



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



In the matter of:)
)
) ISCR Case No. 11-03476
)
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

09/17/2012

Decision

MASON, Paul J., Administrative Judge:

The disqualifying evidence under the financial considerations guideline has not been mitigated. Applicant knew about some of the delinquent accounts in October 2007, and found out about additional delinquent accounts in September 2010. He provided false statements concerning the status of several of the accounts in July 2011. Though other debts have been removed from his credit report, Applicant failed to provide necessary documentary evidence detailing the basis for the disputes and removal of the debts. Eligibility for access to classified information is denied.

Statement of the Case

Applicant completed and signed an Electronic Questionnaire for Investigations Processing (e-QIP) on August 11, 2010. He was interviewed by an investigator from the

Office of Personnel Management (OPM) on two occasions: October 17, 2007, and September 21, 2010. The interview summaries appear in Government Exhibit (GE) 4. In GE 5, dated June 20, 2011, Applicant was asked to provide information about action taken to resolve delinquent accounts discussed in his earlier interviews. On July 30, 2011, Applicant provided a notarized response to the debts listed in GE 5. He confirmed that both interviews were “accurate as drafted . . . except for the following.” He furnished certain modifications to the interviews and provided additional comments. (GE 6 at 1-2)

DOHA issued an undated Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F). The action was taken pursuant to 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’s answer to the SOR was notarized on December 5, 2011 and received by DOHA on December 14, 2011. DOHA issued a Notice of Hearing on May 24, 2012, for a hearing on June 28, 2012. The hearing was held as scheduled. At the hearing, without objection, six exhibits (GE 1 through GE 6) were admitted in evidence in support of the Government’s case. Applicant testified and offered 13 exhibits (AE A through M). Those exhibits were admitted into evidence without objection. During his examination of Applicant, his attorney identified AE N as an exhibit related to SOR ¶ 1.h. After it was determined that the same exhibit appeared on page I16 of GE 6, Applicant continued his examination of Applicant using the Government’s exhibit. (Tr. 41-43; GE 6 at I16) Applicant did not seek to offer AE N into evidence. He was granted time after the hearing to submit additional evidence regarding his delinquent financial obligations. He submitted four additional exhibits which have been re-labeled AE N through AE Q. On July 13, 2012, the Government indicated they had no objection to the admission into evidence of the additional exhibits. DOHA received the transcript on July 5, 2012. The record closed on July 13, 2012.

Findings of Fact

The SOR lists nine allegations under the financial considerations guideline. Though Applicant denied all allegations in his answer to the SOR, at the hearing, he admitted SOR ¶¶ 1.a, 1.c, 1.d, and 1.g; he denied SOR ¶¶ 1.b, 1.e, and 1.f. He denied SOR ¶ 1.h. However, the evidence indicates that the account is his responsibility. The total amount of delinquent debt listed in the SOR is \$29,032. The tax lien was filed in February 2008. The eight accounts became delinquent between March 2005 and August 2010.

Applicant is 34 years old and has been married since November 2010. (AE L) His wife is expecting. He has a 12-year-old child from his first marriage that ended in August 2007. He owns his home. He and his wife own cars that are financed. (Tr. 50-51) He has approximately \$102,000 in his checking and savings account and his wife's retirement account contains almost \$63,000. (AE A, M) Applicant's salary is approximately \$137,000 a year. (Tr. 27) He has had uninterrupted employment since February 2000. (GE 1 at 17-25)

Applicant served in the U.S. Army, Army National Guard, and Army Active Duty Reserve from March 1996 until his honorable discharge in November 2007. While he was in the Army, he earned some college credits between June 1996 and November 2000, but received no degree. During his military service, Applicant was deployed to Iraq three times in a military or civilian capacity to perform information technology or security tasks. (GE 4, October 2007 interview at 2; GE 4, September 2010 interview at 1-2; Tr. 44). He was also deployed to Afghanistan. (Tr. 44)

Since February 2010, Applicant has been employed as a senior information assurance specialist with a defense contractor. He has worked part-time as a warfare specialist with another defense contractor. He has held a security clearance since June 1996.

