



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 10-08450
)
Applicant for Security Clearance)

Appearances

For Government: Candace Le'i Garcia, Esq., Department Counsel
For Applicant: *Pro se*

07/20/2012

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On March 7, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 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 answered the SOR on March 26, 2012, and requested a hearing before an administrative judge. The case was assigned to me on May 1, 2012. DOHA issued a notice of hearing on May 18, 2011, scheduling the hearing for June 12, 2012. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 7 were

admitted into evidence without objection. Applicant testified, and the documents he submitted with his response to the SOR were marked Applicant Exhibits (AE) A through E and admitted without objection. The record was held open for Applicant to submit additional information. Applicant timely submitted documents that were marked AE F through I and admitted without objection. Department Counsel's memorandum forwarding AE F through I is marked Hearing Exhibit (HE) I. DOHA received the hearing transcript (Tr.) on June 20, 2012.

Findings of Fact

Applicant is a 39-year-old employee of a defense contractor. He has worked for his current employer since May 2010. He held a security clearance in the past, but it lapsed when he obtained a job that did not require a clearance. He attended college for a period but did not obtain a degree. He married in 1997 and divorced in 2000. His second marriage ended in divorce in December 2003. He married for the third time in 2011. He has a 14-year-old child.¹

The SOR alleges 15 delinquent debts. Applicant admitted that at one time he owed the debts alleged in SOR ¶¶ 1.b through 1.g and 1.o, but he stated the debts had been paid. He admitted owing the \$2,707 debt to the Internal Revenue Service (IRS), as alleged in SOR ¶ 1.i, but he stated that he was in the process of making arrangements to pay the debt. He denied owing the remaining debts, stating that both his ex-wives opened accounts without his knowledge and consent.

Applicant had cancer and some of his medical bills were not completely paid by his insurance. He established that he paid or settled the medical debts alleged in SOR ¶¶ 1.b (\$441), 1.c (\$82), 1.d (\$373), and 1.o (\$277). He also established that he paid the three student loans totaling \$619, as identified in SOR ¶¶ 1.e, 1.f, and 1.g.²

Applicant denied owing the \$10,177 judgment alleged in SOR ¶ 1.a. There is no evidence in the record of a judgment of that amount. The May 2010 credit report lists a charged-off debt to a bank (Bank A), with a zero balance. The debt is listed as an individual account that was opened in December 2000, with a date of last action of March 2004. The credit report also lists a \$10,177 delinquent debt to a collection company on behalf of Bank A. The report shows the collection account was opened in April 2008. Later credit reports show the initial debt to Bank A, with a zero balance, but they do not show the debt to the collection company. The credit reports show a judgment of \$87,378 that was awarded to the collection company in July 2009. Applicant denied knowledge of any judgment to the collection company.³

Applicant had a joint checking account, an individual savings account, and an individual line of credit with Bank A. In August 2003, he owed about \$1,700 to the line of

¹ Tr. at 68, 91; GE 1; AE G, H.

² Tr. at 16-18, 26-28, 103-104; Applicant's response to SOR; GE 3-7; AE A-D, I.

³ Tr. at 18-41; Applicant's response to SOR; GE 3-7; AE G, I.

credit. Without his knowledge or consent, his second wife withdrew money from the checking and savings accounts and about \$5,800 from the line of credit. He complained to the bank, but he did not file a formal claim with the bank that the funds were obtained by fraud. His mother convinced him not to file a criminal complaint against his wife, as she would be on her own as a single mother of three after their divorce.⁴

The above debt is not specifically addressed in Applicant's divorce decree, which was issued in December 2003. The decree states that Applicant was "awarded any debts owing in his name only." Applicant stated that he did not pay the debt because he did not think it was right for him to pay for money that his wife took. He stated that a number of years ago, he told the Bank A representative that he would pay the original \$1,700 that he owed, but he would not pay the remainder that his ex-wife took. The representative stated that the bank wanted the full amount, at which time Applicant "just hung up and never spoke to them again." After he received the SOR, Applicant called Bank A, and the bank's representative asked him if he wanted to make payment arrangements. Applicant responded "No, I'm not paying for it. You should go after the girl," and he hung up the phone. He testified that if the bank would accept \$2,500, which would cover the \$1,700 he owed plus interest, then he would set up payment arrangements.⁵

