



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 10-08706
)
Applicant for Security Clearance)

Appearances

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

10/18/2012

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Statement of the Case

On June 4, 2010, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for a position with a defense contractor. After an investigation conducted by the Office of Personnel Management (OPM), the Defense Office of Hearings and Appeals (DOHA) issued an interrogatory to Applicant to explain potentially disqualifying information in his background. After reviewing the results of the background investigation and Applicant's response to the interrogatory, DOHA could not make the preliminary affirmative findings required to issue a security clearance. DOHA issued a Statement of Reasons (SOR), dated May 4, 2012, detailing security concerns for financial considerations. These actions were 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) effective in the

Department of Defense on September 1, 2006. Applicant acknowledged receipt of the SOR on May 13, 2012.

Applicant answered the SOR on May 29, 2012. He admitted 14 and denied 9 of the 23 allegations under Guideline F. Department Counsel was ready to proceed on July 10, 2012. The case was assigned to me on July 18, 2012, and DOHA issued a Notice of Hearing on July 19, 2012, scheduling a hearing for August 15, 2012. I convened the hearing as scheduled. The Government offered four exhibits that I marked and admitted into the record without objection as Government Exhibits (Gov. Ex.) 1 through 4. Applicant testified and submitted two documents that I marked and admitted into the record without objection as Applicant Exhibits (App. Ex.) A and B. I left the record open for Applicant to submit additional documents. Applicant timely submitted six documents, which I marked and admitted into the record as App. Ex. C through H. The Government had no objection to admission of the documents. (Gov. Ex. 5, e-Mail, dated September 5, 2012). DOHA received the transcript of the hearing (Tr.) on September 4, 2012.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is a 28-year-old electronics technician for a defense contractor. Applicant served on active duty in the Army from May 2002 until August 2006. He received an honorable discharge in the grade of specialist (E-4). He deployed for a year in support of Operation Iraqi Freedom from March 2003 until March 2004.

Applicant married in February 2005, but he and his wife separated in September 2009. They are still separated. He has four children.

Applicant was unemployed from August 2006 until July 2007 after leaving the Army. He was again unemployed from February 2008 until July 2008 after a contract he was working on terminated. His third period of unemployment was from May 2009 until May 2010 when he attended school. During the periods of unemployment, he drew unemployment compensation.

Applicant's present annual salary is approximately \$31,000. His present net monthly income, including payments from the GI bill, is approximately \$2,300. He has monthly expenses of approximately \$1,900, leaving him a monthly remainder in discretionary income of approximately \$400. Applicant and his wife agreed on child support payments. Applicant pays his wife \$300 a month for child support, and \$325 a month for family health insurance. There is no action by the state to collection any child support. (Tr. 10-13, 19-25, 60-64; Gov. Ex. 1, e-QIP, dated June 4, 2010)

Credit reports (Gov. Ex. 3, dated July 7, 2010; and Gov. Ex. 4, dated August 3, 2011), and Applicant's response to the Interrogatory (Gov. Ex. 2, dated September 30,

2011) show the following delinquent debts: a judgment of \$585 for an apartment rent (SOR 1.a); medical debts in collection for \$268 (SOR 1.b), \$268 (SOR 1.c), \$268 (SOR 1.d), \$484 (SOR 1.e), \$5647 (SOR 1.f), \$196 (SOR 1.g), \$339 (SOR 1.h), \$668 (SOR 1.i), \$989 (SOR 1.o), \$206 (SOR 1.q), and \$465 (SOR 1.r); a cable debt in collection for \$489 (SOR 1.j); a utility debt in collection for \$278 (SOR 1.k); an apartment rent account in collection for \$1,975 (SOR 1.l); a military credit card account in collection for \$2,290 (SOR 1.m); an insurance account in collection for \$301 (SOR 1.n); an account in collection for \$448 (SOR 1.p); an automobile loan repossession default of \$512.38 (SOR 1.s); a cell phone account in collection for \$1,893 (SOR 1.t); a personal loan account in collection for \$1,151 (SOR 1.u); an account in collection for \$65 (SOR 1.v); and a debt to the Department of Veteran's Affairs (VA) for \$1,229 (SOR 1.w). Applicant noted that some of the debts were duplicates. The total amount of the debts listed in the SOR, not considering any duplication, is approximately \$21,000.