Applicant had a difficult childhood. When he was nine years old, his parents abandoned him and he became a ward of the state. He lived with approximately ten foster families until he was 18 years old. Then, he joined the military and developed a growing interest in computers. (Tr. 54-55)

Financial Considerations-Security Investigation

As noted above in Statement of the Case, interrogatories were sent to Applicant on June 2, 2011, requiring him to provide the status of the delinquent accounts listed in the SOR. (GE 5) In his response to the interrogatories dated July 30, 2011, Applicant indicated that the October 2007 and September 2010 interview summaries were correct with exceptions identified. (GE 6 at 1-3) The additional comments that he provided about each listed account and references to Applicant's earlier interviews will be included in the following factual findings:

SOR 1.a, state tax lien, \$3,385. The lien was filed against Applicant in February 2008. In his September 2010 interview, he told the OPM investigator that he faxed his deployment orders to the state tax agency and was told no payment was due. (GE 4, September 2010 interview at 5) In his interrogatory response dated July 30, 2011, Applicant indicated the tax lien was paid and should be removed from his credit report. (GE

6 at I4) Documentation provided by Applicant at the hearing reflects the tax lien was not paid until February 14, 2012. (AE E, AE Q)¹

SOR 1.b, delinquent apartment rental account, \$5,912. In his October 2007 interview, Applicant claimed that he gave a copy of his deployment orders to the rental company and had a copy of the company's release for rent and utilities. (GE 6, October 2007 interview at 3) In his September 2010 interview, Applicant indicated he did not recognize and had disputed this account. (GE 4, September 2010 interview at 6) The last activity on the account was in September 2010. In his July 2011 interrogatory response, he claimed his investigation revealed the company was no longer in business. (GE 6 at 4) He indicated that he disputed the account and it was removed from his credit report. He conceded the residence was his home of record and that he had no documents to show he was not on the lease. (Tr. 61) The Government's credit report shows that Applicant was jointly liable for the rental. (GE 2 at 11) The account does not appear in Applicant's credit report (AE N). He indicated he would try to retrieve documentation to support his claims about this account. (Tr. 61) No additional information was provided.

SOR 1.c, medical, \$28. The last activity on this account was July 2007. In his September 2010 interview, Applicant stated he wanted to pay this account, but the account could not be found in the creditor's account system. (GE 4, September 2010 interview at 4) In his July 2011 interrogatory responses, he stated the debt was paid in a follow-up medical appointment. (GE 6 at 4) At the hearing, Applicant claimed he paid the debt. (Tr. 30-31) He indicated he could supply the documentation. (Tr. 64) No additional documentation was provided.

SOR 1.d, medical, \$75. The last activity on this account was June 2009. Applicant told the investigator he was going to inquire about the account. (GE 4, September 2010 interview at 4) In his July 2011 interrogatory responses, Applicant indicated that this co-payment had been waived and removed from his credit report. He stated however, that he would pay the debt in full if it had not been waived. (GE 6 at 4) At the hearing, Applicant noted he had proof that he paid the account. (Tr. 30) AE P reflects the debt was paid after the hearing on July 2, 2012. (AE P)

SOR 1.e, water bill or fee for overdue library book, \$367. The last activity on this account was in March 2005. In his October 2007 interview, Applicant stated to the OPM investigator that the account applied to an overdue library book or failure to have his car registered. (GE 4, October 2007 interview at 2) In his interview of September 2010, and July 2011 interrogatory response, Applicant believed this account was a delinquent bill for

¹ At the hearing, a determination was made that AE E was unreadable. (Tr. 16) Within the time allowed for post-hearing exhibits, Applicant submitted a legible copy of the exhibit setting forth the details of payment. (AE Q)

not returning an overdue library book. (GE 4, September 2010 interview at 5; GE 6 at 3) At the hearing, he was sure the account represented a water bill his former wife owed that he disputed and had removed from his credit report. He testified that he could try to recover the dispute documentation. (Tr. 66) The account does not appear in Applicant's credit report. (AE N) No dispute documentation was provided.

