



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



In the matter of:)	
)	
)	ISCR Case No. 14-01997
)	
Applicant for Security Clearance)	

Appearances

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

08/24/2015

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 owed more than \$25,000 in federal taxes, had a foreclosure on his home, a vehicle repossessed, and had nine additional charged-off, collection, or delinquent accounts, which totaled more than \$14,000. The mortgage obligation is no longer owed and he is paying his tax obligation. He has mitigated the financial considerations security concerns. Clearance is granted.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on September 2, 2014, the DoD issued a Statement of Reason (SOR) detailing financial considerations

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.

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 September 18, 2014, Applicant answered the SOR and requested a hearing. On January 16, 2015, I was assigned the case. On January 28, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for a hearing to be convened on February 10, 2015. On February 3, 2015, that hearing was cancelled due to a lack of timely notification.

On April 29, 2015, a Notice of Hearing was issued for a hearing convened on May 7, 2015. At the hearing, Government's Exhibits (Ex.) 1 through 7 and Applicant's Exhibit A were admitted without objection. Applicant testified at the hearing. The record was held open to allow Applicant to submit additional information. Additional material (Ex. B) was submitted and admitted into the record without objection. On May 15, 2015, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, he admitted his home was in foreclosure, that he owed Federal income taxes, which were filed in 2009 for Chapter 13 bankruptcy protection, and that two accounts had been charged off. He denies the remaining SOR allegations. His admissions are incorporated as facts. After a thorough review of the pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 56-year-old aircraft painter who has worked for a defense contractor since September 2008, and seeks to obtain a security clearance. His gross pay is approximately \$3,000 every two weeks. (Ex. 2) From August 1977 through August 1980, he served in the U.S. Marine Corps, honorably separating as a corporal (E-4). From August 1987 through August 1994, he served in the U.S. Army, honorably separating as a staff sergeant (E-6). (Ex. 2, Tr. 57)

Before obtaining his current job, Applicant was an independent contractor. (Tr. 27) Three individuals he hired provided him with false social security numbers. This resulted in the Internal Revenue Service (IRS) claiming the three individuals were employees and not independent contractors. Additional taxes were assessed against Applicant for tax years 2005 through 2008, and also tax year 2011. (Ex. A, Ex. 2, Tr. 25) All tax years except for 2006 are now paid.

In October 2013, Applicant contacted the IRS concerning his Federal income tax debt. (Ex. 2) In June 2014, he paid the IRS \$150. (Ex. B) In July 2014, he established a repayment plan and started paying the IRS \$550 every two months. (Tr. 25) He made payments in: July 2014, September 2014, November 2014, and January 2015. (Ex. B) He was entitled to a tax refund for tax year 2013. (Ex. A) That refund was intercepted and \$1,148 was applied to his 2011 tax liability, which paid all arrearage he owed for that tax year. (Ex. A) The additional \$68 of the refund was applied to his 2006 taxes, leaving a balance owed of \$8,771. As of April 2015, a 2014 refund of \$862 was applied to his 2006 tax liability, reducing the balance to \$7,919. (Ex. A)

In August 2009, Applicant sought Chapter 13, Wage Earner's Plan bankruptcy protection. (Ex. 2) At the time of filing, his average monthly income was \$5,000, his wife's average monthly income was \$1,263, and their average monthly expenses were \$3,833. (Ex. 6, Tr. 36) The net income was approximately \$2,400. (Ex. 6) Applicant's assets were approximately \$137,600, of which \$124,000 represented his house and his 2007 pickup. His liabilities were \$154,500, with the house and pickup accounting for approximately \$127,000 of the liability. Excluding the house and the truck, he had approximately \$13,600 in assets and \$27,000 in liabilities. (Ex. 6)

Applicant was required to attend financial counseling as part of the bankruptcy. (Tr. 43) From August 2009 through May 2012,² the monthly amount paid to the bankruptcy trustee was automatically withheld from his pay. (Ex. 2) In May 2012, he could no longer afford the monthly amounts and stopped making payments. The bankruptcy was then dismissed.

