the mortgage on that property. (Tr. 21) He stopped making the mortgage payments when the tenants stopped paying rent. Both homes went to foreclosure. Since foreclosure, both homes have been resold. Applicant has not received any demand from the mortgage companies for deficit payment. (Tr. 43) He has not received any IRS forms 1099-A, Acquisition or Abandonment of Secured Property, or 1099-C, Cancellation of Debt, related to the houses. (Tr. 43)

In August 2008, the \$23,745 home equity loan was charged off. (Ex. 2) The delinquent debt appears on his December 2014 credit report as a charged-off bad debt. (Ex. U) He asserts he contacted the creditor, but the creditor was unable to validate the debt. (Tr. 34)

In June 2006, he opened a bank credit card account (SOR 1.b), which had an outstanding balance of \$9,199 when it was transferred to a collection agency. (Ex. M) At the time of the hearing, Applicant had yet to contact the creditor, but planned on doing so following the hearing to see if a repayment arrangement could be made to address this delinquent debt. (Tr. 16)

A \$17,575 delinquent debt (SOR 1.d)² was turned over to a collection company. (Ex. 2) Applicant has arranged to make \$50 monthly payments on the debt, which has a current balance of \$19,766. (Ex. A, I, M, Q) On September 16, 2014, he made his first payment on this debt. (Ex. A) In October 2014 and November 2014, he made two additional payments. (Ex. I, S) The debt appears on his November 2013 credit report, but not on his October 2014 or his December 2014 credit reports. (Ex. 2, L, U) He asserted, but failed to document, that the creditor offered to settle the debt if he made six monthly payments of \$700 each. (Tr. 34, 35) Applicant has not accepted the offer. (Tr. 35)

In June 2003, Applicant opened a credit card account (SOR 1.c, \$6,816) that was charged off in June 2008. (Ex. 2) When he contacted the creditor, the creditor was unable to validate the debt. The creditor had no knowledge about the debt due to it being charged off. (Tr. 16) Applicant intended to do more investigating into the obligation. (Tr. 16)

While stationed overseas, Applicant incurred a \$3,422 telephone bill, which he listed in his October 2013 e-QIP. (Ex. 1) In October 2014, he started making \$50 monthly payments on the debt. (Ex. I, L, M, S) This debt is not listed as a debt of concern in the SOR.

As of October 2014, Applicant's credit scores were: 645, 664, and 610. (Ex. M) As of December 2014, his credit scores were: 645, 645, and 654. (Ex. U) Applicant stated he had sufficient money to pay his debts, but had not started paying them. (Tr. 27) His 2004 pickup truck is paid for. (Tr. 37) He has \$19,893 in his company's 401(k) retirement program, \$7,569 in a Roth IRA, \$1,271 in his checking accounts, and \$761 in a growth fund. (Ex. G, H, I, J, N, O, R, Tr. 39, 40) He makes \$400 monthly payments to his Roth IRA. (Tr. 39)

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.

² Although the original creditor is the same in the debts in SOR 1.b and 1.d., the debts are two separate obligations.

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 had two charged-off and two collection accounts totaling more than \$56,000. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Four 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's current annual pay is \$55,000, but with overtime pay he anticipated making \$68,000 to \$70,000 this year. His disability pay is slightly over \$20,000 annually, which brings his anticipated income for the year to \$88,000 to \$90,000. His monthly net remainder is \$1,777. He was putting \$400 monthly into his retirement fund. However, he showed he made three monthly payments of \$50 on the SOR delinquent accounts. He has yet to contact one of the collection accounts. The creditors on the two charged-off accounts are unable to verify the debts. He provided no written evidence related to his discussions with these creditors. He is making his student loan payments and an additional \$50 monthly payment on a non-SOR debt.

Applicant does not fully meet any of the mitigating factors for financial considerations. His financial difficulties are both recent and multiple. He has not acted responsibly in addressing his debts. He has received no credit or financial counseling, nor has he demonstrated that his financial problems are under control, or that he has a

plan to bring them under control in the near future. He has not made a good-faith effort to satisfy his debts.

Applicant receives only partial application of the mitigating conditions listed in AG ¶ 20(b), for the two houses went to foreclosure following the downturn in the real estate market and his renters not paying rent. However, he purchased both homes when he had no job. He has been employed since mid-2013. Given sufficient opportunity to address his financial delinquencies, he has failed to act timely or responsibly under the circumstances.

Good-faith requires a showing that a person act in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his or her control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties. ISCR Case No. 05-11366 at 4 n.9 (App. Bd. January 12, 2007) (citing ISCR Case No. 03-13096 at 4 (App. Bd. November 29, 2005); ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. December 1, 1999).

Applicant's financial difficulties were not recently incurred, but are considered recent because they remain unpaid. AG ¶ 20(a) does not apply. The mitigating condition listed in AG ¶ 20(c) does not apply because there is no evidence of "financial counseling" received and the SOR debts have not been sufficiently addressed.

The mitigating condition listed in AG ¶ 20(d) does not apply because, to date, Applicant's efforts to address his delinquent accounts have been minimal. Three \$50 payments are insufficient to establish a good-faith effort to repay his delinquent accounts and he has yet to contact the holder of one of the collection accounts.

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. There is some evidence in favor of mitigating Applicant's conduct. He has started making payments on one of the delinquent accounts. He has known of the Government's concern over his finances since his December 2013 interview, which was restated in his June 2014 SOR. He documented payment of three \$50 monthly payments on a \$17,575 collection account.

The disqualifying evidence under the whole-person concept is more substantial. While he had periods of unemployment and schooling after he left active duty in 2006, which would have made paying on his delinquent debts more difficult. He has been full-time employed starting in mid-2013 and has made minimal payments on the SOR debts.

The concept of "meaningful track record" includes evidence of actual debt reduction through payment of debts. However, an applicant is not required to establish that he has paid off each and every debt listed in the SOR. All that is required is for him to demonstrate he has established a plan to resolve his delinquent debt and has taken significant action to implement that plan. Without a track record of actual resolution of debts, it is unknown whether the debts will, in fact, be resolved in the future.

I must reasonably consider the entirety of Applicant's financial situation and his actions in evaluating the extent to which that plan is credible and realistic. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan may provide for payment on such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR. In this case, Applicant has a net monthly remainder of \$1,777 and is making a \$50 payment on an SOR collection debt and a \$50 payment on a telephone debt. He is also current on his student loan payments.

The issue is not simply whether all Applicant's debts have been paid – they have not – it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(a)(1).) Applicant's efforts to address the SOR debts have been minimal. Overall, the record evidence leaves me with questions and doubts about 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.

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.

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