



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-03884

Appearances

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

11/15/2015

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 has unpaid delinquent obligations resulting from a repossessed vehicle, collection accounts, and delinquent obligations. Financial considerations remain a security concern. Clearance is denied.

History of the Case

On March 23, 2015, acting under the relevant Executive Order and DoD Directive,¹ the DoD issued a Statement of Reasons (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 April 1, 2015, Applicant answered the SOR and requested a hearing. On May 27, 2015, I was assigned the case. On June

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.

16, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for the hearing convened on July 6, 2015. I admitted Government's Exhibits (Ex) 1 through 3 and Applicant's Exhibit A, without objection. Applicant and his wife testified at the hearing. The record was held open to allow Applicant to submit additional information. (Tr. 8) No additional material was received. On July 14, 2015, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, he denied two debts, which totaled approximately \$400. He admits the remaining eight delinquent SOR debts, which totaled approximately \$25,000. I incorporate Applicant's admissions as facts. After a thorough review of the pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 68-year-old aircraft mechanic who has worked for a defense contractor since September 1993, and he is seeking a security clearance. (Tr. 29) He honorably served in the U.S. Army. (Ex. 1, Tr. 28) From 1967 through 1969, he served two tours in Vietnam. (Tr. 26) In July 1969, he separated as a corporal (E-4). (Tr. 26) He receives \$1,100 monthly from the U.S. Department of Veteran's Affairs due to Agent Orange. (Tr. 39)

Applicant divorced in 1999, remarried in 2013, was together for two or three months before divorcing, and then remarrying in 2015. (Tr. 24) He has three children and a step-son ages 26, 26, 27, and 37. (Tr. 33) He pays for utilities and for a car for his daughter who is in college. (Tr. 34) There is no rent or mortgage on the house she lives in because her great aunt owns the home. (Tr. 47)

Applicant is diabetic and three or four years ago he blacked out and was hospitalized. (Tr. 34) He also had a stroke, was hospitalized a several days, and was unemployed for a month. (Tr. 35)

In January 2008, Applicant cosigned with his step-son on a \$25,000 car. (Tr. 17) His step-son failed to make the \$526 monthly payments on the vehicle as agreed. (Ex. 2, 3) The vehicle was repossessed, sold, and \$16,873 (SOR 1.a) remains owing on the loan. Applicant asked his step-son about the debt and the step-son said he would take care of the debt, but failed to do so. (Tr. 18) His credit reports indicate the last activity on the loan occurred in October 2011. (Ex. 2, 3) Applicant asserts the creditor offered to settle for \$6,000 or \$7,000. He provided no documentation supporting this claim.

In May 2009, Applicant purchased furniture (SOR 1.b, \$2,496) and agreed to make \$145 monthly payments toward the debt. (Tr. 22) His credit report indicates that over time that he had six other accounts with the same creditor that were all "paid as agreed." (Ex. 2) He had a payday loan (SOR 1.c, \$719) charged off. (Tr. 23) His credit report indicates that over time he had 11 accounts with this same creditor that were all "paid as agreed." (Ex. 2)

Applicant had a credit card account (SOR 1.d, \$353) charged off and two accounts placed for collection (SOR 1.e, \$3,652 and SOR 1.f, \$1,563). (Tr. 23-25) He has no knowledge about this last debt. (Tr. 25) He denied two other accounts (SOR 1.g, \$200 and SOR 1.h, \$197). (Tr. 25, SOR Answer) Both debts are listed on his February 2014 credit report. (Ex. 2) Two medical copayments of \$50 each (SOR 1.j and SOR 1.k) were placed for collection. (Tr. 25)

Applicant is current on two car payments. One payment is \$300 monthly on a 2008 vehicle and the other payment is \$500 monthly on a 2013 vehicle. (Tr. 38) His third vehicle, a 2001 truck, is paid for and has more than 400,000² miles on it. (Tr. 38) He receives income of approximately \$6,000 monthly to meet his expenses. (Tr. 40) His monthly social security benefit is \$1,900, his VA disability is \$1,100, and he takes home \$3,000 from his job. (Tr. 43) After paying expenses, he has approximately \$1,500 remaining each month. (Tr. 43) In May 2015, Applicant sought the services of a credit repair service. (Ex. A)

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 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.

² Applicant initially worked at a Navy installation until it closed and the work was moved to another Navy facility. His commute from home to work is approximately 80 miles and an hour and a half each way. (Tr. 28)

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 has a history of financial problems. A vehicle repossession resulted in an unpaid debt of approximately \$17,000 and he has other delinquent accounts totaling approximately \$8,000. 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 failed to present any documents indicating he had made payments on his delinquent obligations. There are no repayment agreements nor is there a showing Applicant has had recent communication with the SOR creditors. He denied two SOR debts, but both debts appear on his credit report. No additional evidence of payment was provided following the hearing.

Under AG ¶ 20(a), Applicant's numerous delinquent obligations remain unpaid. The nature of the debts are not so unusual that they are unlikely to recur. AG ¶ 20(a) does not apply. Applicant divorced and remarried a number of times. He also had a stroke three or four years ago and was out of work for a month. These are events beyond his control. However, he failed to show how these events impacted his current finances. He has approximately \$6,000 monthly income and after expenses he has approximately \$1,500 remaining monthly. He provided no documentation showing that even the two \$50 medical copayments have been paid. He has been employed since 1993 with no periods of unemployment. AG ¶ 20(b) does not mitigate the security concern.

Under AG ¶ 20(c) Applicant failed to explain any financial counseling he has received. There is no clear indication his finances are under control. He failed to show any payments on his delinquent obligations or that he has established repayment agreements with the creditors. The mitigating factors listed in AG ¶ 20(c) do not apply.

The lack of documentation also prevents the application of AG ¶ 20(d) “[T]he individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” A mere intention to repay debts without documentation establishing repayment is insufficient to warrant applying this mitigating condition.

Applicant denied two delinquent obligations, which are on his credit report, totaling approximately \$400. There is no evidence of a dispute having been filed. AG ¶ 20(e) does not apply because the mitigating factor requires there be a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and there must be documented proof to substantiate the basis of the dispute or evidence of actions to resolve the issue. No documentation was received.

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. I considered Applicant’s service to the U.S. military in hostile territory and that Agent Orange has caused him disabilities. He has worked for his employer for more than 22 years. Additionally, almost 70 percent of the delinquent debt relates to the repossessed vehicle he co-signed for with his step-son.

In March 2015, Applicant received an SOR informing him of the Government’s concern about his delinquent financial obligations. In May 2015, he sought the assistance of a credit repair service. He has paid none of the delinquent accounts. He has failed to establish a meaningful track record in paying his delinquent obligations.

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. 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.

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).) Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. 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. The repossessed vehicle debt and other delinquent obligations have yet to be addressed. 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.k: 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