During Applicant's 30 months of payments, he paid approximately \$75,000 to the bankruptcy trustee. (Ex. 7, Tr. 38) During the Chapter 13, his mortgage company³ received approximately \$50,000. (Ex. 2, Ex. 7) Approximately \$11,000 was paid on his pickup during the bankruptcy and approximately \$1,685 was paid to other secured creditors.⁴ (Ex. 7)

In March 2007, Applicant purchased a \$28,304 pickup truck and made the \$675 monthly payments. (Ex. 3) In 2011, directly after the dismissal of his bankruptcy, he voluntarily surrendered possession of the pickup. (Ex. 2, Tr. 43) A \$7,332 (SOR 1.j) debt was incurred following the surrender of the vehicle. He indicated he received a letter from the creditor informing him that after the truck was sold he owed \$3,500. (Tr. 42, 44) He has not paid the debt because he was working on addressing the home foreclosure and was making tax payments first. (Ex. 2)

On Applicant's February 2013 Electronic Questionnaires for Investigations Processing (e-QIP), he listed a Chapter 13 bankruptcy filed in August 2009, that he owed \$1,800 in Federal income tax, and that he had defaulted on a home loan and on a truck loan. He also indicated a medical debt had been turned over to a collection firm. (Ex. 1)

² The bankruptcy documents indicate Applicant's case was dismissed in November 2011 and not May 2012 as claimed by Applicant. (Ex. 7) The amount paid during the bankruptcy is not in dispute.

³ The record fails to indicate the date Applicant purchased his home, however his February 2013 credit report indicates he had a \$61,600 mortgage opened in March 2006. (Ex. 5) From the record it is unclear if this was the initial mortgage company or the mortgage debt had been transferred from a different mortgage company.

⁴ The trustee paid \$1,865 to secured creditors of which there were four. The two secured furniture accounts (SOR 1.f and SOR 1.g) totaled \$1,665. Applicant's bankruptcy filing shows the county tax assessor submitted a \$3,200 secured claim and a department store submitted a \$1,000 secured claim. There is no indication which of the four secured claims was paid by the \$1,685 payment made by the bankruptcy trustee. (Ex. 6)

In March and April 2013, Applicant was interviewed about his finances and completed a Personal Subject Interview (PSI). (Ex. 2) He was asked about the \$339 (SOR 1.a) and \$862 (SOR 1.b) medical collection accounts, which he had acknowledged on his e-QIP. He had listed the \$694 delinquent medical account (SOR 1.c). (Ex. 1) He stated the \$375 collection account (SOR 1.e) was his wife's car note and that he was never on the note. (Ex.2) The four remaining SOR debts were not discussed during the interviews. Those debts were: a \$936 medical collection account (SOR 1.d), a \$1,845 cable bill collection account (SOR 1.i), and a \$473 television service provider collection account (SOR 1.m). (Ex. 2, Ex. 4, Tr. 33)

During the interview, Applicant discussed the two furniture charged-off accounts (SOR 1.f, \$397 and SOR 1.g, \$1,268). (Ex. 2) He indicated he contacted the furniture company and due to a reorganization of the company following the company's bankruptcy, the creditor did not know where Applicant should send payment. (Ex. 2) As previously stated, the two furniture accounts had been listed as secured claims in his bankruptcy. (Tr. 35)

In April 2014, Applicant answered written financial interrogatories. (Tr. 2) At that time, he asserted he had returned the cable company's equipment (SOR 1.i, \$1,845) and no longer owed anything. (Ex. 2) In September 2014, he asserted he had returned the equipment to the television service provider (SOR 1.m, \$473). (SOR Answer) He was unsure about other delinquent accounts, that they might be medical accounts, and stated he would be contacting the creditors. (Ex. 2) Applicant and his daughter were in an automobile accident caused by another individual. (Tr. 33) He has and had medical insurance through his current employer, but for some reason the four medical bills were never paid. (Tr. 34)

