



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 11-10184
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: *Pro se*

April 30, 2013

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

The Statement of Reasons (SOR) identified Applicant as owing 12 delinquent debts totaling \$603,433. Applicant satisfied three debts, totaling \$6,637. One debt was forgiven by the creditor. Two other debts were satisfied through foreclosure. Applicant failed to introduce proof that he has addressed the remaining \$181,619. Based on a review of the testimony, pleadings, and exhibits, eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on December 23, 2008. On December 18, 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 January 14, 2013. The Government requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on March 19, 2013. DOHA issued a notice of hearing on March 19, 2013, scheduling the hearing for April 9, 2013. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 8, which were admitted without objection. Applicant offered Exhibits (AE) A through L, which were admitted without objection. Applicant testified on his own behalf. The record was left open until April 16, 2013, for the receipt of additional documentation. On April 16, 2013, Applicant presented six additional documents, marked AE M and AE N. Department Counsel had no objections and they were admitted into evidence as identified. DOHA received the transcript of the hearing (Tr.) on April 16, 2013.

Findings of Fact

Applicant is a 63-year-old government contractor. He has worked for his current employer since 2009. He possesses a bachelor's degree. He is single, after two previous marriages ended in divorce, and has three adult children. (GE 1; Tr. 38-39, 42, 46.)

The Government alleged that Applicant is ineligible for a clearance because he 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 12 delinquent debts totaling \$603,433. Applicant admitted six of the debts in his Answer as alleged in SOR ¶¶ 1.c, 1.e, 1.f, 1.j, 1.k, and 1.l. He denied SOR ¶¶ 1.a, 1.b, 1.d, 1.g, 1.h, and 1.i. (Answer.)

Applicant attributes his delinquent debts to two periods of unemployment and the effects of the national economic downturn on his real estate investments. In September 2006 Applicant was laid off from a job that he held for the previous ten years. He was unemployed from October 2006 to October 2007. He was hired by another employer in October 2007 and remained employed in that position until July 2008, when he was again laid off. He began working for his current employer in January 2009. (Tr. 39-41, 44.)

Prior to his first period of unemployment, Applicant invested in four rental properties and his own residence. He purchased his former residence (Property A) in 1989 or 1990 for \$225,000, and occupied it until fall 2012. He began leasing it to renters in Fall 2012. In 1996 or 1997, he purchased a rental property in his home state for \$115,000 (Property B). In 2000, he purchased a property in another state, which his sister rents from Applicant (Property C). In 2003 or 2004, Applicant purchased two additional properties (Properties D and E) in a third state that he intended to "flip." He purchased Property D for approximately \$121,000, which was divided between two mortgages. He purchased Property E for approximately \$195,000, and financed it with two additional mortgages. He fixed up these two properties and intended to resell them,

but found the market had collapsed. There were no buyers or renters interested in either Property D or E. (Tr. 39-41, 54-68, 72-78.)

Applicant's credit report dated January 15, 2009, which was acquired shortly after Applicant acquired full employment, only identifies four accounts as past due at that time: a \$97,200 primary mortgage debt and a \$18,880 secondary mortgage debt on Property D; a \$154,830 primary mortgage debt and a \$29,030 second mortgage debt on Property E. Foreclosure proceedings had already been initiated on Properties D and E by January 2009. At that time, Applicant was paying "as agreed" on all of his debts except for these real estate loans on his two out-of-state properties that he intended to "flip." (GE 5; Tr. 39-41, 54-68.)

His SOR listed debts are as follows:

Applicant was indebted on a delinquent medical account totaling \$101, as alleged in SOR ¶ 1.a. Applicant testified that this medical debt was paid by his insurance company. Applicant's credit report dated April 7, 2013, reflects this debt is paid. (GE 8; Tr. 49-50.)

Applicant was indebted on a delinquent medical account totaling \$359, as alleged in SOR ¶ 1.b. Applicant presented a letter from this creditor that reflects on October 25, 2012, Applicant satisfied this debt in full for \$435. He also presented a copy of the cancelled check, dated October 19, 2012, showing payment of \$435 to this creditor. This debt is satisfied. (AE A; AE G; Tr. 49.)

