



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 14-02587
)
Applicant for Security Clearance)

Appearances

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

07/28/2015

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 November 1, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain 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 October 27, 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).

Applicant answered the SOR on January 14, 2015. He admitted five of the debts (SOR 1.a, 1.c, 1.g, 1.h, and 1.l). While he admitted SOR 1.g, he did not agree to the amount of the debt. He denied six debts (SOR 1.b, 1.d, 1.f, 1.i, 1.j, and 1.k), mainly because he did not have knowledge or information on the debts, or the debts were duplicates of debts he admitted. He did not provide a response for SOR debt 1.e, and it is considered a denial of the debt. Department Counsel was prepared to proceed on May 5, 2015, and the case was assigned to me on May 11, 2015. DOD issued a notice of hearing on May 18, 2015, scheduling a hearing for June 3, 2015. I convened the hearing as scheduled. The Government offered two exhibits that I marked and admitted into the record without objection as Government Exhibits (GX) 1 and 2. Applicant testified but did not submit any exhibits. I received the transcript of the hearing (Tr.) on June 10, 2015.

Findings of Fact

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

Applicant is 59 years old and has been the vice-president of a defense contractor firm since January 2013. He has been married for 12 years and has two children. He served two tours on active duty in the Navy from February 1974 to November 1980, and from February 1983 until January 1993. He received an honorable discharge as a Chief (E-7). Applicant successfully had access to classified information while he was on active duty. His wife now works part-time at the local hospital, and contributes to the household income. Even with his wife's income, Applicant does not have any monthly disposable income. He lives paycheck to paycheck. (Tr. 29-32, 48-49, 59-61); GX 1, e-QIP, dated October 14, 2013)

The SOR lists, and a credit report (GX 2, dated January 14, 2014) verifies, the following delinquent debts for Applicant: a judgment by a credit card company for \$4,259 (SOR 1.a); an account in collection by the same credit card company for \$6,187 (SOR 1.b); a debt to a telephone company in collection for \$174 (SOR 1.c); an account in collection for \$31 (SOR 1.d); a bank debt in collection for \$1,083 (SOR 1.e); a bank account debt to a different bank for \$8,749 (SOR 1.f); a bank debt in collection for \$15,794 (SOR 1.g); an account in collection for \$7,285 (SOR 1.h); a medical account in collection for \$731 (SOR 1.i); a television subscriber account in collection for \$399 (SOR 1.j); a medical account in collection for \$342 (SOR 1.k); and another television subscriber account in collection for \$144 (SOR 1.l). The total amount of the debt in the SOR is \$45,000. Applicant admitted to \$28,000 of the debt.

After leaving the Navy, Applicant was employed as a product manager for a firearms company from November 1997 until he was terminated in January 2009. While employed by this company, he received a six figure yearly income. Applicant was not clear why he was terminated, but he believes his superiors did not like his sales forecasts. After his termination, he went from a six figure income to no income. (Tr. 19-20)

After his termination, Applicant tried to find employment in the firearms field in which he had experience. Sales were down and no company was hiring. He drew unemployment compensation but it was only \$249 a week. It was not sufficient to sustain his family. His wife was not employed at the time, so she could not provide any income for the family. Applicant cashed in his former 401(k) account to continue to pay his bills. He no longer has savings or a retirement account. He stopped using credit cards in 2011. When he could not find a job in the firearms industry, he looked for employment in any type of position. He applied for many jobs, and he had friends helping him look for work. In October 2009, he ran out of funds and turned to social services for support for his family. By the end of 2009, he finally found employment assembling trailers for \$11 an hour. (Tr. 20-22)

Even though he was working, he continued to look for a position commensurate with his experience. He received a job offer from a company that provided support to the forces in Afghanistan at a substantial salary. Before he could complete the documents required for him to qualify for the position, the Government terminated the contract for convenience. At the same time, his bank was foreclosing the mortgage on his house. The house lost value in the housing crisis at the time, and his mortgage was more than the value of the house. He was behind on mortgage payments because of his unemployment. Just before his house was to be sold at auction, he received an employment offer in June 2011 from a company to be a project manager that would pay him enough to again make his mortgage payments. He renegotiated the mortgage payments, and he is still current with his mortgage. (Tr. 22-23)

Applicant worked for this company for approximately 18 months. He also had been in contact for some time with a former Navy shipmate who was the owner of a business. His friend asked him to come to work for him, and he started with the company in January 2013. He has been consistently employed with the company as a vice-president. He does not make as high a salary as he did before he was terminated in 2009, but he does make enough to pay his mortgage and take care of the present needs of his family. He renegotiated some debts not on the SOR and is current with those debts. This is verified by the credit report (GX 2). Applicant stated, and the credit reports verifies, that the large SOR debts were accumulated before his termination in 2009. The medical and television service debts were incurred after his 2009 termination. He has not used a credit card since 2009. He presented no documentation to show payments made on any of the SOR debts. (Tr. 23-24)

Applicant incurred the large credit card debts listed in the SOR when he was employed in the firearms industry and making a good salary. At the time, he had sufficient income to pay the debts he incurred. After losing his job in 2009, he and his family lived frugally. They did not go out to dinner or participate in other entertainment. He tried to pay his past-due debts one after another as funds became available. He was unable to pay some of his current bills leading to the medical and television service debts in the SOR. He spent about six month receiving food stamps for his family.

