



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



In the matter of:)
)
) ISCR Case No. 11-07286
)
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

02/15/2013

Decision

MASON, Paul J., Administrative Judge:

Applicant accumulated approximately \$31,000 in debt since February 2005. He recalled receiving late notices in 2004 for his first repossessed car. Between his military discharge in April 2010 and October 2012, he remembered receiving negative information from his creditors. Yet, he took no documented action to reduce his debt delinquencies. Applicant has three driving while under the influence of alcohol (DUI) convictions between 1996 and January 2011. He will not be discharged from probation for the most recent DUI until March 2014. Applicant's evidence in mitigation is insufficient to overcome the disqualifying evidence under the financial and criminal conduct guidelines. Eligibility for access to classified information is denied.

Statement of the Case

Applicant completed and signed an Electronic Questionnaire for Investigations Processing (e-QIP), identified as Government's Exhibit (GE 1) on February 9, 2011. He answered "no" to all the financial questions under Section 26.¹ The only debt he listed in the section was child support and indicated the arrearage was the fault of the Defense Finance Accounting Service (DFAS). He was interviewed by an investigator from the Office of Personnel Management (OPM) on March 31, 2011, and April 21, 2011. The interview summaries appear in GE 2, Applicant's interrogatory answers, dated May 22, 2012.² In response to question #3 of GE 2, he responded "yes" that the summaries accurately reflected the information he provided to the OPM investigator. In response to question #6 of GE 2, Applicant responded "yes" that he agreed with the summaries and that they could be admitted in evidence at a hearing to determine his security suitability. (GE 2)

On July 11, 2012, the Department of Defense issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F) and criminal conduct (Guideline J). 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 notarized but undated answer to the SOR was received by the Defense Office of Hearings and Appeals (DOHA) on November 26, 2012. DOHA issued a notice of hearing on December 3, 2012, for a hearing on December 21, 2012. The hearing was held as scheduled. Seven Government exhibits (GE 1 through GE 7) were admitted in evidence without objection. Applicant testified and offered one exhibit (AE A) that was admitted into evidence without objection. The transcript was received on January 3, 2013. The record closed on January 3, 2013.

Rulings on Procedure

At the beginning of the hearing, Applicant advised Department Counsel that he had not received the discovery material that had been sent to him. I advised him that he could request a continuance to prepare his case. He indicated that he wanted to proceed with the

¹ Applicant's inaccurate responses cannot be considered as a part of the Government's case-in-chief. However, I have considered them in assessing his credibility and under the whole-person concept.

² The page numbers of this exhibit appear in handwriting in the lower right hand corner of the exhibit. For example, (GE 2 at I-3) would be the third page of the exhibit.

hearing anyway. I was satisfied that Applicant understood he had right to continue the case and waived that right. (Tr. 6-8)

Findings of Fact

The SOR contains six allegations under the financial considerations guideline. Applicant admitted all allegations. The SOR contains four allegations under the criminal conduct guideline. Applicant admitted all allegations except SOR 2.c.

Applicant is 36 years old and recently filed for divorce from his second wife. He has two children from this marriage and one child from a previous marriage. He served in the U.S. Navy from August 1999 until his honorable discharge in April 2010. Following a three-to four-month period of unemployment, Applicant was employed as an aircraft mechanic for a defense contractor from August 2010 to February 2011. He has been employed in a similar position by his current employer since February 2011.

Applicant attended 1½ semesters of college in 1996. He needs 11 credits to complete an aeronautical science degree. (Tr. 40)

Financial Considerations

The SOR lists approximately \$31,000 in delinquent debt. The debts were transferred for collection or charged off between February 2005 and September 2011. The accounts range in amounts from \$29 to \$15,175. All of the listed accounts are identified as individual installment accounts meaning that Applicant is responsible if the account becomes delinquent. (GE 4) He admitted in his answer to the SOR that he owed the accounts. He told the OPM investigator in April 2011, that before he purchased a car in May 2010, a credit report was obtained and he was not told about any of the delinquent debts.³ He told the OPM investigator that he intended to call each creditor and pay them if he owed them. (GE 2 at I-17)

In May 2012, Applicant was required to furnish information about the current status of the listed delinquent debts, most of which appear in the SOR. He indicated he would pay off the smaller debts soon. Regarding the two car repossessions, Applicant explained the first car was repossessed in 2004 when his first wife did not maintain the car payments during his deployment overseas. (SOR 1.e; Tr. 33-34); the second car was repossessed when Applicant returned the car to the finance company complaining that the official pre-sale car report did not disclose the car's major mechanical defects. (SOR 1.f; Tr. 34-35)

³ In June 2011, his current wife took the vehicle, the children, and \$1,700 from his checking account to another state and have not returned. (Tr. 31, 47-48)

Applicant did not indicate how he was going to resolve the two car repossession debts. (GE 2 at I-3) When asked why he had not contacted the car creditors or set up payment plans with them, he responded:

