



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



In the matter of:)
)
) ISCR Case No. 10-02558
)
Applicant for Security Clearance)

Appearances

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

03/28/2012

Decision

HEINY, Claude R., Administrative Judge:

Applicant owed approximately \$32,000 on 16 delinquent obligations. He has paid or is making payment on half of the obligations. He plans to address the remainder. Applicant has rebutted or mitigated the security concerns under financial considerations. Clearance is granted.

History of the Case

Applicant contests the Department of Defense's (DoD) intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) on August 29, 2011, detailing security concerns under Guideline F (Financial Considerations).

¹ Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (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.

On September 13, 2011, Applicant answered the SOR and requested a hearing. On January 12, 2012, I was assigned the case. On January 19, 2012, DOHA issued a Notice of Hearing for the hearing held on February 1, 2012.

The Government offered exhibits (Ex.) 1 through 9, which were admitted into evidence without objection. Applicant testified and submitted Exhibits A through C, which were admitted into evidence without objection. The record was held open to allow Applicant to submit additional information. On February 10, 2012 and February 28, 2012, additional material was submitted. Department Counsel had no objection to the material, which was admitted into the record as Exs. D through L. On February 15, 2012, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, he denied the factual allegations in SOR ¶ 1. m. He admitted the remaining factual allegations, with explanations. He also provided additional information to support his request for eligibility for a security clearance. I incorporate Applicant's admissions to the SOR allegations and supporting documents into the findings of fact. After a thorough review of the pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 36-year-old test engineer who has worked for a defense contractor since November 2009. His annual income is \$58,000, but last year, with overtime, he made approximately \$65,000. (Tr. 30) From 1994 through 1996, he was a member of the Army National Guard. (Tr. 27) In 1996, he entered active duty with the U.S. Army and left in April 2008 as a sergeant (E-5). (Tr. 28) He remained a drilling reservist for one year after leaving active duty. (Tr. 28)

Applicant's co-workers state: Applicant is very goal oriented, a team player, attentive to detail, and devoted to his work. He is motivated, conscientious, well organized, thrives under adversity, and is a productive employee. (Exs. D and E)

On Applicant's February 2008 Questionnaire for Public Trust Positions, Standard Form (SF) 86 and on his December 2009 Electronic Questionnaires for Investigations Processing (e-QIP), he indicated he had filed bankruptcy in December 1997 and was more than 180 days delinquent on financial obligations. (Ex. 1, 2, 3) He listed his delinquent obligations on those forms. He indicated his financial problems started with his divorce and loss of full-time employment in April 2009.

In 1997 and 1998, Applicant filed for Chapter 7, bankruptcy protection. As a junior enlisted member he got caught up in a series of payday loans. (Tr. 53) He reaffirmed his car loan and a military credit card account. (Tr. 25) From his bankruptcy until 2006, he asserts he had good credit. (Tr. 25)

In July 2005, Applicant purchased a \$125,000 home with \$865 monthly mortgage payments. (Ex. 6) He fell behind on his payments and agreed to pay an additional \$235 monthly on his mortgage. He did so until May 2009, when he began working part time. In November 2009, when he obtained his current job, he realized he could no longer

afford the home and put it on the market. (Tr. 26) Additionally, his home and new job were in separate states. (Tr. 47) In February 2010, the house went to foreclosure. The mortgage company sent him an IRS Substitute Form 1099-A, which indicated the loan balance exceeded the fair market value of the home by \$237. (Ex. 7, Ex. G, Tr. 30) The mortgage lender has not asked Applicant to repay this amount.

