



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



In the matter of:)	
)	
)	ISCR Case No. 11-10509
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

06/28/2013

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. He owes more than \$200,000 in delinquent state and federal income tax. He failed to mitigate the financial considerations security concerns. Clearance is denied.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on January 29, 2013, the DoD issued an SOR detailing security concerns. DoD adjudicators could not find that it is clearly consistent with the national interest to grant or continue Applicant’s security clearance. On March 1, 2013, Applicant answered the SOR and requested a hearing. On April 24, 2013, I was assigned the case. On May 8, 2013, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for the hearing

¹ Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

convened on May 15, 2013. I admitted Government's Exhibits (Ex) 1 through 9 and Applicant's Exhibits A through H, without objection. Applicant testified at the hearing. The record was held open to allow Applicant to submit additional information. No material was received. On May 23, 2013, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, he admitted some of the factual allegations in the SOR and denied the remainder. His admissions are incorporated herein. After a thorough review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 50-year-old field support technician who has worked for a defense contractor since March 2010, and seeks to obtain a security clearance. (Tr. 22) In 2003, he was honorably retired from the U.S. Air Force as a technical sergeant (E-6). (Tr. 23) Applicant produced no work performance documents. Applicant's supervisor and a co-worker state Applicant is reliable, competent, dependable, professional, and a team player. (Ex. B, C) As of April 2012, Applicant's annual salary was \$80,200. (Ex. 3)

Applicant stated his financial problems started in the early to mid-1990s. (Ex. 6) However, the financial problems appear to have started earlier because in March 1988, he filed for Chapter 7 bankruptcy protection. In July 1989, his debts were discharged. (Ex. 5) He said the bankruptcy was caused by him and his wife living beyond their means, and contributed to by a premature baby born in June 1987. (Tr. 46, 47) He also said his part-time job delivering pizzas ended when he was reassigned to attend training. (Tr. 49) Although on active duty in the Air Force at the time, he asserts the birth resulted in unpaid medical expenses. (Tr. 47) The balances on his credit card and charge accounts were too high, and he was unable to make the monthly payments.

In July 1995, Applicant was in the U.S. Air Force and received non-judicial punishment under Article 15 of the Uniform Code of Military Justice (UCMJ). (Ex. 6) His wife had charged their credit cards to the maximum and the accounts became delinquent. (Tr. 50) The Article 15 was issued for failing to pay his just debts. He obtained financial counseling in the Air Force and his debts were under control for a while. (Ex. 6) He asserted he had continuous financial counseling during his Air Force career. (Tr. 34) His use of credit cards increased.

In January 1999, a motor vehicle accident destroyed his car, and they had to get a new one. At the time, Applicant had a full-time job with the Air Force and a part-time warehouse job, and his wife was also working. They were raising four children. In September 1999, Applicant's wife was laid off from work due to knee surgery. In November 1999, he was reassigned overseas for one year. Applicant stopped making his car payments when he received his orders. He last made payment on his car or house in October 1999. (Ex. 6) A voluntary repossession occurred and the car went back to the bank. The \$14,000 debt arising from the car was included in Applicant's bankruptcy and discharged.

In December 1998, Applicant purchased a home (\$97,000 first mortgage) and took out a second mortgage (\$12,000) in 1999. (Ex. 6, 7) In October 1999, they stopped making payments on it when Applicant left the United State for his overseas assignment. His wife and family lived in the house, without making payments, until March 2000, when they left to go live with her relatives. They simply walked away from the house. When she left, she called the mortgage company and told them the house was their's. (Ex. 6)

In January 2000, Applicant and his wife filed for Chapter 7 bankruptcy protection. (Ex. 8) In May 2000, their debts were discharged. (Ex. 4, 5, 7) The reason for the bankruptcy was again because Applicant and his wife were "living at the limits of what they were making." (Tr. 48) Additionally, his part-time job ended when he was transferred overseas. (Tr. 49) The debt included \$33,235 in unsecured debt including numerous credit card accounts, not including in the \$33,235 amount was first and second mortgages. (Ex. 7)