SOR 1.f, automobile loan, \$18,707. The last activity on this account was July 2007. In his September 2010 OPM interview, Applicant indicated to the investigator the account was for his former wife's totaled car. Applicant's insurance paid for the car and he purchased another car. (GE 4, September 2010 interview at 5) In his July 2011 interrogatory response, Applicant explained the debt was:

paid auto loan insurance for my totaled vehicle, which was paid by the original creditor after they sold the account to a collections agency . . . I have not been contacted by any collection agency and/or creditor regarding this debt, nor did I have any issues obtaining my current auto loan. I failed to report this debt because I was unaware of it. To the best of my knowledge, this debt is resolved and/or inaccurate and therefor should be properly removed from my credit report. (GE 6 at 4)

At the hearing, Applicant accused his father of stealing Applicant's identity in obtaining an auto loan. Applicant indicated he was trying to buy a house in 2000 and was informed he had a delinquent car loan. He retrieved the auto loan documentation and did not recognize the identification card or signature. His social security number did not appear in the documentation. He filed a dispute with one of the three credit agencies identifying the original creditor and the account was removed from his credit report. However, the account had been sold to a collection agency. (Tr. 33-37) In early January 2012, Applicant indicated he re-filed a dispute with the credit agency seeking removal of the collection agency from his credit report. He testified he would look for the documentation. (Tr. 39) Later in this testimony, he indicated that phone logs and notes were the only documentation that supports his attempt to remove the collection agency from his credit report. (Tr. 67) The collection account still appears in his credit report. (AE N) No additional documentation was provided.

SOR 1.g, medical, \$42. The last activity on this account was May 2010. In his July 2011 interrogatory response, Applicant indicated the debt was paid-in-full. (GE 6 at 4) At the hearing, he reiterated his position referencing AE J in support. (Tr. 40) After the hearing, Applicant provided documentation indicating the debt was resolved on July 2, 2012. (AE O)

SOR ¶ 1.h, bank account (open), \$516. The last activity on this account was August 2010. This account was sold by the original creditor to a collection agency. In his July 2011

interrogatory response, Applicant provided settlement information about an account that does not apply to **SOR ¶1.h**, or any other listed account in the SOR. At the hearing, Applicant testified that he could not recall an account with the bank identified in **SOR ¶1.h**, and he did not know whether he disputed the account. (Tr. 67-68)

The **SOR ¶1.h** account appears in the Government's credit report and Applicant's credit report. I find that the account (appearing in both reports) is the same for the following reasons: the name of the collection agency is the same in both reports; the first three digits of the account numbers match; and the amount of the delinquent account is the same in both reports. (GE 2 at 13; AE N at 24) The only difference in the account is that a new bank replaced the old bank as the original creditor of the account. The name of the new bank who acquired the account appears at page 25 of AE N. Applicant provided no evidence to support his claim that this account is not his responsibility.

The only financial counseling Applicant ever had occurred when he was in junior high school. (Tr. 69-70) Applicant has never sought debt consolidation services. (GE 4, September 2010 interview at 6)

Character Evidence

Applicant provided three written character references. Mr. C has been Applicant's friend since 2001. They were roommates in 2005 and 2006. Mr. C believes Applicant is a reliable friend and a valuable business adviser. (AE C)

Mr. B, the president of a defense contractor, wrote a character reference on March 5, 2012. Mr. B's assessment of Applicant is based on nine months of observation when Applicant was working at two federal agencies on computer security assignments. (AE B) Mr. B's reference is strikingly similar to the comments made by Mr. H, president of a different defense contractor, in his character reference dated June 25, 2012, based on three years of observation. (AE H) Other than the different letterhead, different dates when the character references were written, and different contact information, the references are almost identical. While each reference praises Applicant's performance, it seems very unlikely that the authors would use the same words in describing the quality of Applicant's work. The similarities in both references reduce the probative weight that is assigned to each reference.

A national organization operates a governing board that administers professional information technology certifications. The board has certified Applicant as an ethical hacker, a penetration tester, a global information security specialist, and security specialist. Applicant needs the certificates in his employment for defense contractors. (Tr. 44-50)

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 useful in evaluating an applicant's eligibility for access to classified information.