In 2006, Applicant separated from his wife and was divorced in February 2008. His household income was cut in half. In 2008, he decided to leave the Army in hopes of getting a better-paying job so he could pay his debt. (Tr. 25) From April 2008 to April 2009, he worked as an IT technician and radio-support technician. (Tr. 25) From April 2009 through November 2009, he worked only part time. (Tr. 26)

In November 2009, Applicant began paying his delinquent obligations after starting his current job. He first started making monthly payments to pay off the collection account (SOR 1.m, \$890), which he has paid. (Attachment 2 to SOR Answer, Tr. 26)

Following Applicant's bankruptcy, he reaffirmed a military department store account obligation (SOR 1.n). From May 2008 to March 2009, Applicant's pay was garnished \$100 monthly and applied to his account. (Ex. 6) His 2008 federal income tax refund of \$800 and his 2010 tax refund of \$4,000 were intercepted and paid on this obligation. (Tr. 31) The obligation has been paid and his monthly garnishment, which had increased to \$300 monthly, ended. (Ex. 7, Tr. 31)

Applicant is making monthly payments on his US Vet Administration collection account. (Exs K and L) He intends this to be the next bill he pays off. (Tr. 36) He intends to address his federal obligations first then to pay his other debts starting with the smallest. (Tr. 48)

As of January 2010, Applicant had not received any financial counseling or used a debt consolidation service. (Ex. 6) He has since talked to a number of financial counseling services including CCCS, but was told they could not work with him due to the outstanding VA obligation. (Tr. 50) He listens to financial advisors on the radio. (Tr. 51)

In May 2011, he completed a monthly budget which indicated his net monthly income was \$2,896 and his monthly expenses were \$2,455, which left a net remainder of \$441. (Ex. 7) At that time, he was making a \$227 monthly van payment to his father for a 2002 Nissan; \$285 monthly payments on his 2003 Chevrolet pickup, \$512 monthly payments on the debt listed in SOR 1.n, and \$150 payments on the debt in SOR 1.d. He is current on his truck and van payments and his utility bills. (Tr. 33, 53) The debts in SOR 1.n and 1.d have now been paid. (Exs. H and J) His current wife does not work and they have a four-year-old son. (Tr. 31) He has three percent of his pay going to a company retirement savings account. (Tr. 49) He currently has \$6,585 in this account. (Ex. F)

A summary of Applicant's financial delinquent account and their current status follows:

	Creditor	Amount	Current Status
a	Medical collection account.	\$15	Paid in September 2011. (Ex. C, Enclosure 3 to SOR Answer, Tr. 35)
b	Charged-off credit card account. (Ex. 6)	\$565	Unpaid. (Tr. 36) Applicant obtained the card in an attempt to rebuild his credit.
c	Charged-off credit card account.	\$589	Unpaid. (tr. 37) Applicant obtained the card in an attempt to rebuild his credit.
d	Collection account for jewelry store credit card. (Ex. 6)	\$1,192	Paid. As of April 2011, Applicant was making \$150 monthly payments on this debt. (Ex. 7, Enclosure 1 to SOR Answer, Tr. 37) As of October 2011, it was settled in full. (Ex. H)
e	Collection account for a hardware store. (Ex. 6)	\$6,372	Unpaid. (Tr. 38)
f	Collection account on a credit card account. (Ex, 6)	\$1,996	Unpaid. February 2008 divorce decree assigned this debt to Applicant's ex-wife for payment. (Ex. A) If she does not pay the debt, he will. (Tr. 39)
g	Collection account on a bank credit card account. (Ex, 6)	\$8,794	Unpaid. In January 2010, he stated he would resume payment when he was able.
h	US Vet Administration collection account for an overpayment on GI Bill tuition. (Tr. 41) .	\$2,349	Paying. In February 2012, Applicant received an offer to make monthly payments on this debt, which he is paying. (Exs. K and L)
i	US VA collection account.	\$125	Paid. (Ex. L)
j	Collection account.	\$34	Paid. (Enclosure 4 to SOR Answer, Ex. Tr. 43)
k	Collection account on a book club account. (Ex, 6)	\$73	Unpaid. (Tr. 44)
l	Collection account for internet service. (Ex. 6, B)	\$182	Paying. Has agreed to a repayment plan and in January 2012, he paid half the balance. (Ex. I, Tr. 44, 45)
m	Collection account on a department store credit card account. (Ex, 6)	\$890	Paid. (Attachment 2 to SOR Answer, Tr. 46)