In late 2000, Applicant was reassigned in the United States. His finances were stable until September 2001, when his wife lost her job. She had been earning \$700 to \$800 per month. (Ex. 6) At that time, he had not paid his electric bill for three months, his water bill was two months delinquent, and his telephone service had been shut off for nonpayment. As of January 2002, his net monthly remainder was a negative \$14. (Ex. 6) He blames his financial problems on his wife's inability to control her spending. (Tr. 25)

During March and April 2005, Applicant was unemployed. (Tr. 23) In late 2005, Applicant's house went to foreclosure. Approximately \$277,000 (SOR 1i) was owed on the first mortgage and \$69,975 on the second. The house had been purchased for \$350,000. (Ex. 2) He did not attempt a short sale of the property, but chose to simply walk away. (Ex. 2) During his OPM personal subject interview he said his last contact with the mortgage lender was in 2005, and he did not plan to contact the company. (Ex. 2) As of the hearing, he had yet to contact the mortgage lender. He does not intend to pay the balance owed on the first mortgage because he said it is beyond the statute of limitations. (Tr. 44) In 2006, following the foreclosure, Applicant asserts, but did not document, that the holder of the second mortgage agreed to settle the debt for \$1,400. (Tr. 43, 44) Applicant and his wife "were living at the top of their means" with both of them working. (Ex. B) His wife quit working when she was incorrectly diagnosed with cancer. (Tr. 42)

In February 2008, Applicant separated from his wife, and they were divorced in June 2011. Applicant asserts that since the divorce he has been living within his means, paying his debts, working on addressing his past-due tax obligations, and has \$1,600 monthly of disposable income. (Ex. 2)

From March 2005 to April 2005, Applicant was laid off as a consultant. From April 2009 through March 2010, he was unemployed. (Tr. 23) During his February 2011 personal subject interview, he stated he had \$2,000 to \$3,000 in monthly disposable income to address debt payments. (Ex. 2) In October 2012, his monthly net income was

\$6,500, his monthly expenses \$4,000, and his debt payments \$800, which left his net monthly remainder at \$1,600. (Ex. 2) However, if he pays the required \$2,000 monthly IRS debt discussed below his net monthly income would be a negative \$400. (Tr. 59)

Applicant was late in filing his state and Federal income tax returns for tax years 2003 through 2011. After 2003, when he retired from the Air Force, he failed to pay his income tax. He stated "I was unable to save any money during that time frame even though I was getting paid a lot." (Tr. 26) In 2011, he made initial filing of the returns, but many were rejected by the IRS. (Tr. 36) Only two of the returns were signed. He said he had signed copies of the remaining forms at home and would submit them following the hearing. (Tr. 38) No documents were received.

A state taxing authority entered state tax liens against him. State liens were entered in February 2007, for \$18,412; in January 2010, for \$4,001; and in October 2010, for \$7,453. (Ex. 4) He asserted he had entered into repayment agreements with two states to repay past-due state income tax. (Ex. 2, 3) One state had garnished \$3,500 monthly from his pay until April 2009. He asserted, but failed to document, he was paying one state \$280 monthly and another state \$50 monthly. (Tr. 28)

Applicant asserted the monthly payments to the state taxing authorities were automatically deducted from his pay. He also asserted he had statements from the states showing the balance he owed on the state taxes. (Tr. 30) He was requested to provide a copy of the statements and documents supporting his assertions. (Ex. 29) No documents were received.

In September 2011, a \$146,670 Federal tax lien was filed against Applicant. (Ex. 4) In November 2012, he agreed to an installment agreement to repay the \$177,374 owed in past-due Federal income tax. (Ex. 3) The agreement covered tax year 2002 and years 2004 through 2009. (Ex. 3) He agreed to pay \$100 monthly in December 2012, which was to increase to \$2,000 monthly in February 2013. (Ex. 3) He failed to make the February 2013 payment and had yet to make the April 2013 payment. (Tr. 30, 35) He failed to provide documentation that he has made any payment in accordance with the agreements.

Applicant asserted he had paid a medical debt (SOR 1.f, \$1,652) in early 2011. (Tr. 41) He stated he could provide evidence showing payment of the debt. No document was received. He asserted he had paid a student loan (SOR 1.h, \$1,674) in 2011, but provided no documentation of payment. (Tr. 42)

In 2011, Applicant paid off his 2005 pickup truck and his wife's 2005 vehicle and purchased a 2012 truck. (Tr. 54) The truck cost \$35,000 and the monthly payments are \$485. (Ex. 2, Tr. 57) His tax attorney told him that having an outstanding vehicle loan would be to his advantage in discussions with the IRS when establishing his monthly payment to the IRS. (Tr. 55) He has two credit cards and he says he pays the balance each month. He was requested to provide documentation supporting this claim. (Tr. 74) No document was received. He does not contribute to his company's retirement plan.

