



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



In the matter of:)
)
) ISCR Case No. 11-12493
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel

For Applicant: *Pro se*

03/14/2013

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, I conclude that Applicant has mitigated the security concerns raised under the guideline for Financial Considerations. His request for a security clearance is granted.

Statement of the Case

On November 16, 2012, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) that cited security concerns under Guideline F (Financial Considerations). This action was taken under 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; and the Adjudicative Guidelines (AG) implemented by the DOD on September 1, 2006.

In his December 5, 2012 Answer to the SOR, Applicant admitted the SOR allegations, with explanations,¹ and requested a hearing before an administrative judge. I received the case on January 11, 2013, and the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on February 11, 2013. At the hearing on March 7, 2013, the Government offered four exhibits, admitted into evidence as Government Exhibits (GE) 1 through 4. Applicant testified, and offered two exhibits, admitted as Applicant Exhibits (AE) A and B. I held the record open to allow Applicant to submit additional documentation. He timely submitted one document, which I admitted as AE C. DOHA received the transcript (Tr.) on March 14, 2013.

Findings of Fact

After reviewing the pleadings, Applicant's response to the SOR, and the record evidence, I make the following additional findings of fact.

Applicant is 40 years old. He married 1995 and divorced in 1998. He and his second wife have been married 15 years. He has three children, 10, 12, and 14 years of age. He earned a bachelor's degree in computer information technology in 2010, and since then, he has been earning credits toward a master's degree. In 2011, he began his current employment with a defense contractor as a systems engineer. (GE 1, 2; Tr. 17-20, 29-30)

Applicant's financial problems began when he hired a professional tax preparer to complete his federal returns, but did not review the returns carefully. The returns were not accurate. The preparer had a history of filing faulty returns for other clients. Applicant's 2006 and 2007 federal tax returns were audited by the IRS. Applicant had underpaid two tax years by about \$8,000. Initially, Applicant made payments to the IRS, but when he was no longer able to do so, his wages were garnished. In 2012, the IRS withheld his refund for tax year 2011 to resolve unpaid taxes. He no longer owes back taxes to the IRS. (GE 2; Tr. 56, 59-69)

In about 2005 or 2006, Applicant was garnished by his home state for two debts. He was attending a state university, and requested financial aid of approximately \$3,000. After beginning classes, he learned his request was denied, and he was responsible for the tuition. In addition, the same state garnished his wages when Applicant sold his car, but did not return the license tags. He continued to be considered the owner, and was responsible for financial obligations related to the car. His 2011 credit report shows the debts to the state are paid. Between 2006 and 2008, the garnishments by the IRS and the state reduced Applicant's income by 25 to 50%. He went through a difficult financial period, and could not meet his monthly expenses. (GE 2, 4; Tr. 57-69)

¹ Several of the responses Applicant provided in his Answer to the SOR were unclear as to admission or denial. Department Counsel conferred with Applicant before the hearing and determined that he admitted each debt. (Tr. 8)

In 2007, when Applicant's income had declined because his wages were being garnished, several judgments were brought against him. Two are unpaid, and appear in the SOR (1.a and 1.g). His credit reports show that Applicant paid the other three judgments in 2008. (GE 3, 4)

Applicant and his father bought a home in 2001, financed through two mortgage loans. Applicant could not keep up with the payments because his father stopping contributing, the house needed repairs, the interest rate increased, and his income had declined. In 2008, his home was foreclosed. The mortgage loans are resolved, and his credit report shows a zero balance on each loan. They are not alleged in the SOR. (GE 3; AE B; Tr. 21-26)

Applicant has borrowed approximately \$100,000 in student loans to cover the cost of his bachelor's and master's degrees. The loans are in deferral until six months after he completes his master's degree in May 2013. He testified he will have sufficient funds to meet his student loan payments. (Tr. 54-56)