Applicant was indebted on a delinquent medical account totaling \$65, as alleged in SOR ¶ 1.c. Applicant's credit report dated April 7, 2013, reflected this debt as unpaid. Applicant testified that he disputed this debt with the creditor, a dentist, because he performed work on the wrong tooth. Applicant failed to produce documentation to substantiate his dispute with this creditor. This debt is unresolved. (Tr. 34-36, 50.)

Applicant was indebted on a judgment against him totaling \$6,177, as alleged in SOR ¶ 1.d. and duplicated in SOR ¶ 1.i. Applicant presented a copy of two cancelled checks made out to this creditor, the first dated October 26, 2012, in the amount of \$823.64 and the second dated December 27, 2012, in the amount of \$823. Applicant presented a letter dated January 22, 2013, from this creditor that confirmed he completed the terms of his settlement agreement and was not responsible for any additional payments on this account. This debt is satisfied. (AE D; AE H; AE K; Tr. 50-53.)

Applicant was indebted on a delinquent credit card account totaling \$22,000, as alleged in SOR ¶ 1.e. Applicant presented a copy of two checks made out to this creditor: the first was dated September 27, 2012, and was for \$200; the second was dated October 29, 2012, and was for \$223. Applicant failed to present additional proof that he is making payments to this creditor. His credit report of April 8, 2013, reflects

that this account is in collections. This debt has not been satisfied. (GE 8; AE E; AE F; Tr. 53-54.)

Applicant was indebted on a delinquent account totaling \$109,000, as alleged in SOR ¶ 1.f. This debt was the primary mortgage for Property B. Applicant testified that he was approved for a loan modification on this mortgage and presented a letter dated September 12, 2012, as evidence of the modification. However, the loan number listed on the September 12, 2012 letter from the creditor reflects the conventional real estate mortgage is for \$359,000, that is past due in the amount of \$328,000 as of April 7, 2013, the date of Applicant's most recent credit report. Applicant has not presented sufficient evidence to establish this debt is being satisfied or otherwise repaid. (GE 8; AE B; Tr. 63.)

Applicant was indebted on a delinquent account totaling \$158,000, as alleged in SOR ¶ 1.g. This debt was for a Home Equity Line of Credit on Property A. On September 19, 2012, Applicant received a letter from this creditor that notified him he had been granted "full forgiveness of the remaining principal balance of \$143,912.49" on this debt. This debt is resolved. (AE C; Tr. 63.)

Applicant was indebted on a delinquent account totaling \$49,000, as alleged in SOR ¶ 1.h. This debt was also a secondary mortgage for Property A. Applicant indicated this debt was "rolled over" into his loan modification agreement. However, he testified the loan modification had not yet been finalized. He presented a copy of a loan modification agreement dated September 19, 2012, in which Applicant represented in part, "One of the borrowers signing this Agreement lives in the Property as a principal residence." The modification included a provision for termination of the agreement if any of the representations "are no longer true." Shortly after signing the initial modification agreement, Applicant moved out of this residence and rented the property. He had not informed the creditor that the property was converted to an investment property after their initial modification agreement. (AE J; Tr. 64-68, 72-73.)

Applicant was indebted on a delinquent account totaling \$1,554, as alleged in SOR ¶ 1.j. Applicant testified that he made payment arrangements with this creditor to repay \$79 per month for one year. However, he testified that after successfully making those payments, the creditor did not abide by their oral agreement and the creditor is still attempting to collect this debt. He then contested the debt. He presented a letter from this creditor dated January 11, 2013, indicating "the information that appears on his credit report is correct," despite Applicant's dispute of the debt. This debt has not been satisfied. (GE 8; AE L; Tr. 36-38, 69-70.)

Applicant was indebted on a delinquent account totaling \$154,000, as alleged in SOR ¶ 1.k. This debt was for a mortgage on Property E. Applicant's April 8, 2013 credit report reflects that the home has been foreclosed upon. Applicant testified he has no remaining liability for this mortgage debt after foreclosure. (GE 8; Tr. 70-71.)

