



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



In the matter of:)
)
) ISCR Case No. 10-08449
)
Applicant for Security Clearance)

Appearances

For Government: Robert Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

06/18/2012

Decision

HEINY, Claude R., Administrative Judge:

Applicant owed approximately \$15,000 on four charged-off or collection accounts, which are now included in his repayment plan. Applicant has mitigated the financial considerations security concerns. 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 February 14, 2012, 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 February 28, 2012, Applicant answered the SOR and requested a hearing. On April 16, 2012, I was assigned the case. On May 23, 2012, DOHA issued a Notice of Hearing for the hearing held on June 5, 2012.

The Government offered exhibits (Ex.) 1 through 6, which were admitted into evidence without objection. Applicant testified, as did his wife, and submitted Ex. A, which was admitted into evidence without objection. The record was held open to allow Applicant to submit additional information. Additional material was submitted in a timely manner. Department Counsel had no objection to the material, which was admitted into the record as Ex. B through D. On June 13, 2012, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, he denied the debt alleged in SOR ¶ 1.d. He admitted the remaining three debts, 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. After a thorough review of the pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 51-year-old electronic technician who has worked for a defense contractor since April 2010.

In February 2012, Applicant received the SOR listing the two vehicle repossession debts and two debts for cell phone service. In March 2012, he sought assistance and contacted one financial company, but chose to go with a different debt repayment service. (Ex. A, B, C, Tr. 43). The agreement requires a \$241 automatic-monthly-debit from his bank account. (Ex. D, Tr. 26) On March 23, 2012, the first payment was made and payments have continued monthly since then. (Ex. A)

The debt repayment agreement includes the four SOR debts that total approximately \$15,000: SOR 1.a, \$971; SOR 1.b, \$8,434; SOR 1.c, \$5,115; and, SOR 1.d, \$522. (Ex. A, B) Applicant stated the debt resolution agreement provided that the debt repayment company would negotiate offers with the creditors and once an offer was accepted the debt would be paid or payments would start. The company has settled and paid the smallest of the four debts (SOR 1.d, \$522). (Ex. B) When a debt is settled, the debt repayment company receives a \$194 fee. (Ex. B, Tr. 49)

In 2003, Applicant's father died and he received a \$40,000 inheritance. (Tr. 78) The money was used to pay debts and \$6,000 or \$7,000 was used as a down payment on a truck purchase. (Tr. 79)

In 2004, Applicant and his wife married, and they purchased a home. His annual salary was approximately \$30,000. At the time, his spouse was working as a retail associate at \$10 per hour. (Tr. 68) From 1995 through November 2005, Applicant was employed by an engineering firm working for a major automobile manufacturer. (Tr. 64, 71) In 2005, his employer cut back his hours from 40 per week to 32 per week before

laying him off in November 2005. (Ex. 2) From January 2006 through August 2006, he was unemployed. (Tr. 45, 69) In August 2006, he moved to another state and started a job where he worked for a little less than one year. (Tr. 46, 72) In January or February 2007, he obtained another job where he worked until the summer of 2007. (Tr. 46, 72) When that job ended, he moved to another city in the state and worked at a job for about a year. (Tr. 73)

When that job ended, Applicant was homeless for seven or eight months. (Tr. 83) In April 2010, an acquaintance helped him to move to his current location and he obtained his current job. (Tr. 73, 74) Upon moving to his current state, he and his wife lived in a motel for six weeks before purchasing a 32-foot 2006 recreational vehicle (RV) for \$6,500. (Tr. 76, 77) The RV is currently their home and they pay \$400 monthly for lot rental. (Tr. 58, 76) The RV has been paid off. His 1996 Chevrolet is paid for and they are current on his wife's Ford pickup truck payments.

In August 2006, after having been laid off from his job of ten years, Applicant and his wife sought Chapter 7 bankruptcy relief. (Ex. 6) Approximately \$280,000 of unsecured debt was discharged. (Tr. 55) The discharged debt included approximately \$135,000 for a real estate foreclosure, \$64,000 on two automobile deficiencies, and approximately \$13,000 on a tractor loan deficiency. (Ex. 6, Tr. 61) In December 2006, the debts were discharged. (Ex. 2)

In 2006, Applicant obtained two cell phones (SOR 1. d, \$522) and used them for three months. (Ex. 2) During his June 2010 personal subject interview, he stated he was responsible for the debt and intended to repay it. (Ex. 2) At the hearing, he asserted the account was paid in full when the cell phones were returned, and a few months after closing the account he was informed additional charges were made on the account. These charges were challenged over the phone, and he thought they had been removed from his account.

In December 2006, after the bankruptcy discharge, Applicant purchased a used 2003 Ford Focus for approximately \$10,000. (Ex. 4, 5) The \$293 monthly payments were made on the account until October 2007, when Applicant was again terminated from work. (Ex. 3, Tr. 36, 45) The vehicle was repossessed and sold leaving a balance due of \$8,434 (SOR 1.b). When questioned about this debt during his 2006 interview, he stated he believed this debt was included and discharged in his Chapter 7 bankruptcy. (Ex. 2) In his December 2011 response to interrogatories, he stated he had no knowledge of this account.