In October 2012, Applicant completed a personal financial statement (PFS) showing that he and his wife earn a monthly net income of \$9,800. With expenses of \$3,260 and debt payments of \$985, his monthly net remainder is about \$5,500.² Applicant testified his monthly remainder is about \$3,000, because he has additional varying expenses that do not appear on his PFS. He uses the remainder for miscellaneous expenses that arise; for instance, his car was "totaled" a week before the hearing, so he planned to purchase a vehicle. He has about \$900 in each of his savings and checking accounts, about \$4,000 in an investment account, and approximately \$20,000 in his 401(k) account. Applicant's plan has been to resolve his debts by paying the smallest ones first, and then the larger debts. He testified that he has been following that plan, and has paid several of the smaller debts. He has not sought financial counseling. (GE 2; Tr. 30-34, 69, 84)

Applicant's SOR debts, excluding the duplicates at subparagraphs 1.j and 1.m, total \$24,233. Most of his debts started to become delinquent in 2007 while his salary was being garnished. The debts appear in credit reports dated August 6, 2012 and June 29, 2011. (GE 3, 4) The status of Applicant's SOR debts follows.

CHARGE ACCOUNTS:

1.a – Charge account, \$3,657; 1.j, \$3,281 – UNRESOLVED (duplicate). This retail store account was handled by Creditor B (allegation 1.j). Creditor B sold it to Collection Agency C, which obtained a judgment in the amount of \$3,657 in 2010

² Applicant completed his PFS incorrectly. He listed his mortgage payment (\$3,200) twice, under "Monthly Expenses" and "Monthly Debts." He also listed a total of \$560 per month for utilities under Monthly Expenses, but then listed the five utilities again under Monthly Debts. With these errors corrected, his Monthly Expenses (excluding the mortgage) total \$3,260, and the Monthly Debts, (excluding the utilities) total \$985. (GE 2)

(allegation 1.a). Applicant testified that he paid the debt, but could not locate supporting documentation. He tried to reach Collection Agency C to obtain a receipt, but it is no longer in business. (GE 2, 3, 4; AE B, C; Tr. 35-37, 50-51)

1.f - \$4,548; 1.m, \$3,138 – PAYMENT PLAN (duplicate). Applicant opened a retail charge account in 2006 (allegation 1.m). The account was handled by the same Creditor B as in allegation 1.j, above. The debt was sold to Collection Agency D. As of August 2012, the balance had increased to \$4,548 (allegation 1.f). The debt is now being handled by Law Firm E. Although Applicant believes he already paid the debt, he is paying \$200 monthly in order to resolve it. He provided documentation showing he paid \$1,200 between October 2012 and March 2013. Law Firm E has not yet updated the credit report to reflect the payments. (GE 3, 4; AE A, B, C; Tr. 44-46, 52-54)³

OTHER:

1.b, \$392 – PAID. Applicant opened this credit union account in 2005. It first became delinquent in 2009, and the original creditor charged it off. Applicant paid the successor creditor in October 2012. His credit report of March 2013 confirms that the balance is zero. (AE B; Tr. 37-38)

MEDICAL ACCOUNTS:

1.c, \$340; 1.g, \$345 – UNRESOLVED. The \$340 medical debt alleged at subparagraph 1.c was for Applicant's daughter's care, and the one at subparagraph 1.g was for his own medical care. He did not realize that his medical insurance did not pay all of the associated costs. Applicant testified that he paid both bills, but does not have documentation. His June 2011 credit report shows a judgment obtained in June 2007 by a medical company for \$345, but the disposition is "Unknown." Applicant's August 2012 credit report shows a \$340 medical debt as unpaid. His March 2013 credit report shows a medical debt of \$343 is unpaid. (GE 3, 4; AE B; Tr. 38-39, 46-48)

1.i, \$95 – PAID. Applicant's credit reports show that this medical account became delinquent between 2008 and 2009. He testified that it is paid. Both his August 2012 and March 2013 credit reports confirm that the balance is zero. (GE 3, 4; AE B; Tr. 50)

1.k, \$206; 1.l, \$76 – UNRESOLVED. Both of these medical debts became delinquent in 2010. Applicant testified that he has paid them, but did not have supporting documentation. After the hearing, he contacted the bank but could not obtain documents showing the payments, because the bank account is closed. Neither debt appears in his August 2012 or March 2013 credit reports. (GE 3, 4; AE B, C; Tr. 51-52)

