



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



In the matter of:)
)
) ISCR Case No: 14-03176
)
)
Applicant for Security Clearance)

For Government: Caroline Heintzelman, Esquire, Department Counsel
For Applicant: *Pro se*

03/06/2015

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Statement of the Case

On December 7, 2007, Applicant submitted an electronic Questionnaire for Investigations Processing Investigation Request (e-QIP) as part of a re-investigation for his security clearance. On September 17, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) 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 on September 1, 2006.

Applicant answered the SOR in writing (Answer) on October 22, 2014, and requested a hearing before an administrative judge. On December 15, 2014, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. On January 6, 2015, DOHA issued a Notice of Hearing, setting the case for January 20, 2015. Applicant conferred with Department Counsel on December 10 and 19, 2014, and on January 2, 2015, regarding the scheduling of a hearing date in January 2015. (Tr. 8.) At the hearing, he did not object to proceeding with the hearing, having received a formal notice of the date less than 15 days before the scheduled date. (Tr. 7.) The case was heard as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 9 into evidence without objection. Applicant testified. He offered Applicant Exhibits (AE) 1 through 5 into evidence without objection. The record remained open until February 16, 2015, in order to provide him time to submit additional documents. DOHA received the hearing transcript (Tr.) on January 30, 2015. Applicant timely submitted AE 6, which was admitted without objection, after which the record closed.

Findings of Fact

In his Answer to the SOR, Applicant admitted all allegations, except those alleged in ¶¶ 1.c, 1.f, and 1.i because he was unfamiliar with the creditor. All admissions are incorporated herein.

Applicant is 55 years old. He has some college credits. His wife of 24 years died in March 2014. Applicant stayed home with her for four months before she died. (Tr. 12.) They have two adult children, ages 18 and 21, both of whom he supports while they attend college. (Tr. 26.) He has worked for the same defense contractor for 36 years and held a secret security clearance for 30 years. For the past nine years, he has been a project manager. (Tr. 33.) In January 2008 he submitted a security clearance application (SCA) for a routine re-investigation. In a February 2008 interview, the Government discussed financial concerns with him, including delinquent debts. (Tr. 34; GE 4.) His security clearance was subsequently renewed. (Tr. 32.)

Applicant stated that his financial problems began sometime in 2004 after his wife was injured and unable to work. Subsequent to the injury, she taught music lessons at home and played piano for their church until she could no longer do that. (Tr. 30.) She earned about \$800 a month and received social security disability benefits from the time she was injured until 2012 when she could no longer teach. In 2007 Applicant and his wife hired a debt consolidation company to help manage their mounting debts, but stopped after six or eight months because they were not happy with the company's payment process. (Tr. 32.) By 2012 their financial situation worsened. (Tr. 35.) They considered filing bankruptcy, but decided to attempt to pay their debts. (Tr. 37.) In December 2012 Applicant submitted another SCA in order to upgrade his position. In that SCA, he disclosed that he was making payments on unpaid taxes for 2010. (GE 1.)

Based on credit bureau reports (CBR) dated February 2008, February 2013, March 2014, and December 2014, the SOR alleged 12 delinquent debts totaling

\$42,862 that began accumulating in 2007. A summary of the status of each debt is as follows:

Debts Paid/Resolved/Resolving:

SOR ¶ 1.a. The \$15,604 judgment owed to a bank for a credit card debt is paid. The judgment was entered on December 7, 2009. Applicant made regular payments on the judgment until he could no longer afford them. On October 22, 2014, the bank obtained a garnishment order for \$1,675, the unpaid amount. Beginning that month, \$400 was deducted from Appellant's monthly salary. As of February 12, 2015, the garnishment was paid. (AE 1, 6.)

SOR ¶ 1.B. The past due balance of \$371 for a credit card debt owed to a bank was paid on January 13, 2015. The remaining balance is \$3,733. (AE 2.)

SOR ¶ 1.e. The \$13,629 credit card debt owed to a bank was cancelled by the bank in November 2008. Although this debt was a joint account, the IRS Form 1099C Cancellation of Debt listed only his late wife's name, which is the reason the debt continues to appear on his CBR. (Tr. 58-60; AE 3.) It is resolved.