Applicant denied owing the \$1,865 delinquent debt to a bank (Bank B), as alleged in SOR ¶ 1.h. He stated that his first ex-wife opened this credit card in his name. The May 2010 combined credit report shows that Equifax reported this account as charged-off, purchased by another lender, and a zero balance. The debt is listed as an individual account that was opened in 1995, with a date of last action of June 2005. Applicant's 2000 divorce decree specifically divides the assets and liabilities and names responsibility for individual debts. A debt to Bank B is not addressed in the decree. The debt is not listed by Equifax on the later credit reports. Experian reported in November 2011 that the bank wrote off \$1,865, and the account was purchased by another lender. TransUnion and Experian listed the bank debt as transferred with a zero balance on the May 2012 combined credit report. TransUnion and Experian also reported a delinquent debt of \$1,868 to a collection company on behalf of a bank that was acquired by Bank B.⁶

SOR ¶ 1.i alleges a delinquent debt of \$875 owed to a collection company on behalf of a hospital. Applicant denied any knowledge of the debt. He stated that his wife contacted the hospital, but it was unable to provide any answers about the basis of the debt. The debt is not listed on the most recent reports.⁷

⁴ Tr. at 18-41; Applicant's response to SOR; GE 3-7; AE G, I.

⁵ Tr. at 18-41; Applicant's response to SOR; GE 3-7; AE G, I.

⁶ Tr. at 41-50; Applicant's response to SOR; GE 3-7; AE I.

⁷ Tr. at 46-47. 50-51; Applicant's response to SOR; GE 3-7; AE I.

Applicant denied any knowledge of the \$4,943 delinquent debt to a bank (Bank C), as alleged in SOR ¶ 1.j. He stated that this account was opened by his first wife. The May 2010 combined credit report shows that Experian reported this account as charged-off, purchased by another lender, and a zero balance. The debt is listed as an individual account that was opened in 1998, with a date of last action of April 2004. The debt is not listed on the later credit reports.⁸

Applicant owes the IRS for tax years 2008, 2009, 2010, and 2011. SOR ¶ 1.l alleges Applicant's federal tax liability of \$2,707. He reported on his Questionnaire for National Security Positions (SF 86), submitted in May 2010, that he owed \$707 for tax year 2009. He wrote that his "company deducted insufficient taxes for 2009." He responded to DOHA interrogatories in January 2012 that he owed the IRS \$2,707 and that he was "working with IRS to refile 2009 taxes [and] agree upon a payment plan." He wrote in his response to the SOR:

I have contacted the United States Treasury (Internal Revenue Service) and I am in the process of making payment arrangements to satisfy this debt. The IRS is processing prior year returns and the payment arrangements will not be in effect until all returns are fully processed. The IRS does not have any proof of cooperation that they can provide but I do recognize this debt and am committed to satisfying it.

Applicant testified that he did not pay his taxes for 2011 when they were due because the IRS representative told him that he could lump all his tax years into his payment plan. Applicant called the IRS on May 31, 2012. Based on that phone call, the IRS established an installment agreement for Applicant to pay his taxes for tax years 2008, 2009, 2010, and 2011, through monthly payments of \$100, starting on July 19, 2012. Applicant provided a copy of the installment agreement. The full amount owed in taxes was not included in the agreement.⁹

SOR ¶ 1.k alleges a \$4,259 delinquent debt to a collection company on behalf of a bank (Bank D). Applicant denied any knowledge of the debt, writing that he "did not open this credit card." He stated that his first wife must have opened this account. He stated that he had never had an account with Bank D, and he did not know where the bank is located. Experian reported this debt on the May 2010 combined credit report as a collection account with a \$4,259 balance. The debt is listed under the collection company as an individual account that was opened in 2008, with a date of last action of May 2010. The debt to the collection company is not listed on the three later Equifax credit reports, the 2011 Experian report, or the May 2012 combined report. A debt to Bank D is listed on the May 2012 credit report as an individual account that was opened in 1994. It is reported as current, paid and closed, with a zero balance. In his 2000

⁸ Tr. at 51, 59-60; Applicant's response to SOR; GE 3-7; AE I.