No. I - - I - - I had not. It was before I went to [overseas deployment], and it was kind a "out of sight, out of mind." You know, I was - - I guess I just didn't think about the consequences at hand when - - at that time. Now that - - and I always thought I had a clearance, that, oh, I have a clearance, I don't have to take care of this. (Tr. 49)

Applicant recalled receiving late notices in 2004 from the creditor of his first repossessed car. Between his military discharge in April 2010 and October 2012, he received negative information from the creditors regarding his delinquent debts, but did nothing until recently when he contacted a debt consolidation firm. In October 2012, a representative from the firm told him they had identified the delinquent debts and were preparing to establish a payment plan with the creditors. Applicant told the representative to wait until the first of 2013. (Tr. 60-61, 67-70)

Applicant indicated he satisfied some delinquent debts recently. He discussed a payday loan that he had applied for in April 2011, that he paid off in October 2012. (Tr. 70-73)

Though he admitted to all the delinquent accounts in his answer to the SOR, he claimed in May 2012 and at the hearing that he did not remember the debt identified in SOR 1.d and was going to challenge it. (GE 2 at I-3; Tr. 33) No documentation was presented to show that Applicant submitted an official dispute with the creditor or one of the credit agencies.

Criminal Conduct

On January 12, 2011, Applicant was celebrating the date he was to begin employment with his current employer. He was drinking with friends at a bar from approximately 11 p.m. to 2 a.m. He had consumed three beers and a special drink that was beer-based or liquor-based. Applicant decided to drive behind his friend to ensure the friend arrived home safely. He was stopped by the police for crossing the white line. He recalled taking a breathalyzer test in which he registered a .08. He was arrested and charged on January 13, 2011, with driving while under the influence of alcohol (DUI), driving while impaired by alcohol, negligent driving, and reckless driving. (SOR 2.a) On March 31, 2011, he pled guilty to driving under the influence of alcohol and sentenced to 10 days in jail and three years probation before judgment. The probation period does not end until March 31, 2014. (SOR 2.b); Tr. 57) He told the sentencing judge that he volunteered for an alcohol

awareness class and intended to begin the class in May 2011. No additional information was provided. (GE 2 at I-17, GE 7 at 2; Tr. 54-58)

On March 28, 2001, Applicant was charged with retail theft of tennis shoes. (SOR 2.c) Though he denies the charge, he received non-judicial punishment including a reduction in rank. He contends that when he discovered the wrong size shoes were in the wrong shoe box in the shoe display area, he found the ones that he wanted and put them in the shoe box. He did not explain how the pricier shoes got into the cheaper stamped shoe box when he appeared and purchased the shoes at the cash register. He contends that he was also prosecuted because he smiled at the attendant at the cash register. (Tr. 38, 58-60)

On February 23, 2000, Applicant (age 22) was arrested for DUI. He consumed one or two beers with some friends in his Navy training class. He was stopped for speeding. After passing a field sobriety test, he was given seven breathalyzer tests, and he claimed all results registered below the legal limit. He was arrested and transported to the police station. In court, he was found guilty of DUI and sentenced to 10 days in jail, five years suspended license, one year probation, and a fine. (SOR 2.d) After receiving his military orders, Applicant claims he was released by the probation officer from all conditions of his sentence and his commanding officer spoke with the judge to confirm Applicant's release from probation. (GE 2 at I-12)

On October 16, 1996, Applicant was charged with driving while intoxicated, not DUI. See second page of GE 5. He was found guilty of the charge and sentenced to four days in jail and ordered to pay a fine and costs. (SOR 2.e) He was attending a fraternity party. He had been drinking heavily and believes he was above the legal limit for alcohol in his blood. He was tired and attempted to drive home. On the way out of the parking lot, he backed into another car. (GE 2 at I-13)

The three criminal offenses were alcohol-related. Applicant's current alcohol consumption, which is a glass of wine occasionally on the weekends and if he is cooking dinner, is dramatically less than his consumption levels were in February 2000. (Tr. 64)

Character Evidence

During his military career, Applicant received six U.S. Navy Achievement Medals. He was considered one of the top enlisted persons in his command. (Tr. 61)

On December 12, 2012, the flight test director and test pilot commended Applicant, stating in a character statement that "His careful and meticulous work ethic maintaining and modifying our squadron's one-of-a-kind [planes] test assets directly contributed to significant program milestones with zero

incidents or mishaps.” The test director has full confidence and trust in Applicant’s character and job performance. (AE A)

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 of 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 under the financial considerations guideline. Based on the credit reports, Applicant's interview summaries, his interrogatory responses, and the record transcript, the Government has established its case. Two disqualifying conditions under AG ¶ 19 are: (a) (inability or unwillingness to satisfy debts) and (c) (a history of not meeting financial obligations). The delinquent debt total is approximately \$31,000. The debts became delinquent between February 2005 and September 2011. The credit reports confirm Applicant's individual liability for the accounts. AG ¶¶ 19(a) and 19(c) are applicable.