	Creditor	Amount	Current Status
n	Garnishment for a military store credit card. (Ex. 6)	\$8,485	Paid. (Ex. J, Tr. 46)
o	Collection account for a credit card.	\$1,306	Unpaid. (Tr. 47)
p	December 1997 Chapter 7 Bankruptcy.	\$	
q	Home foreclosure 2010.	\$	Foreclosure in February 2010. The loan balance exceeded the fair market value by \$237. (Ex. G)
	Total debt listed in SOR	\$32,677	

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.

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. Applicant has had to resort to bankruptcy protection in 1997 and currently has approximately \$32,000 in delinquent obligations. Disqualifying Conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

Four 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; and

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

Applicant has paid or is paying eight of the sixteen past-due obligations. His home went to foreclosure and the outstanding loan balance on the property exceeded the home's fair market value by \$237. The mortgage company has not requested payment of this amount. He has paid or is paying on more than \$13,000 of the \$32,000 of past due obligations, which is approximately forty percent of the total debt. In the past, he has arranged to make monthly payments on certain obligations and his honoring of those agreements give assurance he will continue to do so on his current arrangements.

As a junior enlisted service member, Applicant got in financial problems due to pay day loans and sought bankruptcy protection. From that date until he separated from his wife, he was paying his bills as agreed. His credit was good enough for him to purchase a home. In 2008, he not only experienced the financial burden of divorce, but also left active duty in search of a higher paying job. A year after leaving the service, his income was reduced because of eight months of part-time employment.

Under AG ¶ 20(a), Applicant's financial problems are numerous and recent. Although he went through divorce and under-employment, neither is such an unusual event to find that such events would never recur. AG ¶ 20(a) does not apply.

Under AG ¶ 20(b), Applicant experienced both separation and divorce along with the financial burden associated with each. Additionally, he was under employed for eight months before securing his current job. His financial problems are not completely over, but he is addressing his past-due obligations to the best of his ability. AG ¶ 20(b) applies.

Applicant is not making payment on each of the SOR obligations. He has determined to address the federal debts first and then address the other debts starting with the smallest and progressing to the largest. Good-faith requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. Applicant is acting in good-faith. In evaluating his assertion that he will continue to address his obligations, his past conduct must be evaluated. His promises to pay must be reviewed by looking at his past track record.

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. Applicant’s past conduct addressing his finances is considered in evaluating the extent to which his current 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.

Based on Applicant's current income, his past conduct in agreeing to monthly payments on certain obligations, and his following through on those obligations, I believe he will address his outstanding obligations.

Under AG ¶ 20 (c) and ¶ 20 (d), Applicant has paid or is paying eight of the sixteen obligations. He has not received any financial counseling, but listens to the financial counselors on the radio for advice on addressing his past-due obligations. He is living within his means, paying the debts he can, and no longer has the \$300 monthly garnishment, which can now be used to address his remaining obligations. AG ¶ 20 (c) and ¶ 20 (d) apply.

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. The debts incurred were not the type that indicates poor self-control, lack of judgment, or unwillingness to abide by rules and regulations.

Applicant's past history of addressing his financial obligations since obtaining his current job in November 2009, support his stated intention to pay all of his debts. He has a plan and is working that plan. The plan does not address all of the SOR debts simultaneously, because he does not have sufficient income to do so. As debts are paid, he will begin paying others. Of course, the issue is not simply whether all his debts are paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2 (a)(1).) All of his financial obligations have not been paid, but he has progressed past the point of merely making promises to pay his debts and is making progress on addressing them.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his financial considerations.

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: FOR APPLICANT

Subparagraphs 1.a – 1.q: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security interests to grant Applicant a security clearance. Eligibility for access to classified information is granted.

CLAUDE R. HEINY II
Administrative Judge