⁹ Tr. at 70-91; Applicant's response to SOR; GE 1, 3; AE F.

divorce, the court ordered Applicant was liable for the balance of \$4,300 due on a credit card issued by Bank D.¹⁰

Applicant denied any knowledge of the \$5,143 delinquent debt to a collection company on behalf of a department store credit card issued by a bank (Bank E), as alleged in SOR ¶ 1.m. The May 2010 combined credit report shows that Experian reported this account as charged-off, purchased by another lender, and a zero balance. The debt is listed as an individual account that was opened in 1998, with a date of last action of April 2004. The debt is not listed on the later credit reports. Applicant's divorce order from his first divorce shows that his first ex-wife was ordered to pay an account to this department store that had a \$700 balance at the time of the 2000 divorce.¹¹

SOR ¶ 1.n alleges a \$403 delinquent debt to a collection company on behalf of a telephone services company. Applicant denied any knowledge of the debt. He filed a formal dispute with the telephone services company in March 2012. Experian reported this debt on the May 2010 combined credit report as an individual collection account that was opened in December 2007, with a date of last action of January 2010. The debt to the collection company is not listed on the three later Equifax credit reports, the 2011 Experian report, or the May 2012 combined report.¹²

Applicant has never received financial counseling, but he stated that his finances are in good shape. He is current on his child support payments and his other accounts.¹³

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 are to be used 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, administrative judges apply the guidelines 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.

¹⁰ Tr. at 51-58; Applicant's response to SOR; GE 3-7; AE H, I.

¹¹ Tr. at 41, 46, 60-63; Applicant's response to SOR; GE 3-7; AE H, I.

¹² Tr. at 52, 60-62; Applicant's response to SOR; GE 3-7; AE E. I.

¹³ Tr. at 79, 93-94; GE 3.

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.

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 the 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 EO 10865 provides that adverse 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 *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is 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.

The guideline notes conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay his financial obligations. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following 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 had cancer and some of his medical bills were not completely paid by his insurance. His medical problems were beyond his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. He paid four medical debts and successfully disputed owing a fifth medical debt. He also established that he paid the three student loans. AG ¶ 20(d) is applicable to the paid debts. AG ¶ 20(e) is applicable to the disputed medical debt.

Applicant owes federal taxes for tax years 2008, 2009, 2010, and 2011. After Applicant's phone call on May 31, 2012, the IRS agreed to an installment agreement whereby Applicant will pay \$100 per month. Applicant did not provide any documentation from the IRS stating how much he owes for the four tax years.

Applicant denies responsibility for the remaining debts. He provided sufficient information to doubt the validity of the debts alleged in SOR ¶¶ 1.h, 1.j, 1.m, and 1.n. AG ¶ 20(e) is applicable to those debts.

In August 2003, Applicant's second wife, without his authorization or consent, withdrew about \$5,800 from his line of credit with the bank discussed in SOR ¶ 1.a. At

the time, he owed about \$1,700 to the line of credit. Applicant did not report his wife for fraud, and his subsequent divorce decree ordered him to pay “any debts owing in his name only,” which included his line of credit to the bank. He has not paid anything towards this debt. There are no mitigating conditions applicable to this debt.

Applicant denied any knowledge of the \$4,259 delinquent debt to a collection company on behalf of a bank, as alleged in SOR ¶ 1.k. He stated that he had never had an account with the bank. That testimony is contradicted by his 2000 divorce decree, in which the court ordered Applicant to be liable for the balance of \$4,300 due on a credit card issued by this bank. There are no mitigating conditions applicable to this debt.

There is insufficient evidence for a determination that Applicant acted responsibly and made a good-faith effort to repay or otherwise resolve all his delinquent debts. His financial issues are recent and ongoing. I am unable to determine that they are unlikely to recur. They continue to cast doubt on Applicant’s current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) and 20(c) are not applicable. AG ¶¶ 20(b), 20(d), and 20(e) are partially applicable. I find that financial concerns remain despite the presence of some mitigation.

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 have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

There are three lingering concerns about Applicant’s finances: 1) he has an indeterminate amount of unpaid taxes for the last four years, which are just beginning to be repaid; 2) he has an unpaid line of credit from a bank that the divorce court has

ordered him to pay; and 3) he claims that he has never had an account with a bank that is listed on his credit report with a \$4,259 balance, but his divorce decree ordered him to pay the balance of \$4,300 due on a credit card issued by that bank.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has not mitigated financial considerations security concerns.

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:	Against Applicant
Subparagraphs 1.b-1.j:	For Applicant
Subparagraphs 1.k-1.l:	Against Applicant
Subparagraphs 1.m-1.o:	For 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge