



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



In the matter of:)
)
) ISCR Case No. 10-01555
)
)
Applicant for Security Clearance)

Appearances

For Government: Caroline H. Jeffreys, Esq., Department Counsel
For Applicant: *Pro se*

January 31, 2011

Decision

MASON, Paul J., Administrative Judge:

Applicant was aware that the federal government filed a tax lien against him in May 2002. Between 2004 and August 2009, he accumulated more than \$38,040 in delinquent debt. His two divorces, unemployment from April 2006 to July 2007, monthly child support and mother's support have been considered. However, these unanticipated events do not excuse Applicant from repaying his delinquent debts. The government advised Applicant several times beginning with his September 2007 interview, that his delinquent debts raised concerns. Yet, he provided no documentation that he paid any of the listed debts. Eligibility for access to classified information is denied.

Statement of the Case

Applicant completed and certified Electronic Questionnaire for Investigations Processing (Item 5, e-QIP) on August 27, 2009. He was interviewed by an investigator from the Office of Personnel Management (OPM) on November 9, 2009, and December 22, 2009. In his interrogatory answers submitted to the Government on June 9, 2010

(Item 6), Applicant agreed that the investigator's summaries of his November and December 2009 interviews were essentially correct,¹ and acknowledged the summaries could be used in a security clearance hearing to determine his security suitability. (*Id.*) On August 17, 2010, 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 furnished his answer (Item 4) to the SOR on September 11, 2010. He requested a decision be made on the record in lieu of a hearing. A copy of the Government's File of Relevant Material (FORM, the Government's evidence in support of the allegations of the SOR) was sent to Applicant on October 25, 2010. He received the FORM on October 29, 2010. In an attachment to the FORM, he was advised he could object to the information in the FORM or submit additional information in explanation or extenuation. His response was due on November 28, 2010. No response was received. The case file was assigned to me on January 14, 2011.

Findings of Fact

Applicant is 60 years old. He has been married twice; the second marriage ended in divorce in January 2006. He has four children, ages 36, 34, 30, and 20. He was in the military from July 1970 until July 1976, when he received an honorable discharge. In December 2004, after completing 35 hours of course material at a city college, he received a certificate in project management. He took several courses at an engineering institute from July to September 2009. He has been employed at the same or similar job as a senior systems engineer/program analyst (business process improvement specialist)² for several defense contractors at the same location since August 2001, with a period of unemployment from April 2006 to July 2007. (Item 5)

The SOR contains 13 allegations (delinquent debts) under the financial considerations guideline.³ The delinquent accounts total more than \$38,340. Credit reports dated October 21, 2010, April 7, 2010, October 8, 2009, and August 1, 2007, validate the status of the listed delinquent debts. Applicant's interview on September 6, 2007 (Item 13) has also been evaluated to determine whether Applicant disclosed any additional information about the delinquent accounts. Credit reports indicate and

¹ The only clarification he noted was his child support. He claimed that neither account is correct, but that the state where he resides correctly reflects a \$600 a month payment to reduce and eliminate an arrearage for his youngest child.

² He helps to provide guidance for information technicians and project managers to standardize development and maintenance processes using preferred business models.

³ For unexplained reasons, there is no 1.j allegation in the SOR.

Applicant recalled the federal tax lien was filed in May 2002. (Item 13) The other accounts changed over to a delinquent status between July 2004 and August 2009.

Applicant admitted SOR 1.a, 1.b, 1.d, 1.g, 1.i, 1.k, 1.l, and 1.m. He denied SOR 1.c, 1.e, 1.f, 1.h, and 1.n. He claimed the federal tax lien (SOR 1.a) was being disputed, but presented no documentation of the dispute. He claimed that on the advice of counsel, he had taken no action on the lien. Applicant indicated he paid the medical accounts identified in SOR 1.b, 1.d, 1.k, 1.l, and 1.m, but provided no documentation or evidence that verifies he formally disputed the delinquent medical accounts appearing in the credit bureau reports. He also claimed he was going to credit counseling service to resolve SOR 1.g and 1.i. Applicant submitted no independent evidence to support his enrollment in the credit counseling service.

In an attachment to Item 7, Applicant explained in the June 2010 interrogatory answers that he had not taken any steps to verify the delinquent debts. He identified two divorces, unemployment in 2000, unemployment in 2005 through 2006, \$600 a month child support, and \$400 a month for his mother's care, as major reasons for his financial problems. He emphasized his financial problems have never interfered with his job responsibilities. (*Id.*)

Character Evidence

On July 22, 2009, Applicant received a certificate of achievement for his contributions to the mission. He was recognized as employee of the second quarter of 2009 for his work on the business model and increased productivity of the management team.

