



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 11-03721
)
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Esq., Department Counsel
For Applicant: *Pro se*

March 7, 2013

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

The Statement of Reasons (SOR) identified Applicant as owing nine delinquent debts totaling \$23,942. Applicant satisfied one debt voluntarily after his hearing, and five others were satisfied through involuntary garnishment. He failed to present sufficient evidence that he is addressing the remaining three debts in a responsible manner or that he has the discipline to resolve them. His remaining three debts total \$17,143, and constitute over 70% of the total debt alleged on the SOR. Applicant chose to ignore his debts from 2006 through early 2013. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on October 8, 2010. On September 21, 2012, the Department of Defense issued an SOR to Applicant, detailing security concerns under Guideline F (Financial Considerations). The action was 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 effective in the Department of Defense on September 1, 2006.

Applicant answered the SOR (Answer) on October 19, 2012, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on January 8, 2013. DOHA issued a notice of hearing on January 8, 2013, scheduling the hearing for February 5, 2013. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 9, which were admitted without objection. Applicant offered Exhibits (AE) A through K, which were admitted without objection. Applicant testified on his own behalf. The record was left open until February 26, 2013, for the receipt of additional documentation. Applicant presented two post-hearing exhibits, marked AE L and AE M. Department Counsel had no objections and they were admitted into evidence as identified. DOHA received the transcript of the hearing (Tr.) on February 13, 2013.

Findings of Fact

Applicant is a 46-year-old government contractor. He has worked for his current employer since 2005. Applicant retired from the Navy in June 2005 as a petty officer first class (E6). He possesses a bachelor's degree. He is currently married to his second wife. He has a 12-year-old stepdaughter who resides with him and his current wife. (GE 3; Tr. 33-34, 61-63.)

The Government alleged that Applicant is ineligible for a clearance because he has made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness, and ability to protect classified information. The SOR identified 9 delinquent debts totaling \$23,942. Applicant denied each debt in his Answer. However, each of the debts can be found in at least one of the four credit reports placed into evidence by the Government. (GE 4; GE 5; GE 6; GE 9.) His debts are as follows:

Applicant is indebted to a collection agent for an electric company in the amount of \$117 (as alleged in SOR ¶ 1.a). This debt has been delinquent since April 2006. Applicant testified that he contacted the electric company directly and was told they could not find the account in their system. He requested the electric company provide him a letter to this effect, but he had not received the letter at the close of the record. He testified that he did not directly contact the collection agent for this creditor. (GE 6; AE K; AE L; Tr. 36-37, 39-40, 64.) This debt is unresolved.

Applicant was indebted to a bank on five Federal student loans totaling \$6,735 (as alleged in SOR ¶¶ 1.b, 1.d, 1.e, 1.f, and 1.g). As of January 2008, his student loan debt totaled \$30,163.23 and was delinquent. A withholding order was issued by a state commission to garnish his wages at that time. He presented documentation that shows his student loans were paid in full, through garnishment of his wages, in the fall of 2011. (GE 2; GE 4; GE 5; AE M; Tr 37-39, 41-42.) These debts are resolved.

Applicant is indebted to a collection company in the amount of \$64 (as alleged in SOR ¶ 1.c). This debt has been past due since August 2005. Applicant satisfied this debt on February 22, 2013. He provided a partial copy of his bank statement and a letter from this creditor indicating this debt was resolved. (GE 5; AE L; Tr. 53.) This debt is resolved.

Applicant is indebted to a collection company in the amount of \$9,706 (as alleged in SOR ¶ 1.h). Applicant testified that this debt was an unsecured loan from a bank. Applicant's credit report, dated March 15, 2011, records this debt as being delinquent since November 2009. In Applicant's post-hearing documents, he indicated he called the collection company and verbally contested this debt because he did not recall "ever opening an account with [original creditor]." He requested the creditor provide proof that it is a valid debt. He is awaiting that documentation. (GE 5; AE L; Tr. 53-54, 60.) This debt is unresolved.

Applicant is indebted to a collection company in the amount of \$7,320 (as alleged in SOR ¶ 1.i). Applicant testified at hearing that this debt was an unsecured loan from a bank. Applicant's credit report, dated March 15, 2011, records this debt as being delinquent since January 2006. In Applicant's post-hearing documentation, he indicated, "I spoke with [the collection agent] regarding the [original creditor] bill of \$7320. The [collection agent] stated they were unable to find my account in their system." Applicant requested a letter to this effect, but he did not receive anything before the close of the record. Applicant also made an inquiry with the original creditor about this debt, but claims the original creditor was unable to find any record of the debt in their system. (GE 5; AE L; Tr. 53-54, 60.) This debt is unresolved.

Applicant has a long history of financial problems. In June 1998, he gave a statement to an agent of the Defense Investigative Service in which he discussed eight delinquent debts. He attributed his debts at that time to his first wife's loss of employment and to their decision to live in an apartment that was "too expensive." Applicant attributed his recent financial problems to his first wife's job loss in 1998, his separation from his first wife beginning 2002, his divorce in 2006, and expensive medical treatments to treat his second wife's (then girlfriend's) cancer in 2005. (GE 1; Tr. 33-34, 55-58.)

Applicant testified that to avoid future financial problems, he pays cash for all purchases. He and his wife moved in with his elderly parents in 2010. They maintain his parent's property in lieu of paying rent. As a result, he has been able to save approximately \$5,000 for future emergencies. He has not participated in formal financial counseling. (Tr. 34-36, 58, 66.)

