



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



In the matter of:)
)
 I) ISCR Case No. 09-06525
)
)
 Applicant for Security Clearance)

Appearances

For Government: Richard Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

April 19, 2011

Decision

MASON, Paul J., Administrative Judge:

Applicant’s filing of the Chapter 7 bankruptcy petition in July 2010 weighs in his favor. However, his student loan accounts are still delinquent. The fact that Applicant has incurred no new debt since May 2006 also weighs in his favor, but is undermined by his bad credit that thwarted his opportunities to take on new debt, and his failure to act on the delinquent debts much sooner in the period between May 2006 and July 2010. Given the large amount of debt Applicant incurred between 2003 and September 2009, inadequate time has transpired for me to find in his favor under the financial guideline. Eligibility for access to classified information is denied.

Statement of the Case

Applicant completed and certified his Electronic Questionnaire for Investigations Processing (e-QIP)(GE 1) on June 9, 2009. He was interviewed by an investigator from the Office of Personnel Management (OPM) on July 27, 2009. A summary of his interview appears in Applicant's interrogatory answers dated November 30, 2009. Under question 4 (corrections to report of investigation), Applicant believed his credit debt was \$68,373, not \$45,000, as he estimated in the July 2009 interview. The current balance on his student loan is \$69,663, not over \$100,000 as he estimated in the July 2009 interview. Applicant and his wife are currently unable to qualify for a car loan and purchased a van for cash. Under question 6 of GE 2, Applicant indicated that with the additions or clarifications, the investigator's interview summary could be used at a hearing to determine his security suitability.

On June 4, 2010,¹ DOHA issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F). 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 (AG) implemented by the Department of Defense on September 1, 2006.

Applicant submitted his answer to the SOR on June 29, 2010. DOHA issued a Notice of Hearing on September 14, 2010, for a hearing on October 6, 2010. The hearing was held as scheduled. At the hearing, five exhibits (GE 1 through 5) were admitted in evidence (without objection) in support of the government's case. Applicant testified. His five exhibits (AE A through AE E) were admitted without objection. In the time allowed to submit post-hearing exhibits, Applicant supplied one exhibit (AE F). Department Counsel interposed no objection to the post-hearing exhibit. Applicant's exhibits AE A through AE F are now in the record. DOHA received the transcript (Tr.) on October 19, 2010. The record closed on October 27, 2010.

Rulings on Procedure

Before opening statements, Department Counsel moved to amend the SOR by withdrawing the following allegations (Tr. 5-7): SOR ¶ 1.e, which refers to the same debt as SOR ¶ 1.a; and SOR ¶ 1.k, which is the same debt as SOR ¶ 1.b. SOR ¶ 1.e and ¶ 1.k are found in Applicant's favor. During closing statements, Department Counsel suggested

¹ Department Counsel moved to have the "April 29, 2010" date stricken from the record. The motion was granted. (Tr. 5)

that SOR ¶1.g and SOR ¶ 1.f were the same account. (Tr. 57) A careful review of the record shows this to be the case, and SOR ¶ 1.g is found for Applicant.

Findings of Fact

The SOR lists 13 delinquent accounts under the financial considerations guideline. As noted in Rulings on Procedure, three of those accounts have been found in Applicant's favor. The debts total \$60,749. The student loan debt was 120 days past due in the amount of \$2,960, leaving a balance of approximately \$71,000. Applicant was asked to make modifications to the July 2009 interview summary. He stated the student loan balance was \$69,663 (GE 2 at 93)²

Applicant admitted SOR ¶ 1.a (judgment filed December 2004), SOR ¶ 1.b (judgment filed April 2004), ¶ 1.d, ¶ 1.e, ¶ 1.f, ¶ 1.i, ¶ 1.k, and ¶ 1.l. Applicant denied SOR ¶ 1.c, claiming the debt is not his. (AE C) He denied SOR ¶ 1.g. SOR ¶ 1.e and SOR ¶ 1.g have been found in Applicant's favor. He denied SOR ¶ 1.h and provided documentation claiming he was qualifying for an income-based repayment plan offered by the student loan organization. Applicant denied SOR ¶ 1.j claiming the account was assigned to his first wife under a divorce decree. SOR ¶ 1.k has been found in his favor. Applicant's admissions in his answer to the SOR are incorporated as findings of fact. The following represents additional factual findings.

Applicant is 36 years old. In October 1998, he married his first wife, and has two children from that marriage. He divorced his first wife in May 2006 and married his current wife in June 2006. He has one child from this marriage. Applicant received a bachelor of arts degree in psychology in June 1996, and his master of science degree in September 2002. He has worked for his present employer since January 2005. In his current position as customer service, level II, he manages accounts and does quality assurance for a military internet system. Applicant is an instructor at an art institute in the local area. (GE 1) He was investigated for a confidential clearance in January 2005.

