



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



In the matter of:)
)
) ISCR Case No. 11-05834
)
)
Applicant for Security Clearance)

Appearances

For Government: Pamela Benson, Esquire, Department Counsel
For Applicant: *Pro se*

04/18/2013

Decision

DAM, Shari, Administrative Judge:

Applicant accumulated substantial delinquent debt since late 2009, the majority of which is credit card debt. He provided minimal evidence of an effective plan to resolve the debt or ability to prevent continued financial delinquencies. Resulting security concerns were not mitigated. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Statement of Case

Applicant submitted a security clearance application (SF-86) on February 8, 2011. On July 20, 2012, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR), 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 within the DoD for SORs issued after September 1, 2006.

Applicant answered the SOR on August 16, 2012 (Answer), and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 4.) Department Counsel submitted the Government's written case on January 22, 2013. A complete copy of the File of Relevant Material (FORM), containing 10 Items, was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant signed the document acknowledging receipt of his copy of the FORM, and timely returned the receipt to the Department of Defense Office of Hearings and Appeals (DOHA). He provided no further response to the FORM within the 30-day period, did not request additional time to respond, and expressed no objection to my consideration of the evidence submitted by Department Counsel. I received the case assignment on March 28, 2013.

Findings of Fact

In his response to the SOR, Applicant denied all 12 allegations, on the basis that 10 debts were being paid, one debt was paid, and one debt he did not recognize. (Item 4.)

Applicant is a 60-year-old employee of a defense contractor, where he was hired in February 1986. He has held a security clearance since starting work there. He married his first wife in June 1975, and has three children with her and two step children, all adults. They divorced in May 2005. He married his current wife in December 2006. He earned a bachelor's degree in 1975. (Item 5.)

In February 2011, Applicant submitted an SF-86. In it, he disclosed 11 delinquent debts totaling \$77,537, and indicated that he was "in the process of filing bankruptcy." (Item 5.) During a March 2011 interview with a security investigator, Applicant attributed his financial problems to his wife's loss of job in 2010 and her subsequent unemployment until sometime in 2012. As a consequence they were unable to pay their debts. He indicated that he contacted a bankruptcy attorney and had taken an online budgeting course required by the bankruptcy court. As of that date, he had not filed the Chapter 7 bankruptcy. (Item 6.)

In June 2012, Applicant completed and submitted a set of Interrogatories relating to delinquent debts and confirming the content of his February 2011 interview. (Item 6.) He provided a Notice of Chapter 13 Bankruptcy filing by his wife dated April 18, 2012. That submission did not contain a list of creditors included in the bankruptcy. He provided a copy of a \$778 check, dated January 2012 and payable to one creditor; four \$50 checks, dated May 2012 and payable to the same creditor but on different accounts;¹ and a \$100 check, dated May 2012 and payable to another creditor. These

¹ These four checks, dated in May 2012 are payable to a creditor referred to as Creditor A in subsequent findings. The account numbers on these checks do not match delinquent debt accounts listed in the SOR.

smaller checks were allegedly his first monthly payment on monthly repayment plans that he negotiated. He did not submit evidence of confirmation of the repayment plans from the five creditors.

In July 2012, DoD issued an SOR, alleging 12 delinquent debts totaling \$82,441. The status of each SOR-listed debt is as follows:

1. (SOR ¶ 1.a) The \$5,099 debt is owed to Creditor A for a charged-off credit card account. In his August 2012 Answer, Applicant asserted that “this account is being paid to [Creditor A] at a rate of \$75.00 a month.” (Item 4.) He failed to provide documentation to substantiate these payments or the debt’s current balance. According to the January 2013 credit bureau report (CBR), the account remained in charged-off status. (Item 9.) It is unresolved.

2. (SOR ¶ 1.b) The \$12,711 debt is owed to Creditor A for a charged-off credit card account. In his August 2012 Answer, Applicant asserted that “this account is being paid to [Creditor A] at a rate of \$75.00 a month.” (Item 4.) He failed to provide documentation to substantiate these payments or the debt’s current balance. According to the January 2013 CBR, the account remained in charged-off status. (Item 9.) It is unresolved.