The disqualifying and mitigating conditions should also be evaluated in the context of nine general factors known as the whole-person concept to bring together all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision for security clearance eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to the potential, rather than actual, risk of compromise of classified information.

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 of establishing that it is clearly consistent with the national interest to grant him a security clearance.

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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

The Government has the responsibility of presenting sufficient information to support all allegations of the SOR. Based on the credit reports, Applicant's interrogatory responses,

and the record transcript, AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c) (*a history of not meeting financial obligations*) are applicable.

Five mitigating conditions under AG ¶ 20 are potentially applicable. 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*) does not apply. Because of Applicant's conflicting and misleading statements about when he paid several of the delinquent accounts, the circumstances of his indebtedness are likely to recur and continues to raise security concerns regarding his reliability and trustworthiness. These security concerns are aggravated by the failure of Applicant to provide documentation to support his testimony regarding the efforts he made to have other listed accounts removed from his credit report.

AG ¶ 20(b) (*the conditions that resulted in the financial problem were largely beyond the person's control and the individual acted responsibly under the circumstances*) does not apply. Applicant has not established that there were unforeseen events beyond his control to frustrate his efforts to resolve his delinquent debts. His interviews establish that he knew about some of the listed accounts in October 2007 and additional listed accounts by the time of the interview in September 2010. Furthermore, Applicant's evidence is insufficient to demonstrate he acted responsibly under the circumstances to resolve his debts. In July 2011, he provided false information when he stated unequivocally he paid several of the listed debts. At the hearing, he stated he paid three medical debts that were not paid until after the hearing. The record shows that he has ample resources to pay the delinquent accounts. He has been continuously employed since February 2000, either in the military or in civilian employment. He has ample checking and savings and earns a good salary. He owns his home and car.

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*) is not applicable. Under this mitigating condition, an applicant should show he has received counseling and there are clear indications his financial difficulties are being resolved or under control. With or without financial counseling, an applicant still must demonstrate that his financial problems are being resolved or under control. Applicant's financial counseling in junior high school has little current probative value because it occurred almost 20 years ago. He has paid four listed debts, but not until after he received the SOR. Given Applicant's contradictory statements about when he paid several of the listed debts and his failure to provide a documentary basis to support his claims of removing other debts from his credit report, I am unable to conclude that there are clear indications his financial problems are being resolved or under control.

AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) does not apply. The record reflects that Applicant has paid four

of the listed creditors, but not until after he received the SOR. The timing of his payments and his conflicting statements about when he paid the creditors cannot be viewed as a good-faith effort to resolve his debts.

AG ¶ 20(e) (*the individual has a reasonable basis to dispute that 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*). Though **SOR ¶¶ 1. b** and **1.e** have been removed from Applicant's credit report, Applicant did not provide documentary evidence setting forth the basis of the dispute and removal. **SOR ¶ 1.f** remains on Applicant's credit report and is not covered by the condition because Applicant furnished no documented proof to substantiate the basis of the dispute.

Whole-Person Concept

I have examined the evidence under the disqualifying and mitigating conditions of the two guidelines. 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be a commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

Applicant is 34 years old. He is married and his wife is expecting. He also has a 12-year-old child from another relationship. He served his country from 1996 to November 2007 when he received an honorable discharge. He has held a security clearance since 1996. He has earned approximately three years of college credits. He appears to have a good performance record in computer security. He has been a reliable friend to Mr. C.

On the other hand, Applicant has not been candid and forthright during the security investigation. This lack of candor has a negative impact on his overall case in mitigation. In his July 2011 interrogatory responses, Applicant stated unequivocally that he had paid several of the listed debts. He reiterated this falsehood at the hearing. The documentation

shows that he did not pay several of the delinquent debts until after the hearing. This pattern of dishonest conduct continues to raise questions about his trustworthiness and judgment. Moreover, Applicant has not provided documentary evidence corroborating the basis of his disputes with SOR ¶¶ 1.b, 1.e and 1.f. Having weighed the disqualifying and mitigating evidence in the context of the whole-person factors, Applicant has not overcome the security concerns arising under the financial considerations guideline.

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.h: 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