Applicant's financial problems surfaced during his first marriage. Neither he nor his first wife managed their finances wisely. Remodeling their house, taking family vacations, purchasing appliances and a second car were major expenditures that added to the financial mismanagement. (GE 2; Tr. 31) After Applicant moved away from his first wife in August or September 2002, the listed accounts started to become delinquent. (Tr. 51) GE 4 (credit report) and GE 5 (credit report) show that in June 2003, the first account to become delinquent was SOR ¶ 1.f (telephone). Two additional accounts became delinquent in 2003. Three accounts became delinquent in 2004. SOR ¶ 1.a became a judgment in

² The handwritten page number appears in the lower right hand corner of the exhibit.

December 2004. SOR ¶ 1.b became a judgment in April 2004. The apartment account (SOR ¶ 1.i) became delinquent in March 2005. SOR ¶ 1.j was filed in March 2006. The student loan account (SOR ¶ 1.h) became delinquent in September 2009.

In his July 2009 interview, Applicant stated that when he divorced his first wife in May 2006, a stipulation required him to pay all the credit card debt totaling more than \$45,000. He stated that in the past three years he has taken no action to pay the large debts because the creditors refused to accept small payments. (GE 2) No additional information was provided. He and his wife currently have bad credit. He no longer uses credit cards and has no additional debt. He cannot afford a bankruptcy attorney. (*Id.*)

The following two paragraphs, which are not duplicate allegations, address the accounts that Applicant denies:

SOR ¶ 1.c, \$2,164, credit card: Applicant offered AE C (one-page document from a credit report) to support his claim that he never had an account with the creditor and he never used the name that appears in the exhibit. Applicant's two reasons for disputing the debt are noted. However, at the bottom of the one-page exhibit in bold letters are the words "Dispute File Information." Underneath the heading are the words "if you believe any of the information found on this report is incorrect, there are 3 ways to launch," and the rest of the sentence does not appear on the page. Other than his statements challenging responsibility for this account, there is no documentation establishing that Applicant officially disputed this account. The account remains his responsibility.

SOR ¶ 1.h, \$2,960, student loan 120 days past due, with a balance of approximately \$69,663 due. (GE 2 at 93): Initially, Applicant testified that he paid \$360 and the student loan officials indicated that his account was current. (Answer to SOR; Tr. 22) Later in his testimony, Applicant stated that he was taking steps to qualify for an income based repayment (IBR) plan. (Answer to SOR; AE A) He was submitting documentation to the student loan organization to determine manageable repayment amounts. (Tr. 37-38) He was told by officials that forbearance depended on his bankruptcy. (*Id.*) Applicant did not believe his student loan account was in forbearance. (Tr. 50) On October 18, 2010, Applicant was informed that the IBR was not processed because the student loan organization received notice that he filed bankruptcy. (AE F) Applicant is seeking to have the student loans discharged. (AE B) The student loan account remains delinquent because student loans cannot be discharged in bankruptcy under most circumstances.

¶ 1.j, \$2,408, loan for first wife's vehicle, account became a judgment in March 2006. (GE 4): Applicant indicated the divorce decree assigned this debt to his former wife. (Tr. 25) However, he did not provide any corroborating documentation that supports his claim. The judgment would still remain his responsibility. However, he listed the account

in Schedule F (unsecured creditors) and it will probably be discharged by his Chapter 7 petition.

Applicant indicated in his Answer to the SOR that in the last several years, he consulted with several financial services including debt consolidation programs, financial management plans, and a bankruptcy attorney. They agreed his income was insufficient to satisfy his debts. (Tr. 34) On July 23, 2010, he filed for Chapter 7 bankruptcy, including eight of the 10 listed accounts. (AE B) Since his divorce from his first wife in May 2006, Applicant has incurred no additional debt. (Answer to SOR) His child support has always been current. (Tr. 29)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. Each guideline lists potentially disqualifying conditions and mitigating conditions, which are required to be used to the extent they apply in evaluating an applicant's eligibility for access to classified information.

The administrative judge's ultimate goal is to reach a fair and impartial decision that is based on common sense. The decision should also include a careful, thorough evaluation of a number of variables known as the "whole-person concept" that brings together all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. 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 about the potential, rather than actual, risk of compromise of classified information.

Under Directive ¶ E3.1.4., 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 for obtaining a favorable security decision.

Analysis

Financial Considerations

The security concern for financial considerations is set forth 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.