The delinquent debts listed at SOR 1.a and SOR 1.l are duplicates for the rent of an apartment. Applicant was a few months behind with his rent when he was evicted from his apartment. He was unemployed and unable to pay the rent. He believes the total amount owed was \$1,975 as listed at SOR 1.l. The \$585 for the judgment at SOR 1.a is only part of the amount owed. Applicant at one time contacted the collection agency but was unsuccessful in reaching a settlement or payment agreement. He has not recently pursued any action with the creditor or collection agency. The debt is not resolved. (Tr. 33-34)

Applicant was employed by a small defense contractor when he suffered a mild stroke and atrial fibrillation in July 2009. He was healthy with no medical problems until this point. He was taken by ambulance to the local hospital emergency room. He received treatment but was hospitalized for approximately a week before returning home. Subsequently, because of his condition, he had to make two to three visits to doctors' offices a week for a few months. Even though he was employed at the time, he did not have health insurance. He did pay some of the bills as he was treated. He was unable to return to work for a period of time for recuperation. Applicant is sure all the medical debts in the SOR are the result of the emergency room treatment, subsequent hospitalization, and doctor bills. At Government exhibit 2 is a statement from the hospital that lists charges for the emergency room and follow-up treatment totaling \$5,647.01, the amount of the debt at SOR 1.f. Applicant has been in contact with the collection agencies listed in the credit reports for the medical debts. He was told that the debts were sent to the collection agencies by the local hospital, but they have subsequently returned them. Based on the information he received from the collection agencies, he believes the debts at SOR 1.b to 1.e, SOR 1.g to 1.i, 1.o, 1.q, 1.r, and 1.v, are charges from the emergency room, hospital stay, and follow-up medical appointments. Most have been included in the amount of debt listed in SOR 1.f. Before the hearing, he had not paid any of the debts but some have been removed from his credit reports. His recent credit reports list 10 or 11 medical debts. A few of the medical debts he paid after the hearing. (Tr. 25-40, 42-45, 52-54)

When Applicant was evicted from his apartment, he incurred final bills for utilities. The delinquent debt at SOR 1.j is to the cable company for equipment that he did not return. He only had a few days to pack his household goods and he inadvertently packed the cable equipment. He has not returned the equipment or paid the debt. The delinquent debt at SOR 1.k is for his final electric bill. The bill has not been paid. (Tr. 38-40).

The delinquent debt at SOR 1.m is the balance owed on his military credit card when he was discharged. The amount owed was recovered from his tax refund by the Government and the debt is paid in full. (Tr. 40-41; Response to the SOR, Letter, dated May 14, 2012)

The delinquent debt at SOR 1.n is for car insurance. When Applicant moved, he changed insurance companies but did not notify the original insurance company until later that he moved the car and had a new insurance company. He admits he owes the debt and it has not been paid. (Tr. 41-42)

Applicant researched the delinquent debt at SOR 1.p and is unable to determine the origin of the debt. Since he does not know about the debt, he has not paid it and does not know who to pay. (Tr. 43)

The delinquent debt at SOR 1.s is the remainder of a debt owed after his car was repossessed. The car loan went to default in March 2009, and the car was repossessed in May 2010. He made some payments in 2010 on the loan to hold off the repossession but was unsuccessful. The amount owed on the loan was \$8,774. The car sold at auction for \$7,300, leaving a balance of \$1,400. Because of the amount Applicant paid to hold off the repossession, the debt is now \$512. The debt has not been paid. (Tr. 45-48)

The delinquent debt at SOR 1.t is for a cell phone bill. Applicant claims he lost his cell phone while on an exercise during his active duty tour. He was not sure the phone was lost so he did not immediately report the loss to the phone company. After returning from the exercise, he was sure the phone was lost so he notified the phone company. The phone company told him there were charges on the phone of about \$900. He stated that the phone company told him they would reduce the bill by 50% since the phone was lost. All of the arrangements were verbal and no documents were exchanged. Applicant stated that the phone company did not cut the debt, so he stopped service with them, and refused to pay the debts. The debt has not been resolved. (Tr. 48-50)

The delinquent debt at SOR 1.u is for a personal loan he took out for approximately \$1,151. He was making payments on the loan until he lost his job in 2009. He contacted the company but he was still unable to make any payments. He recently contacted the collection agency to inform them that he would be making payments on the debt soon. (Tr. 50-52)

The delinquent debt at SOR 1.w to the VA was incurred by Applicant when he did not complete a course paid for by the VA under the GI bill. Applicant started the course when he was not employed but had to drop the course when he found employment. The amount of the debt was approximately \$4,229. The VA diverted his VA disability payments to pay the debt, which has now been paid in full. (Tr. 54-56; Response to SOR, Letter, dated May 16, 2012)

Applicant presented two recent credit reports. His recent Equifax report shows 11 delinquent medical accounts. (App. Ex. A, Credit Report, August 14, 2012) Applicant states that these are valid accounts and the duplicate listing for these accounts has been removed from his report. The recent Transunion account lists 10 delinquent medical accounts. (App. Ex. B, Credit Report, dated August 14, 2012) Applicant again stated that these are valid debts and the duplicate listings for these debts have been removed from his credit report. (Tr. 62-64)