SOR ¶ 1.h. The \$85 credit card debt owed to a department store was paid, but Applicant cannot find his receipt. (Tr. 61.)

Debts Unresolved:

SOR ¶ 1.c. The \$207 debt owed to a creditor is unpaid. Applicant does not recognize it. Although he denies owing it, he has not filed a formal dispute with the credit reporting bureau. (Tr. 54.)

SOR ¶ 1.d. The \$2,292 debt for payday loans owed to a bank and charged off in April 2012 is unresolved. (Tr. 56-57.)

SOR ¶ 1.f. The \$110 debt owed to a creditor is unpaid. Applicant does not recognize it. Although he denies owing it, he has not filed a formal dispute with the credit reporting bureau. (Tr. 61.)

SOR ¶ 1.g. The \$1,713 credit card debt owed to a bank is unpaid. (Tr. 62-63.)

SOR ¶ 1.i. The \$4,731 credit card debt owed to a retail store is unresolved. (Tr. 62-63.)

SOR ¶ 1.j. The \$1,061 credit card debt owed to a bank is unpaid. (Tr. 62-63.)

SOR ¶ 1.k. The \$3,371 credit card debt owed to a retail store is unresolved. (Tr. 62-63.)

SOR¶ 1.I. The \$50 debt owed to a creditor is unpaid. Applicant does not recognize it and has no bill for it. Although he denies owing it, he has not filed a formal dispute with the credit reporting bureau. (Tr. 61.)

In summary, Applicant paid or resolved \$29,689 of the SOR-alleged debt. About \$13,535 remains unresolved. In addition, he is repaying his 401(k) \$32,000 for monies he borrowed in January 2012 to preserve his mortgage, and in January 2013 to pay personal debts. (Tr. 39, 67.) He also owes \$1,400 to the Internal Revenue Service (IRS) for 2011 taxes, which he pays through an automatic deduction every month for \$100. He thinks his tax refund for 2014 will be sufficient to pay that debt in full. (Tr. 42.) He owes \$522 for state income taxes for the years 2010 and 2011. He pays the state \$95 per month through an automatic deduction. (AE 6.) He previously resolved his 2010 outstanding federal taxes.¹

Based on Applicant's bi-weekly Leave and Earnings Statement (LES), his annual salary is about \$64,500.² (AE 1.) His net monthly income is \$3,300, after taxes and payments on three debts, including the 401(k) loan. (Tr. 40.) Based on a personal financial statement his monthly expenses are greater than his income. (Tr. 73; AE 4.) His mortgage and utilities are current. (Tr. 37.) He makes minimum payments on one credit card that has a balance of \$1,800, and another that has a balance of \$916. Both have been delinquent at times. (Tr. 38, 52.)

Applicant stated that his financial situation has improved over the years, as he has made progress paying debts. (Tr. 65.) He said that he has paid many debts not listed on the SOR, including a debt he recently settled for \$400 that was owed to a company for outstanding payday loans. (AE 6.) He intends to pay all outstanding debts and not file bankruptcy. Because the garnishment is recently paid, he should have an additional \$500 a month to resolve other debts. He contacted two banks about making future payments on their outstanding credit card balances. (Tr. 63-65.)

Applicant testified candidly and honestly. He is embarrassed about his financial problems and has tried to address them. (Tr. 65-66.) He has not participated in credit counseling or budget management, and disclosed that he was a credit counselor in the past. (Tr. 70.) He acknowledged that 8 of the 12 SOR-listed debts are credit cards, most of which his wife used for unnecessary items. (Tr. 70.) He admitted that he managed his finances and family expenditures "poorly" over the years. (Tr. 78.)

Applicant's supervisor is aware that these financial problems have created security clearance concerns. Applicant discussed his financial situation with him over the years. (Tr. 26.) Applicant submitted performance evaluations for three years. In

¹All unalleged debts will not be considered in the analysis of disqualifying conditions, but may be considered in the whole-person discussion.

²Applicant testified that his annual salary is about \$78,000. (Tr. 67.) According to the LES, his total gross income as of November 13, 2014, was \$50,323, and would not total \$78,000 by the last pay period in December 2014. (AE 1.)

2011 he received a “Highly Effective” rating; in 2012 he received an “Effective” rating; and in 2013 he received a “Highly Effective” rating. (AE 5.)