At the hearing, Applicant's wife stated they learned in 2008, from someone at the automobile dealership who informed them that the car resold following repossession for more than what they owed on the vehicle. (Tr. 37) No documentation supporting this assertion was received. They believed the sale following the repossession had paid the debt owned on the vehicle. (Tr. 47) Following the repossession, Applicant has had no contact with the dealership. No demand for payment was made. (Tr. 47) The debt has been included in his debt repayment agreement. (Ex. A, B)

In May 2007, again following the bankruptcy discharge, Applicant purchased a new \$15,692 Chevrolet Aveo² with \$397 monthly payments. (Ex. 4, 5, Tr. 35) In July 2008, Applicant made his last payment. The vehicle was repossessed, sold, and a balance due \$5,115 (SOR 1.c) remained unpaid. In his 2010 personal subject interview, he stated he had no knowledge of the collection account and did not believe it was his debt. (Ex. 2) In his December 2011 response to interrogatories, he stated he had no knowledge of this account.

A collection firm (SOR 1.a) is attempting to collect a \$971 debt for telephone service. (Ex. 3) This debt was not discussed during his June 2010 personal subject interview because it first became delinquent in July 2010. (Ex. 3) The collection agency agreed to settle this debt for \$486, and it has been paid. (Ex. A, B, Tr. 27)

Applicant is living within his means, paying his monthly bills, and is receiving no calls or letters from creditors demanding payment. He is working six and seven days a week to meet his financial obligations. (Tr. 39) In the two years at their current location, he has not had any financial deficiencies. (Tr. 40) He has a 2003 Ford pickup and a 1996 Chevrolet. (Tr. 57)

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,

² The manufactures suggested list price on the base model of this car is \$12,000.

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. In 2006, Applicant resorted to bankruptcy protection after his job of ten years with the automobile industry was

terminated. Following his bankruptcy, he incurred four charged-off or collection debts, which totaled \$15,000. 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.

Because Applicant has four delinquent debts and his financial problems are continuing in nature, he receives minimal application of the mitigating condition listed in AG ¶ 20(a). Additionally, the debts are recent since they were incurred following his December 2006 bankruptcy discharge of debts and are still being addressed.

Under AG ¶ 20(b), Applicant was substantially affected by circumstances beyond his control. In January 2006, his job of ten years with a major automobile manufacturer ended as the economy slowed. In 2006, he was unemployed for seven months, which led to his August 2006 filing for Chapter 7 bankruptcy protection. In December 2006, Applicant's debts were discharged, and he received a fresh start. Starting in August 2006, he had a variety of jobs which ended during 2009. His jobs lasted less than a year each. Due to his loss of employment he was homeless for seven or eight months before obtaining his current job. These are factors beyond his control.

In determining if Applicant has acted appropriately, his actions since being questioned about his finances must be evaluated. In June 2010, he was asked about the two vehicle collection accounts. He assumed one was included in his 2006 bankruptcy and did not recognize the other. He made no payment on these accounts

until after receiving the SOR. He receives only partial application under AG ¶ 20(b) because he could have done more to verify the debts, and he should have started his payments earlier.

Applicant should have received some financial counseling through his bankruptcy and the four debts are part of a debt repayment program. Other than the four SOR debts, he has no other delinquent debt. His monthly bills, including the monthly payment on his wife's pickup truck are all being made in a timely manner. His financial problems are under control. AG ¶ 20(c) applies.

The four debts are included in a repayment plan on which Applicant has been making monthly payments since March 2012. Three months of payments is not a large track record, but he has made sufficient payments to provide assurance that he will continue making payments to the plan. AG ¶ 20(d) does not apply because some of the SOR debts remain unpaid.

Even though Applicant disputes two debts, (SOR 1.b) stating the vehicle was sold by the dealership for more than they owed and the cell phone charges were disputed (SOR 1.d), AG ¶ 20(e) does not apply. Applicant failed to provide written documentation supporting the disputes.

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 do not show Applicant was living beyond his means. In 2006, he purchased a 2003 Ford and in 2007 purchased a Chevrolet. The other two debts totaling approximately \$1,500 are for cell phone service. The debts were not for luxuries and are not the type that indicates poor

self-control, lack of judgment, or unwillingness to abide by rules and regulations. It does not appear the money was frivolously spent.

Applicant has made sufficient payments to provide assurance that he will continue making payments to the plan. 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, which he has. Applicant’s entire financial situation and the actions he has taken must be evaluated to determine if the 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 repayment agreement included all four SOR debts and the monthly amount to pay the plan is automatically debited from his account. AG ¶ 20(d) applies.

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 four SOR delinquent accounts are being addressed in a repayment plan. 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. d: For Applicant

Conclusion

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

CLAUDE R. HEINY II
Administrative Judge