In Applicant's answer to written financial interrogatories, he provided proof he had settled his apartment debt in February 2011, had settled in full an undisclosed debt in January 2011, had paid another debt of an undisclosed amount in May 2007, a gas utility bill was paid in January 2011, and that a telephone bill and an ambulance bill would be removed from his credit bureau report (CBR) in January 2011. (Ex. 3)

At the conclusion of the hearing, Applicant was reminded of the need to present documentation of his various claims that payments were made or were currently being made. (Tr. 80-82) No post-hearing documentation was received from Applicant.

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 must be considered 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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny 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 interests of 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 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.

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 to obtain a favorable security decision.

A person who seeks access to classified information enters 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 safeguard classified information. Such decisions entail a certain degree of legally permissible

extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order (EO) 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

Applicant has a history of financial problems. Applicant has had to resort to bankruptcy protection twice. He owed the IRS \$177,000 for past due taxes and owes two states approximately \$30,000 in unpaid state tax. He has failed to show any payment on these debts or that he paid other SOR delinquent obligations totaling more than \$3,000. Disqualifying Conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

(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 meets none of the mitigating factors for financial considerations. His financial difficulties started in the 1980s. His first bankruptcy discharged all of his debt in 1988. In 1995, he received nonjudicial punishment under Article 15 of the UCMJ for failing to pay his debts as agreed. In 1999, he stopped making payments on his car and home when he received orders for an overseas assignment. He owed approximately \$110,000 on his home. In 2005, he chose to simply walk away from another home on even though he owed more than \$350,000 in mortgage debt. He has had no contact with the mortgage company since 2005. He owes more than \$200,000 in delinquent state and federal income tax. In 2012, he purchased a \$35,000 truck in order to potentially lower any monthly payments he would be required to make to the IRS. Although some of his debts were incurred some time ago, they remain unpaid. They are therefore considered both recent and not isolated. AG ¶ 2(a) does not apply.

Applicant produced no evidence of circumstances beyond his control, and he has not acted responsibly in addressing his debts. He said he was making "a lot of money," but simply failed to pay taxes on that income. He asserted he could not control his ex-wife's spending, but that is insufficient to fully mitigate financial considerations concerns. AG ¶ 2(b) does not apply.

While in the Air Force, Applicant received continuous financial counseling. The counseling has had little positive impact on his finances. There are no clear indications that the problem is being resolved or is under control. AG ¶ 20(c) does not apply.

Applicant entered into agreements to repay his delinquent taxes. However, he failed to provide documentation showing he has made a single payment in compliance with those agreements. He was repeatedly informed of the need to document his

assertions that debts had been paid or were being paid. No documentation supporting his claims was received. AG ¶ 20(d) does not apply.

AG ¶ 20(e) does not apply because Applicant admits owing the delinquent taxes. He asserts he paid other SOR debts, but provided no documentation showing payment. He asserts the statute of limitation bars recovery of the mortgage. However, he provided no evidence as to the provisions and any limitations of the state statute of limitations.

Applicant's 1988 Chapter 7 bankruptcy should have put him on notice of his need to control his and his wife's spending. Events leading to this initial bankruptcy were caused by him living beyond his means, but I will not find against him for this initial finding because this bankruptcy is not recent. I find SOR 1.I for Applicant.

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 the facts and circumstances surrounding this case. The debts incurred indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. He admits living beyond his means or at the outer limits of his ability to repay his creditors. He had all of his debt discharged in 1988 and again in 2000. Even with a fresh financial start, he has incurred more large debts that remain unpaid.

The issue is not simply whether all Applicant's debts have been paid – they have not – it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(a)(1).) Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated 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 Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Financial Considerations: AGAINST APPLICANT

Subparagraphs 1.a – 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 a security clearance. Eligibility for access to classified information is denied.

CLAUDE R. HEINY II
Administrative Judge