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 are deemed necessary 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 significant period of a person's life with 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. I have avoided drawing inferences grounded on mere speculation or conjecture. 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 the potential, rather than actual, risk of compromise of classified information.

Under Directive ¶ E3.I.14., the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.I.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.

In 2001, Applicant began his employment for the defense contractor. He recalled the IRS filed the tax lien against him in May 2002. His first personal debt became delinquent in July 2004. His most recent account became delinquent in July 2008. Over the last eight years, Appellant has accumulated \$38,040 in delinquent debt which he has not repaid. AG ¶ 19(a) (*inability or unwillingness to satisfy debts*), and AG ¶ 19(c) (*a history of not meeting financial obligations*) apply.

Five mitigating conditions are potentially applicable. No mitigation is available 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 reliability, trustworthiness, and 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*).

There are 12 delinquent debts and one federal tax lien. The delinquent accounts did not materialize under unusual circumstances, and Applicant's failure to address the debts increases the likelihood that his current financial difficulties will persist and probably increase in the future. AG ¶ 20(a) does not apply.

Applicant has been divorced twice, and the last time was in January 2006. Item 5 (security form) shows that he has been unemployed from April 2006 until he resumed employment in July 2007. He is currently paying \$600 in child care and provides \$400 a month to care for his mother. Although the above events entitle Applicant to limited mitigation under AG ¶ 20(b), they do not relieve him altogether from repaying his debts. The unforeseen events are insufficient to weigh the condition in Applicant's favor. That is why there are two elements within the guideline. The second element is "the individual acted responsibly under the circumstances." Credible action under these circumstances would be to handle the delinquent accounts in a responsible manner. He has not taken measures to remedy the federal tax lien (SOR 1.a) that he has been aware of since May 2002. He has made no documented effort to address the small medical debt of \$66 identified in SOR 1.d. Applicant receives little consideration under AG ¶ 20(b).

There is no indication that Applicant has ever had financial counseling. Applicant's history of debt problems began in May 2002 with the federal tax lien, and he has done nothing to deal with them. Applicant's claim of having paid the medical debts is not credible without actual receipts for payment. Applicant's stated intention to group certain debts in a debt plan counseling service has no probative weight without documentation of enrollment and a record of payments. AG ¶¶ 20(c) and 20(d) do not apply.

Applicant claimed he has disputed certain debts. Unless he provides "documented proof to substantiate the basis of the dispute," his simple disagreement over a debt will not meet his burden of proving the validity of his dispute. AG ¶ 20(e) does not apply. Applicant's character evidence has been carefully considered, but it does not satisfactorily explain why Applicant has not paid his delinquent debts.

Whole-Person Concept

I have examined the evidence under the disqualifying and mitigating conditions in my ultimate finding against Applicant under the financial considerations 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.

Applicant is 60 years old. Based on his answers to the SOR, the information he provided in his (e-Qip), and the interrogatory answers he provided, he is a mature adult who spent six years in the military and received an honorable discharge in 1976. He has worked at his job since 2001, except when he was unemployed from April 2006 to July 2007. The performance awards show he has earned the respect of his management team.

Applicant has not demonstrated good judgment in the handling of his finances. He knew about his federal tax lien when it was filed in May 2002. The government placed Applicant on notice in September 2007 that his delinquent debts should be addressed. The Government placed Applicant on notice in November and December 2009 that his delinquent debts were a concern. In June 2010, the Government submitted written questions to Applicant asking for detailed information about what he had done to eliminate his debt. When Applicant received the FORM in October 2010, he was advised he could provide evidence and documentation. The government's overtures to Applicant to take responsibility for his delinquent debts can only be satisfied by credible documentation that shows Applicant is taking positive steps to pay his delinquent debts, or that he is seeking assistance through a debt consolidation plan, or that he is seeking help from the bankruptcy courts in a Chapter 7 or Chapter 13 petition. Applicant has no plan to ameliorate or extinguish his delinquent financial obligations. Because it is probable that Applicant's financial difficulties will continue in the future, the financial considerations guideline is found against him. See, AG ¶¶ 2(a)(1) through 2(a)(9).

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 through 1.i	Against Applicant
Subparagraph 1.k through 1.n	Against Applicant

Conclusion

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

Paul J. Mason
Administrative Judge