Five mitigating conditions under AG ¶ 20 are potentially pertinent: (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); (b) (the conditions that resulted in the financial problem were largely beyond the person's control 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 about \$31,000 in delinquent debt. One of the debts dates to February 2005, and one of the accounts became delinquent in September 2011. Applicant still owes the debt. Although he knew as far back as 2004 that he had delinquent debt, he did not address the debts, thus raising ongoing security concerns about his judgment and trustworthiness. AG ¶ 20(a) does not apply.

Applicant testified that his first car (SOR 1.e) was repossessed when his first wife stopped making the monthly payments during his deployment. While her decision to stop payments was an occurrence beyond Applicant's control, he knew in 2004 that the payments were not being made. However, after he was placed on notice that the car payments were delinquent, he did not act "responsibly under the circumstances." Instead of contacting the creditor to attempt a resolution of the account, he took no action.

Regarding the second car (SOR 1.f) that was repossessed, Applicant knew he owed money for the car when he returned it to the finance company. His complaint that the car's clear pre-sale mechanical report was false does not excuse him from the remaining conditions of the installment contract. Under these circumstances, he gains no mitigation from AG ¶ 20(b) because he created the delinquent debt and did not "act responsibly under the circumstances" to resolve the account.

Applicant testified he contacted a debt consolidation firm who identified the creditors and was prepared to establish repayment plans. However, he provided no documentation of his enrollment in the firm's debt consolidation plan. The documentation would be of negligible value since Applicant advised the firm not to negotiate payment plans until the first of 2013. Without a plan to pay the delinquent accounts, Applicant receives no credit under AG ¶¶ 20(c) and 20(d) because there are no indications the accounts are being resolved or under control.

Applicant indicated in his interrogatory answers in May 2012 and at the hearing that he did not remember and was going to dispute the account identified in SOR 1.d. Simply not remembering and orally disputing the account is not sufficient to relieve an applicant from responsibility for the account. An applicant must provide a reasonable basis for the dispute and documented proof to support the dispute. Applicant provided neither. AG ¶ 20(e) does not apply.

Criminal Conduct

AG ¶ 30 of the criminal conduct guideline sets forth the security concern related to criminal conduct:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

The two potentially disqualifying conditions under AG ¶ 31 are: (a) (a single serious crime or multiple lesser offenses); and (d) individual is currently on parole or probation.

Since 1996, Applicant was involved in four criminal offenses. In October 1996, he consumed too much alcohol and struck another car while attempting to leave a parking lot. In February 2000, he was found guilty of DUI with friends. He contends that he did not have sufficient alcohol in his body to be legally under the influence. Regarding the theft offense that occurred in March 2001, Applicant did not sufficiently explain how he appeared at the checkout counter with the pricier shoes in a box that was marked for lesser priced shoes. His contention that the theft occurred because he smiled at checkout attendant makes no reasonable sense. In January 2011, ten years after the theft offense, Applicant committed his third DUI and will not be discharged from probation until March 2014. AG ¶¶ 32(a) and 32(d) apply.

There are two conditions under AG ¶ 32 that may apply: (a) (so much time has passed since the criminal behavior happened, or it happened under such circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment); and (d) (there is evidence of successful rehabilitation;

including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community development).

The most recent DUI occurred in January 2011, less than two years before the hearing. Applicant will be on probation until March 2014. He continues to consume alcohol (the factor that triggered his criminal conduct) though at reduced levels. His repeated conduct casts doubt on his reliability, trustworthiness, and good judgment. AG ¶ 32 (a) does not apply. AG ¶ 32(d) applies in part because of Applicant's good job performance.

Whole-Person Concept

I have examined the evidence under the disqualifying and mitigating conditions of the financial considerations and criminal conduct 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 36 years old with two children from his current wife and one child from a previous marriage. In his 11-year career in the U.S. Navy, he received six Navy Achievement Medals and was one of the top enlisted individuals in his command. He is 11 credits hours away from receiving a degree in aeronautical science.

Weighing against the foregoing positive evidence is the negative evidence of Applicant's financial problems that he has not taken any documented action to resolve. Except for three or four months in 2010, he has been continually employed since August 1999, first in the U.S. Navy, then for two defense contractors. Applicant knew about the late car notice in 2004. From April 2010 to October 2012, he knew he had delinquent debts because of the negative information that he received from the creditors. In April 2011,

Applicant informed the Government that he was going to contact each creditor and pay the delinquent debts. In May 2012, he stated in his interrogatory answers that he was going to pay off the smaller debts soon. His testimonial assertions about contacting the debt consolidation firm in October 2012, do not have much probative value because there is no supporting independent evidence. Applicant committed the three DUI offenses and will be on probation until March 2014. After weighing the disqualifying and mitigating conditions in the context of the whole-person concept, Applicant has not mitigated the security concerns raised under the guidelines for financial considerations and criminal conduct.

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.f:	Against Applicant
Paragraph 2 (Guideline J):	AGAINST APPLICANT
Subparagraph 2.a through 2.e:	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