Applicant submitted six documents after the hearing. These documents show receipts for payments to a collection agency for medical debts totaling \$158. (App. Ex. C, e-mail, dated September 5, 2012; App. Ex. D, E, and F, Receipts, dated September 4, 2012) There are also two receipts for payments to another collection agency on two medical accounts for \$65.62 (App. Ex. G, Receipt, dated September 4, 2012), and \$293 (App. Ex. H, Receipt, dated September 4, 2012). While these payments are for medical accounts, the only one that can be readily identified as a SOR debt is the receipt at App. Ex. G for \$65.62 which possibly corresponds to the \$65 medical debt to the same creditor at SOR 1.v.

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 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion in seeking 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Analysis

Financial Considerations

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. (AG ¶ 18) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect 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 under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties exhibits a risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations. Applicant's delinquent debts established by credit reports and his admissions raise Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts); and AG ¶ 19(c) (a history of not meeting financial obligations). The evidence indicates both an inability and an unwillingness to satisfy debt. Applicant incurred delinquent debts when he was hospitalized and then laid off in 2009. However, he has paid few of the debts on his own. Some of the debts were recently paid and two debts were paid by Government action in applying disability and tax refund payments to the debts.

I considered Financial Considerations Mitigating Conditions 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) and AG ¶ 20(b) (the conditions that resulted in the financial problems 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). These mitigating conditions do not apply. Most of the debts were incurred in 2009 and no action has been taken on the debts until recently. There were a number of different debts incurred under different circumstances so delinquent debt was incurred frequently. Applicant incurred delinquent debt at different times when was unemployed and could not pay debts. The only unusual circumstance for some of his debts was he was laid off. He then became sick and had extensive medical procedures resulting in medical debts that he could not pay and again became unemployed. These debts were incurred under the circumstances of unexpected illness and loss of employment which were beyond his control. However, he took little if any action to pay his delinquent debts. Two debts were paid because his tax refunds and disability payments were applied to those debts. He had some duplicate medical debts removed from his credit reports, but 10 or 11 delinquent medical debts still remain on his credit reports. He only recently made some payments on some medical debts. This is not responsible action towards his debts under the circumstances. He has been steadily employed since 2010 and has sufficient income to live within his means and pay his present debts. He has not used his income to make payments on his delinquent debts until recently. He has not presented sufficient information to show his finances are under control. Applicant has not established that he acted responsibly towards his debts under the circumstances.

I considered AG ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts). For AG ¶ 20(d) to apply, there must be an "ability" to repay the debts, the "desire" to repay, and "evidence" of a good-faith effort to repay. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. A systematic method of handling debts is needed. Applicant must establish a "meaningful track record" of debt payment. A "meaningful track record" of debt payment can be established by evidence of actual debt payments or periodic payment to reduce debts. Applicant is not required to establish that he paid each and every debt listed. All that is required is that Applicant has an established plan to resolve his financial problems, and show he has taken significant actions to implement that plan.

Applicant has not established that he has a systematic plan to pay his debts. Two debts were paid because of governmental action applying disability payments and tax refunds to the debts. The medical debts he incurred in 2009 were consolidated in one debt listed at SOR 1.f. His recent credit reports still show 10 or 11 unresolved delinquent medical debts. Since Applicant admits that these are valid medical debts, the consolidated medical debt at SOR 1.f is resolved in his favor as a duplicate. The other debts are unresolved and Applicant has not taken any action to pay them or have a plan how to resolve them. Applicant has not established a meaningful track record of debt

payment. He has not shown a reasonable and prudent adherence to financial obligations, so he has not established a good-faith effort to resolve and pay debts. His past delinquent debts reflect adversely on his trustworthiness, honesty, and good judgment. His financial problems are not resolved and his finances are not under control. Based on all of the financial information presented in this case, Applicant has not mitigated security concerns based on financial considerations.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. An 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 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 considered Applicant's four years of honorable service on active duty in the Army. I considered that Applicant had periods of unemployment and a significant illness that resulted in medical debts. Applicant did not make payments on the SOR until recently. Two debts were paid by Government action and not by his affirmative payment action. Applicant did not establish good-faith efforts to pay or resolve his delinquent debts. His lack of action to pay or resolve his past financial obligations indicate that he may not be concerned, responsible, and careful regarding classified information. Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate security concerns arising from 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, Guideline F:

AGAINST APPLICANT

Subparagraph 1.a:	For Applicant
Subparagraphs 1.b – 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g – 1.l:	Against Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1. n – 1.v:	Against Applicant
Subparagraph 1.w:	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.

THOMAS M. CREAN
Administrative Judge