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 (AG) list potentially disqualifying and mitigating conditions, which are useful 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “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.”

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 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.

Section 7 of Executive Order 10865 provides that an adverse decision shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18:

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.

AG ¶ 19 notes two disqualifying conditions that could potentially raise security concerns in this case:

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

As documented by CBRs, Applicant began accumulating delinquent debts between 2007 and 2014 that he has been unable or unwilling to resolve. The evidence is sufficient to raise these disqualifying conditions.

After the Government produced substantial evidence of those two disqualifying conditions, the burden shifted to Applicant to produce evidence and prove mitigation of the security concerns. AG ¶ 20 sets forth conditions that could potentially mitigate financial security concerns:

- (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.

According to the CBRs, Applicant's multiple financial problems have been ongoing over the past seven years, but actually started earlier according to his testimony. Hence, AG ¶ 20(a) does not apply. Some delinquent debts arose as a result of his wife's loss of employment and long-term disability, which were circumstances beyond his control. Because he did not present sufficient evidence demonstrating that he attempted to responsibly manage debts while they were accumulating over the years, only a partial application of AG ¶ 20(b) is warranted.

Applicant did not provide evidence to support the application of AG ¶ 20(c). He has not participated in credit or financial counseling, nor established a detailed long-term budget to address the unresolved SOR debts and other outstanding liabilities. Currently, his monthly expenses exceed his income. There are no clear indications that his financial issues are under control.

Applicant paid or resolved 4 of the 12 SOR-listed debts, exhibiting a good-faith effort to resolve those debts, and supporting the application of AG ¶ 20(d) as to those allegations. Eight of the SOR-listed debts remain unresolved. He did not provide evidence to document that he formally disputed any debts with the credit bureaus or creditors, as required for application of AG ¶ 20(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). They include the following:

(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) 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 include 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 facts and circumstances surrounding this case. Applicant is a 55-year-old man, who has successfully worked for a defense contractor for 35 years and held a security clearance during most of those years. He was married to his wife for 22 years, before she passed away in March 2014 after suffering a long-term disability. He has two adult children attending college, whom he supports. He was a good husband and is a good father.

After his wife ceased working sometime in 2004 due to an injury, Applicant said he began accumulating delinquent debts, which he could not pay. For the next ten years, he continued accumulating delinquent debts, many of which were unpaid credit cards. During a renewal investigation of his security clearance in 2008, the Government notified Applicant of its financial security concerns. In December 2012 he submitted another security clearance application, and disclosed that he was making payments on a 2010 income tax debt. Applicant honestly admits, without hesitation, that some of the financial problems are the result of years of financial mismanagement. He said that his financial situation is slowly improving.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases, stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of 'meaningful track record' necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrates that he has ' . . . established a plan to resolve his financial problems and taken significant actions to implement that plan.' The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2 (a) ('Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.') There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of 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.³

In this instance, there is insufficient evidence to demonstrate a meaningful track record within the scope of the term defined in the above case. Applicant addressed 4 of the 12 SOR-listed debts and reduced the amount of old delinquent debts from \$42,862 to \$13,535, which is owed to eight creditors. In addition to those outstanding debts, he is making payments on his 2011 federal and state income taxes, and 401(k) loan, the balance which is unknown. He maintains one credit card (with a \$3,733 balance) in good standing through minimum monthly payments. He has two outstanding credit cards, which are not alleged in the SOR, but remain unpaid or resolved. While acknowledging his responsibility to pay or resolve the financial problems, he has not sought professional advice, garnered a thorough understanding of his various financial obligations, or established a solid budget and plan to resolve them. Unfortunately, this situation has been present since before 2007, and there is no evidence to document a track record of financial responsibility and good judgment. In 2008 he was alerted to the Government's security concerns. During the hearing, he was uncertain about the status of many debts and his finances. His budget does not appear to accurately record the scope of ongoing expenses, all outstanding liabilities, and potentially reflects an incorrect income amount. The record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant did not mitigate the security concerns arising under the financial considerations guideline.

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
Subparagraphs 1.a and 1.b:	For Applicant
Subparagraphs 1.c and 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f and 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i through 1.l:	Against Applicant

³ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly not consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

SHARI DAM
Administrative Judge