There are two disqualifying conditions under AG ¶ 19 that may apply:

AG ¶ 19(a) (*inability or unwillingness to satisfy debts*); and

AG ¶ 19(c) (*a history of not meeting financial obligations*).

AG ¶¶ 19(a) and 19(c) apply. Applicant owes 10 creditors \$60,749 in delinquent debt. Applicant owes the student loan association a past due amount of \$2,960, on a balance of \$69,663 in delinquent debt. Applicant is unable to pay the debt. Applicant has a history of not meeting financial obligations that dates to 2003.

Five conditions under AG ¶ 20 could potentially mitigate Applicant's delinquent indebtedness:

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*);

AG ¶ 20(b) (*the conditions that resulted in the financial problem were largely beyond the person's control, and the person acted responsibly under the circumstances*);

AG ¶ 20(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*);

AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*); and

AG ¶ 20(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 to resolve the issue*).

AG ¶ 20(a) does not apply. Most of the accounts became delinquent in 2003, 2004, and 2005. However, the student loan account became delinquent in 2009. Waiting until after he received the SOR in June 2010 to file his Chapter 7 bankruptcy petition and pursue

a resolution of the student loan arrearage continues to cast doubts on Applicant's current reliability, trustworthiness and good judgment.

Notwithstanding his financial irresponsibility during the marriage, Applicant receives some mitigation under AG ¶ 20(b) for his divorce in May 2006, acquiescing to a stipulation in the decree requiring him to pay all the credit card debt. However, the favorable weight that Applicant receives for filing the Chapter 7 bankruptcy petition in July 2010 is decreased by the passage of more than four years before filing the petition.

Applicant receives some mitigation under AG ¶ 20(c) for consulting with several financial services and a bankruptcy attorney. In addition, the fact he has filed a Chapter 7 petition indicates that he is resolving most of the delinquent accounts except for SOR 1.c and 1.h. On the other hand, while Applicant has taken some documented steps to bring the student loans to a current or forbearance status in July 2010, they still remain delinquent.

Filing a Chapter 7 petition is a legitimate method of handling a person's financial debts when they discover they can no longer pay the debt. Applicant receives some mitigation under AG ¶ 20(d) by taking action to "otherwise resolve debts." However, the discharge of debts in this manner does not merit the same mitigation as a sustained track record of good-faith repayment of debts under AG ¶ 20(d). To Applicant's credit, he has incurred no new debt since May 2006. However, it is reasonable to conclude that part of the reason he incurred no new debt was his inability to obtain credit.

AG ¶ 20(e) requires a reasonable basis to dispute the delinquent debt and documented proof to substantiate his reasons for the dispute. Applicant has not provided documented proof to reinforce his claims regarding SOR 1.c. Having considered the adverse evidence under AG ¶ 19(a) and ¶ 19(c) with the mitigating evidence under AG ¶¶ 20(b), 20(c), 20(d), and 20(e), Applicant has not carried his burden of persuasion under the financial considerations guideline.

Whole-Person Concept

In evaluating Applicant's security clearance worthiness, I have examined the evidence under the disqualifying and mitigating conditions of the financial guideline. I have also weighed the circumstances within the context of nine variables known as the whole-person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors:

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 the participation was 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.

Appellant readily admitted that he lived beyond his means during his first marriage. After he moved away from his former wife in August or September 2002, his credit card accounts began to become delinquent. Three of the listed debts became delinquent in 2003. Additional accounts fell delinquent in 2004. Two judgments were filed in 2004, and one was filed in March 2006. Besides the remaining accounts that became delinquent in 2005, Applicant's student loans converted to a delinquent status in September 2009.

Applicant has been employed by his current employer since January 2005. After his divorce in May 2006, he admittedly took no action on the larger debts. His claims of trying to work out payment plans is undocumented. While consulting with several financial services, including a bankruptcy attorney about consolidating or discharging his debt, he waited until after he received the SOR to begin activity to repair his financial problems. Filing the Chapter 7 petition earlier would have meant a discharge and given Applicant more time to chart a course leading to qualifying for the IBR program (or some other plan) to bring the delinquent student loan accounts back to a current or forbearance status. Without a sustained track record of financial responsibility, and the lack of character evidence, Applicant has not met his burden of persuasion under the financial considerations guideline.

Formal Findings

Paragraph 1 (Guideline F): **AGAINST APPLICANT**

Subparagraphs 1.a, 1.b, 1.d, 1.e, 1.f, 1.g, 1.i, 1.j, 1.k, and 1.m: For Applicant

Subparagraphs 1.c, 1.h: Against Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant access to classified information. Eligibility for access to classified information is denied.

Paul J. Mason
Administrative Judge