In July 2014, Applicant's Deed in Lieu of Foreclosure was approved and the \$97,200 lien on the property held by the mortgage company (SOR 1.h) was released. (SOR Answer)

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 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 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination of the loyalty of the applicant concerned.” See *also* 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 under agreed upon terms. Absent evidence of strong 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 a history of financial problems. In 2009, he had to resort to bankruptcy protection. He had a home foreclosure, a vehicle repossessed, and unpaid taxes, all of which totaled more than \$135,000. 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 was a self-employed contractor in the building trade. In August 2009, his income in the construction industry had dropped to the point where he sought bankruptcy protection. His monthly net income was approximately \$2,400. Excluding his home and pickup truck, he had approximately \$13,600 in assets and \$27,000 in liabilities. The plan lasted for 30 months before he could no longer afford to make the required monthly payments. During his bankruptcy, he paid approximately \$75,000 to the trustee.

During the course of the bankruptcy, Applicant's mortgage company received approximately \$50,000. In July 2014, a Deed in Lieu of Foreclosure was approved and the \$97,200 lien on the property held by the mortgage company was released. He owes no money on this debt. I find for him on this debt.

In March 2007, Applicant purchased a \$28,304 pickup truck and made the \$675 monthly payments through November 2011. In the 29 months from the purchase, in March 2007, until the start of the bankruptcy, in August 2009, he paid more than \$19,000. During his bankruptcy, approximately \$11,000 more was paid on his pickup. Following the repossession, the creditor told him he owes \$3,500. That debt remains unpaid. He has not paid the debt because he was addressing the home foreclosure and was making tax payments first. I find for him on this debt.

During the bankruptcy, the trustee paid \$1,865 to secured creditors of which there were four. The two secured furniture accounts totaled \$1,665. It is uncertain how much was paid on these furniture accounts. When Applicant contacted the company, the creditor did not know where he should sent payment on these two accounts due to a company reorganization following the company's bankruptcy. I find for him on these two debts.

When Applicant was a self-employed contractor, he hired three individuals he treated as independent contractors. When the social security numbers they provided were determined to be fraudulent the IRS assessed additional federal income tax. He has been making regular payments on the tax debt. As of April 2015, he has reduced his tax obligation to \$7,919 and is continuing to make payments on the debt. I find for him on his tax liability.

Applicant and his daughter were involved in a vehicle accident that was not his fault. Even though he had medical insurance at the time, and still does, four of the medical debts have not been paid. He returned the equipment to the cable company and to the television service provider.

Under AG ¶ 20(a), Applicant's financial problems were contributed to by the IRS disallowing his claim that his workers were independent contractors and not employees. Paying \$75,000 over the 30 months of his bankruptcy shows good faith. AG ¶ 20(a) and AG ¶ 20(b) apply.

Under AG ¶ 20(c) and ¶ 20(d), Applicant is paying his tax liability, and is no longer liable on the mortgage. He received financial counseling, appears to be living within his means, and meeting his current financial obligations. AG ¶ 20(c) and ¶ 20(d) apply.

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 debts incurred were not the type that indicates poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. Money was not spent frivolously. The SOR debts were not incurred on luxuries, but were for medical treatment, taxes, a home, and a truck.

The largest obligation was a mortgage that Applicant no longer owes. The next largest debt was for taxes, which he is paying and has reduced to approximately \$8,000. The third largest debt followed the repossession of his truck, which is not a very large obligation. He had paid more than \$19,000 before his truck was repossessed. He asserts the creditor says he owes \$3,500 on the debt.

Applicant paid the bankruptcy trustee more than \$75,000 over a thirty-month period. Paying for this period of time gives me confidence he will continue making his tax payments in a timely manner. It also gives me confidence he will address his other delinquent debts when he is able to do so. He first concentrated on the home foreclosure and his tax debt.

The issue is not simply whether all his debts are paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(a)(1).) Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant 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: FOR APPLICANT

Subparagraphs 1.a – 1.m: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

CLAUDE R. HEINY II
Administrative Judge