



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



In the matter of:)
)
) ISCR Case No. 11-05100
)
Applicant for Security Clearance)

Appearances

For Government: Gina L. Marine, Esq., Department Counsel
For Applicant: *Pro se*

02/23/2012

Decision

MASON, Paul J., Administrative Judge:

During an interview on January 19, 2011, Applicant acknowledged individual responsibility for several of the accounts listed in the SOR. He did not recognize the other accounts. Next, he stated that since he has a better paying job, he would contact the creditors and make arrangements to repay the delinquent debts. Applicant has not provided any evidence to substantiate his stated intention to contact the creditors and repay the debt. Eligibility for access to classified information is denied.

Statement of the Case

Applicant signed and certified his Electronic Questionnaire for Investigations Processing (e-QIP, Item 4) on November 7, 2010. Inside Item 5 dated June 20, 2011, is an interview summary Applicant provided to an investigator from the Office of Personnel Management (OPM) on January 19, 2011. The primary topic discussed was Applicant's delinquent debts. He provided interrogatory responses (Item 6) to adjudicators from

DOHA on June 19, 2011. On September 29, 2011,¹ DOHA issued a Statement of Reasons (SOR, Item 1) detailing security concerns under financial considerations (Guideline F). 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 (AG).

Applicant's answer (Item 3) is undated and there is no date-stamp to indicate when DOHA received his answer to the SOR. However, the SOR mailed to Applicant match the SOR that Applicant entered his answers. Applicant's answer was notarized, but the notary did not place a date next to his stamp. A copy of the Government's File of Relevant Material (FORM, the Government's evidence in support of the allegations of the SOR) was sent to Applicant on November 19, 2011. He received the FORM on November 25, 2011. In an attachment to the FORM, Applicant was advised he could object to the information in the FORM or submit additional information in explanation or extenuation. His response was due by December 25, 2011. No response was received by DOHA. The case was assigned to me on January 23, 2012.

Findings of Fact

The SOR contains 19 allegations under the financial considerations guideline. The first two allegations refer to two petitions Applicant filed under the bankruptcy laws. He admitted both allegations. Concerning the 17 delinquent debt allegations, Applicant admitted SOR ¶¶ 1.c, 1.d, 1.e, 1.g, 1.k, 1.o, 1.p, 1.r, and 1.s. He denied SOR ¶¶ 1.f, 1.h, 1.i, 1.j, 1.l, 1.m, 1.n, and 1.q. He provided no explanations for his denials.

As set forth in SOR ¶ 1.a, Applicant filed a Chapter 7 bankruptcy in November 1997. Applicant was discharged from bankruptcy in February 1998. (Item 9) Applicant filed a Chapter 13 bankruptcy petition in August 1999. (SOR ¶ 1.b) The petition was dismissed in November 2003 when Applicant failed to make payments under the petition.

The 17 creditors identified in the SOR include medical providers (one of the medical providers has a judgment filed November 2006 for \$15,456 (SOR ¶ 1.i)), a mortgage lender of a second mortgage (SOR ¶ 1.f), a physical fitness facility, a student loan, and a credit card. The total amount of delinquent debt in the SOR is \$43,170. The debts became delinquent between June 2005 and November 2010. (Item 7, Item 8)

Applicant is 42 years old. He has been married since January 1995. He has a 9-year-old son and a 20-year-old stepdaughter. He has been employed as a technician by

¹ The SOR is undated or the date is unreadable. The cover letter from DOHA to Applicant's employer is dated September 29, 2011, and next to Applicant's signature is the date October 18, 2011, which is interpreted as the date he received the SOR.

a defense contractor. Before his current employment, he was unemployed for two months. He was also unemployed between May and August 2009. (Item 4, e-QIP)

During his interview in January 2011, Applicant recalled the delinquent second mortgage debt identified in SOR ¶ 1.f. He explained to the investigator that he paid the mortgage for 12 to 18 months. However, when hours of employment were reduced, and his overtime was eliminated altogether, he was unable to maintain mortgage payments. (Item 5) Applicant indicated that he had taken no action on the delinquent debts because his wife lost her job. He claimed he would begin to repay the debt when his wife returned to work in the fall of 2011. (Item 6) No additional information was provided. Applicant also mentioned that SOR ¶ 1.i could be related to an injury that he suffered while at work. Applicant provided no additional information about the injury or when it occurred.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the guidelines in the AG. Each guideline lists potentially disqualifying conditions and mitigating conditions that are useful in evaluating an applicant's eligibility for access to classified information.

The administrative judge's ultimate goal is to reach a fair and impartial decision that is based on sound and prudent judgment. The decision should also include a careful, thorough evaluation of a number of variables known as the "whole-person concept" that brings together all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. 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.I.14., the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.I.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 bears the ultimate burden of persuasion in demonstrating that he warrants a favorable security clearance decision.

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.

There are two disqualifying conditions that are applicable: AG ¶ 19(a) (*inability or unwillingness to satisfy debts*); and AG ¶ 19(c) (*a history of not meeting financial obligations*) apply.

Applicant began incurring delinquent debt in June 2005. As of September 29, 2011, the date of the SOR, Applicant owed \$43,173 in delinquent debt. Applicant has given no indication that he is able to pay the debt. AG ¶¶ 19(a) and 19(c) apply.

Four mitigating conditions under AG ¶ 20 are potentially applicable. No mitigation is available under 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*). Applicant still owes the accounts. His declarations to repay the accounts have little weight when he has made no effort to contact any of the 17 creditors to negotiate settlements. Applicant's inaction in responsibly resolving his delinquent debts makes it likely his current financial problems will continue in the future, inspiring little confidence in his current reliability, trustworthiness, and good judgment.

There are two components to 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*). The first is an unforeseen event that causes financial problems was beyond the individual's control. Applicant's unemployment since May 2009 on two occasions for a total of five months, satisfies the first component of the condition. However, an applicant must also show that he acted responsibly under the circumstances. Applicant has been continually employed at his current job since October 2010. Yet, he has not contacted any creditors. Even though his wife is not working, he could still demonstrate financial responsibility by informing the creditors of his financial difficulties. He has taken no action. AG ¶ 20(b) does not apply.

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*) does not apply. There is no evidence of financial counseling or that the debts are being resolved or under control. AG ¶ 20(c) does not apply.

Applicant receives no mitigation under AG ¶ 20(d) (*a good-faith effort to repay overdue creditors or otherwise resolve debts*) because he has made no effort to even contact the creditors. There is no information that Applicant is contemplating or actively

seeking debt consolidation, or a Chapter 7, or Chapter 13 bankruptcy to eliminate the delinquent debt. Judging by the totality of the circumstances, Applicant has offered insufficient evidence to prevail under the financial considerations guideline.

Whole-Person Concept

I have examined the evidence under the disqualifying and mitigating conditions in my ultimate finding against Applicant under the financial considerations guideline. 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 listed in 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.

Given Applicant's Chapter 7 bankruptcy discharge in February 1998, his dismissed Chapter 13 bankruptcy in November 2003, followed by mounting delinquent debt that totaled \$43,170 in September 2011, Applicant should have provided substantial evidence in mitigation demonstrating the financial problems were being resolved or under control. Because he presented no evidence indicating he contacted the creditors or settled any debts, his financial problems are likely to continue. Applicant has failed to meet his ultimate burden of persuasion under the financial considerations guideline. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

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.s: 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