Applicant is highly regarded by his step-daughter, a friend, and a co-worker, who wrote letters of support on Applicant's behalf. In November 2012, Applicant was awarded an individual excellence award for his contributions to his employer. A 2010 performance review indicated that Applicant is a successful contributor to his team. (AE F; AE G; AE L.)

Applicant was awarded the Navy and Marine Corps Commendation Medal while serving in the Navy. His DD Form 214 also reflects that Applicant earned three Sea Service Deployment Ribbons. (AE H; AE L.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions (DCs) and mitigating conditions (MCs), 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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 protect or 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

Guideline F, Financial Considerations

The security concerns under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

Department Counsel asserted, and the record evidence established, security concerns under two DCs, as set forth in AG ¶ 19:

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

Applicant has incurred financial difficulties since June 1998. While he has satisfied some of his delinquent accounts, others remain unresolved despite his apparent ability to repay them from savings. The evidence supports the application of AG ¶¶ 19(a) and (c), thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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 has the burden of showing that future delinquencies are unlikely to occur and that his financial decisions do not cast doubt on his current reliability, trustworthiness, or good judgment. Applicant still has a significant amount of delinquent debt. Of his delinquent accounts, his five student loans (SOR ¶¶ 1.b, 1.d, 1.e, 1.f, and 1.g) were resolved involuntarily through garnishment. One other small debt of \$64 (SOR ¶ 1.c) was resolved after the hearing. Applicant waited until after the hearing to contact the remaining creditors. He failed to present sufficient evidence that he is addressing the debts alleged in SOR ¶¶ 1.a, 1.h, and 1.i. in a responsible manner or that he has the discipline or budget to resolve them. These three debts total \$17,143, and constitute over 70% of the total debt alleged on the SOR. Applicant's choice to ignore his debts from 2006 through early 2013 cast doubt on his judgment during that time period. I cannot find AG ¶ 20(a) applies.

AG ¶ 20(b) is not fully applicable. Some of Applicant's debts are attributable to conditions beyond his control like his first wife's unemployment, his divorce, and his second wife's cancer treatments. However, these events took place over five years ago and Applicant has made little effort since then to address the delinquent accounts. Further, to be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant failed to demonstrate a track record of responsibly addressing his delinquent accounts. Instead, his delinquencies resulted in an involuntary garnishment to repay his five student loans. One additional account was satisfied, after the hearing. He failed to document any action on his largest debt listed on the SOR. I am unable to make a determination that he acted responsibly under the circumstances.

Applicant testified that he had not attended financial counseling or established a solid budget to address his financial obligations. Hence, there is no indication that Applicant's remaining delinquent accounts are being resolved or are under control. AG ¶ 20(c) does not apply.

An applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR.¹ All that is required is that an applicant demonstrate that he has ". . . established a plan to resolve his financial problems and taken significant actions to implement that plan."² However, the Appeal Board has held, "On it's face, satisfaction of a debt through the involuntary establishment of a creditor's garnishment is not the same as, or similar to, a good-faith initiation of repayment by the

¹See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006).

²See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006).

debtor.”³ SOR ¶¶ 1.b, 1.d, 1.e, 1.f, and 1.g were resolved involuntarily through garnishment and thus, this mitigating condition is inapplicable to those debts. Applicant has only initiated a good-faith effort to repay one of his debts (SOR ¶ 1.c). He presented no plan to satisfy his remaining debts (SOR ¶¶ 1.a, 1.h, and 1.i). AG ¶ 20(d) is inapplicable.

Applicant believed that the debts in SOR ¶¶ 1.h and 1.i were for additional loans he had repaid through the garnishment. In post-hearing documentation, he claimed not to recognize the accounts and to have verbally disputed the debts with the creditors. He presented no documentation to confirm that he was in the process of formally disputing SOR ¶¶ 1.h, and 1.i. He failed to provide proof to substantiate the basis of the dispute or evidence of his actions to resolve the issue. AG ¶ 20(e) is not applicable.

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 pertinent facts and circumstances surrounding this case. Applicant is well respected by those who know him. He served honorably in the Navy, and was recognized for his meritorious service. He has worked for his current employer for approximately eight years and performs his job satisfactorily. However, he has a long history of neglecting his personal finances. While he has taken some steps to reduce future delinquencies, such as only using cash for purchases and residing with his parents to eliminate rent payments, he has not fully demonstrated that he has established a responsible plan and budget to resolve his remaining obligations. Prior to this hearing, Applicant took minimal action to address his debts. Applicant needs to be proactive in researching his debts and following up on his financial responsibilities. If he continues to monitor his finances,

³ ISCR Case No. 08-06058 at 6 (App. Bd. Sept. 21, 2009.)

and follow-up with his remaining creditors, he may be eligible for a security clearance in the future. However, at this time, he has not demonstrated the responsibility required to hold a security clearance. Despite his failure to establish Guideline F mitigating conditions that require a substantial good-faith effort to resolve delinquent debts giving rise to security concerns, I find in his favor concerning the debts that were repaid after the hearing or through garnishment because they present no future potential for pressure, coercion, exploitation, or duress, and reflect no continuing irresponsibility.

Overall, the record evidence leaves me with substantial doubt as to Applicant's present eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against 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.

JENNIFER I. GOLDSTEIN
Administrative Judge