3. (SOR ¶ 1.c) The \$1,334 debt is owed to Creditor A for a charged-off gas credit card account. In his August 2012 Answer, Applicant asserted that “this account is being paid to [Creditor A] at a rate of \$25.00 a month.” (Item 4.) He failed to provide documentation to substantiate these payments or the debt’s current balance. According to the January 2013 CBR, the account remained in a charged-off status. (Item 9.) It is unresolved.

4. (SOR ¶ 1.d) The \$4,127 debt is owed to Creditor A for a charged-off credit card account. In his August 2012 Answer, Applicant asserted that “this account is being paid to [Creditor A] at a rate of \$75.00 a month.” (Item 4.) He failed to provide documentation to substantiate these payments or the debt’s current balance. According to the January 2013 CBR, the account remained in a charged-off status. (Item 9.) It is unresolved.

5. (SOR ¶ 1.e) The \$10,843 debt is owed to Creditor A for an unpaid credit card account. In his August 2012 Answer, Applicant asserted that “this account is being paid to [Creditor A] at a rate of \$75.00 a month.” (Item 4.) He failed to provide documentation to substantiate these payments or the debt’s current balance. According to the January 2013 CBR, the account remained in collection status. (Item 9.) It is unresolved.

6. (SOR ¶ 1.f) The \$20,245 debt is owed to Creditor A for a second unpaid gas credit card account. In his August 2012 Answer, Applicant asserted that “this account is being paid to [Creditor A] at a rate of \$75.00 a month.” (Item 4.) He failed to provide documentation to substantiate these payments or the debt’s current balance. According

to the January 2013 CBR, the account remained in collection status. (Item 9.) It is unresolved.

7. (SOR ¶ 1.g) The \$759 debt is owed to an automobile gas company for an unpaid gas credit card account. In his August 2012 Answer, Applicant asserted that “this account is being paid to a [Creditor] at a rate of \$25.00 a month.” (Item 4.) He failed to provide documentation to substantiate these payments or the debt’s current balance. According to the January 2013 CBR, the account remained in collection status. (Item 9.) It is unresolved.

8. (SOR ¶ 1.h) The \$14,341 debt is owed to a company for a charged-off credit card account. In his August 2012 Answer, Applicant asserted that “this account is being paid to a [Creditor] at a rate of \$100.00 a month.” (Item 4.) He failed to provide documentation to substantiate these payments or the debt’s current balance. According to the January 2013 CBR, the account remained in a charged-off status. (Item 9.) It is unresolved.

9. (SOR ¶ 1.i) The \$9,289 debt is owed to a home improvement store for an unpaid credit card account. In his June 2012 Interrogatories, Applicant submitted a copy of a \$100.00 payment he made in May 2012 on this debt. In his August 2012 Answer, Applicant asserted that “this account is being paid to a [Creditor] at a rate of \$100.00 a month.” (Item 4.) He failed to provide additional documentation to substantiate additional payments or the debt’s current balance. According to the January 2013 CBR, the account remained in collection status. (Item 9.) It is unresolved.

10. (SOR ¶ 1.j) The \$396 past-due debt is owed to an automobile loan company for a car that was voluntarily repossessed. In his June 2012 Interrogatories, Applicant stated that the debt was included in his wife’s Chapter 13 bankruptcy. (Item 6.) In his August 2012 Answer, Applicant asserted that “this account is being paid to a [Creditor] at a rate of \$25.00 a month.” (Item 4.) He failed to provide documentation to substantiate these payments or the debt’s current balance. According to the January 2013 CBR, the full amount of the account, \$28,162, has been charged off. (Item 9.) It is unresolved.