Applicant was indebted on a delinquent mortgage account totaling \$97,000, as alleged in SOR ¶ 1.I. This debt was for Property D. Applicant's April 8, 2013 credit report reflects that the home has been foreclosed upon. Applicant testified he has no remaining liability for this debt after foreclosure. (GE 5; GE 8; TR. 70-71.)

Applicant has sought the advice of a credit counselor. He spoke with the advisor in March 2013 and scheduled another meeting in May 2013. He testified that he is very frugal and able to make ends meet on his current income. Additionally, he is currently able to save approximately \$350 per month in his 401K plan. He testified that he no longer has any credit cards. (AE N; Tr. 45, 68.)

Applicant is well respected by his friends, associates, and supervisors. He honorably served the United States' efforts by working as a government contractor in Iraq. He is actively involved in his community and faith-based programs. Applicant is said to have "impeccable character" and is highly recommended for a clearance by those who know him. (AE M; Tr. 47-48.)

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 Guideline F DCs, as set forth in AG ¶ 19:

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

Applicant accumulated a significant amount of delinquent mortgage debt on Properties D and E, prior to 2009. He continued to accrue additional delinquent mortgage and consumer debts after 2009. 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; and

(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.

A security clearance adjudication is not a debt collection procedure. It is a process designed to evaluate an applicant's judgment, reliability, and trustworthiness.¹ An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first.² However, Applicant must demonstrate a meaningful track record with respect to the resolution of his debts. In the instant case, Applicant's financial delinquencies are ongoing. Applicant satisfied three debts totaling \$6,637, including SOR ¶¶ 1.a, 1.b, and 1.d. The debt in SOR ¶ 1.g was forgiven by the creditor. The debts in SOR ¶¶ 1.k and 1.l were satisfied through foreclosure. He failed to produce sufficient evidence that he is addressing the debts listed in SOR ¶¶ 1.c, 1.e, 1.f, 1.h, and 1.j. He has not adequately explained why he incurred significant additional delinquencies after securing consistent full-time employment, or demonstrated that his financial problems are unlikely to recur. Thus, AG ¶ 20(a) does not apply.

Applicant's financial difficulties began in 2006 as the result of his unemployment and his inability to sell Properties D and E after a market downturn. These were financial problems largely beyond Applicant's control. However, Applicant failed to adequately explain why he continued to incur additional delinquent debt after accepting full-time employment in 2009. Since 2009, after foreclosure proceeding had started on

¹See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

²See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Properties D and E and Applicant's income increased, he failed to act responsibly and satisfy his remaining accounts. AG ¶ 20(b) does not apply.

Applicant submitted an email that shows he had one session of financial counseling in the past and has one additional counseling session scheduled. The depth and substance of that counseling are unknown. There are no clear indications that Applicant's financial problems are resolved or under control. The debts listed in SOR ¶¶ 1.c, 1.e, 1.f, 1.h, and 1.j., totalling \$181,619, remain unsatisfied. Applicant may have modification agreements on his two outstanding mortgages, but he failed to present proof that they have been finalized and that he is abiding by the agreements. Applicant failed to produce documentation establishing he made a good faith effort to resolve these remaining accounts. AG ¶¶ 20(c) and 20(d) do not apply.

Applicant testified that he disputed the debts in SOR ¶¶ 1.c and 1.j. He failed to present documentation of his dispute with the creditor in SOR ¶ 1.c. The dispute in SOR ¶ 1.j was investigated and found to be correct. AG ¶ 20(e) does not apply.

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 highly respected by those who know him. He volunteered to work in Iraq in a war zone on behalf of the U.S. Government. He is active in his community and faith-based groups. However, he has failed to adequately address his financial delinquencies at this time. They are recent, likely to continue, and create ongoing potential for exploitation and duress.

Overall, the record evidence leaves me 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:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	For 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.

JENNIFER I. GOLDSTEIN
Administrative Judge