Applicant agrees he owes the debts that he admitted. He denied some debts because he believed they were duplicates of other debts. He has every intention of paying the debts when he has funds available. All of his debts were a direct result of a sudden, unexpected, and involuntary loss of employment. He tried everything he could to rectify his financial situation even to the point of volunteering for combat-related service in Afghanistan. His plan and intent is to pay each one of his debts in turn. He will complete paying a car loan shortly and will then move to another debt. (Tr. 24-33)

Applicant tried to negotiate a settlement of the debt at SOR 1.a, but the creditor did not cooperate even though Applicant made six or seven \$100 payments in 2011 and 2012. The creditor placed a lien against his house for this debt. Applicant offered to pay the entire debt using the funds from refinancing the mortgage. The creditor refused to release the lien he had on the house so there was no agreement. Applicant has not made any payments on this account except the six or seven \$100 payments he claims to have made. He did not provide any documents to verify the payments he claimed. (Tr. 34-39, 53-56)

Applicant had only two accounts with the creditor for SOR 1.a and 1.b. Based upon this information, Applicant believes SOR 1.b is a duplicate of the SOR 1.a debt with interest and fees added. He admitted the debt at SOR 1.c, and has not had contact with the creditor or made any payments on the debt. He denied the debt at SOR 1.d. He has no idea of the origin of the debt. He would have paid a \$31 dollar debt if he knew about it. Applicant admits the debt at SOR 1.e which is for a credit card he uses at a home improvement company. He has not contacted the creditor or made any payments on this debt. He has no recollection or information on the debt at SOR 1.f. Applicant admits the debt at SOR 1.g but thinks the amount is higher than he remembers. He has not made any payments on this account. He admits the credit card debt at SOR 1.h. He has not contacted the creditor or made any payments on this account. He denies the two medical debts (SOR 1.i and 1.k). He has no knowledge of the debts or the circumstances leading to medical debts. (Tr. 39-44)

Applicant admits he at one time had television service from the creditor for SOR 1.j. When his financial issues arose, the service was terminated with a balance due. He did not pay this bill. A few years later, he requested to again receive service from the company. He was advised by the company that they would provide the service and waived the past-due debt. He remained a customer of this company for over two years. He admits he owes the debt listed at SOR 1.l. (Tr. 44-47)

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 was terminated from a good-paying job and could not find meaningful good-paying work for almost three years. He had small jobs during this time but they did not pay enough for him to meet all of his financial obligations. Even though he denied some of the debts because he had no knowledge of them, the credit report validates the debts. The delinquent debts, as established by Applicant's admissions and the credit report, shows an inability to satisfy debt and raises the following Financial Considerations Disqualifying Conditions under AG ¶ 19:

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

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

Applicant accumulated debt prior to 2009 which he was able to satisfy because he had a good paying job. The debt became delinquent starting in 2009 when he was terminated from his good-paying job and could not find meaningful work for about three years. He tried very hard to find good employment but was not successful until June 2011. He used his savings and applied for public assistance to meet his family's needs.

He did not use credit cards and accumulated only limited additional debts. He is now again gainfully employed enjoying a good salary. The delinquent debts were incurred by circumstances beyond his control and are unlikely to recur since he is now fully employed. He acted reasonably under the circumstances since he sought employment and has not accumulated additional debt. AG ¶¶ 20(a) and (b) apply.

Applicant did not present any information that he sought or received financial counseling. The financial problems are not being resolved or under control. AG ¶20(c) does not apply.

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 not established that he has paid any of his past-due financial obligations, or that he has a reasonable plan to pay any of his debts. Applicant has been gainfully employed since at least June 2011. He claims that he is living pay check to paycheck and has no funds to pay his delinquent debts. He has not presented information on any austerity measures he has taken to have discretionary funds to pay his debts. He did not present any information to show that he cannot make payments on his debts. His plan is to pay debts one at a time when funds are available. He has not shown the amount of funds that he may have available to him to pay debts. When he has paid a debt, he will move to the next debt. As noted above, a plan to pay debts in the future is not sufficient to establish a good-faith effort to pay the debts. While he states he paid a limited amount of his delinquent debt, he has not provided information or evidence to verify his claim, and 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 has not shown that he manages his personal financial obligations reasonably and responsibly, and his lack of responsible financial conduct is likely to continue. There is ample evidence of irresponsible behavior, lack of good judgment, and financial 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's long and honorable service in the Navy. However, this information does not offset the significant information concerning Applicant's irresponsible management of his finances. 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:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c – 1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraphs 1.k and 1.l:	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