11. (SOR ¶ 1.k) In his August 2012 Answer, Applicant denied that he owed this \$1,875 credit card debt because it was not his debt. (Item 4.) However, in his June 2012 Interrogatories, he stated that the debt was included in his wife’s Chapter 13 bankruptcy. (Item 6.) He failed to provide documentation to verify his dispute or its inclusion in his wife’s bankruptcy. According to the January 2013 CBR, the account was charged off. (Item 9.) It is unresolved.

12. (SOR ¶ 1.l) The \$1,818 debt owed to a home improvement store was settled for \$778 and paid in January 2012. (Item 6.) It is resolved.

Applicant asserted that he completed an online credit counseling course for a bankruptcy he intended to file, but did not provide evidence of it. He provided no budget or personal financial statement to show the financial means by which he could resolve current or future financial delinquencies. He did not submit a plan to systematically resolve his delinquent debts.

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 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 relating to 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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

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

Since late 2009, Applicant has been unable or unwilling to satisfy delinquent debts alleged in the SOR that totaled over \$82,000. The evidence raises both security concerns, 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's delinquent debts are in excess of \$82,000, arose over the past two or three years, and continue to date.² The majority of the debt is owed for credit card accounts. Applicant failed to demonstrate that such problems are unlikely to continue or recur, or that his reliability and trustworthiness in managing his debts have improved. The evidence does not support the application of AG ¶ 20(a).

According to his SF-86, Applicant was continuously employed throughout the period in question. He offered some evidence that his financial problems arose because his wife lost her position in 2010 and did not find another job until 2012. That was a circumstance beyond his control. However, he did not provide documentation that he began to address his delinquent debts until sometime in 2012, or otherwise acted responsibly to reduce his expenditures during that time, which evidence is necessary for the full application of AG ¶ 20(b).

Applicant did not document participation in credit or other financial counseling. He did not provide a budget to document his financial capability to resolve his debts. He did not submit sufficient documentation that he has been addressing or reducing his delinquent debt since receiving the SOR. He offered insufficient evidence to establish clear indications that his delinquent debts, now totaling \$110,603, are being resolved or under control. AG ¶ 20(c) is inapplicable.

In June 2012, Applicant claimed that he began making payments toward five SOR-listed debts. He submitted copies of five checks that he wrote in May 2012 totaling \$300, but four of those checks did not record account numbers readily identifiable in the SOR. He submitted a copy of another check that resolved a \$1,818 SOR-listed debt. His payment of \$778 in resolution of the \$1,818 debt demonstrated a good-faith effort to resolve that debt (SOR ¶ 1.i). However, over \$110,000 of debt remains outstanding and unaddressed. Mitigation under AG ¶ 20(d) applies only to that one debt.

Finally, Applicant denied owing the debt alleged in SOR ¶ 1.k and listed on the January 2013 CBR, because it was not his debt. However, he provided no proof of that

² In January 2013, the creditor in SOR ¶ 1.j listed the charged-off amount as \$28,162, bringing the delinquent debt total to \$110,603.

assertion, or of affirmative action to formally dispute the debt to resolve the issue. He failed to meet his burden of proof under AG ¶ 20(e).

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.

According to 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 an accountable adult, who is responsible for his voluntary choices and conduct that underlie the security concerns expressed in the SOR. In February 2011, Applicant forthrightly disclosed his delinquent debts. In March 2011, he told a security investigator that he intended to file bankruptcy. In June 2012, he answered financial Interrogatories and stated that he started repayment plans toward five accounts and paid one debt the previous month. Those payments totaled about \$1,000. In January 2013, he received specific notice from the Government in its FORM that his documentation, previously submitted in June 2012, was insufficient to mitigate the financial security concerns and that a recent CBR continued to report his debts as charged-off or in collections. He chose not to respond to the notice. His failure to provide substantial and ongoing proof that he is resolving his debts raises questions about his reliability and judgment.

Overall, the record evidence leaves me with substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden 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

Subparagraphs 1.a through 1.k: Against Applicant
Subparagraph 1.l: 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.

SHARI DAM
Administrative Judge