³ Applicant was somewhat confused about the history of the accounts at allegations 1.a, 1.f, 1.j, and 1.m, because they involved the same creditor (Creditor B), and three of the four had similar balances between \$3,000 and \$3,600. See cross-examination about allegation 1.m. (Tr. 53-54)

UTILITIES:

1.d – Cable, \$370 – PAID. Applicant testified that he paid this cable bill. His March 2013 credit report confirms that it was paid as of October 2012. (GE 3; AE B; Tr. 39-40, 49)

1.h – Gas/electricity, \$520 – PAID. Applicant testified that he paid this bill. His March 2013 credit report confirms that, as of June 2012, the balance was zero. (AE B; Tr. 48-50)

RENT:

1.e, \$13,684 – DISPUTES. Applicant rented an apartment in 2010. He moved before his lease ended. He believes he owes two month's rent, or about \$4,000; the company is demanding about six month's rent. He orally disputed the amount with the rental company staff, and with the successor creditor. He is awaiting verification of the amount before making payments. He did not know how to dispute inaccurate entries on his credit report. After learning how to do so within the past few months, he registered his dispute online, but he has not written a formal letter of dispute. His March 2013 credit report shows that he disputes the account. (GE 2, 3; AE B; Tr. 40-44, 71-75)

Policies

Each security clearance decision must be an impartial, commonsense determination based on examination of available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.⁴ Decisions must also reflect consideration of the "whole-person" factors listed in ¶ 2(a) of the guidelines.

The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the adjudicative factors addressed under Guideline F (Financial Considerations).

A security clearance decision is issued only to resolve the question of whether it is clearly consistent with the national interest⁵ for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance. Additionally, the Government must prove controverted facts alleged in the SOR. If the Government meets its burden, it falls to the

⁴ Directive. 6.3.

⁵ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

Applicant to refute, extenuate, or mitigate the Government's case. Because no one has a "right" to a security clearance, applicants bear a heavy burden of persuasion.⁶ A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.⁷

Analysis

Guideline F (Financial Considerations)

AG ¶ 18 expresses the security concern about financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds. . .

Applicant has had financial difficulties since about 2006, and a number of his debts have become delinquent, been placed with collection agencies, or resulted in judgments. The record supports application of the following disqualifying conditions under AG ¶ 19:

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

The Financial Considerations guideline also contains factors that can mitigate security concerns. I have considered the mitigating factors under AG ¶ 20, especially the following:

- (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;

⁶ See *Egan*, 484 U.S. at 528, 531.

⁷ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

(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.

AG ¶ 20(b) concerns situations where applicants' debts become delinquent because of conditions that are beyond their control. Here, Applicant's financial problems began when his income was reduced up to 50% by garnishments by the IRS and the state. His debts to the state were not outside his control, because he should have returned the tags for his car, and he should have ensured that his financial aid was in place before beginning college classes. However, as to his federal debt, Applicant was not aware that the tax preparer in whom he placed his trust would submit inaccurate federal tax returns, resulting in a large tax debt owed to the IRS. Applicant acted responsibly by making payments to the IRS, until he was unable to continue and his pay was garnished. Applicant receives partial mitigation under AG ¶ 20(b).

Applicant's garnishments resulted from his own mistakes and from the errors of an inept tax preparer. The deep cut to his income resulted in numerous delinquencies. Over the past several years, he made a good-faith effort to resolve them. He was able to satisfy several judgments in 2008, as well as other debts that do not appear in his SOR. Before the SOR was issued in November 2012, he paid four debts, totaling \$1,377. He testified that he also paid five additional debts, totaling \$4,624, though he was unable to provide supporting documentation. He established a payment plan for one of the larger debts, and provided evidence that he has made consistent payments since October 2012, totaling an additional \$1,200. Applicant has provided evidence that he is bringing his financial problems under control, and that he has made good-faith efforts to resolve them. AG ¶ 20(c) and (d) apply

In line with his plan, Applicant's largest debt remains unpaid. However, Applicant also decided not to begin payments on this rental debt because he disputes its accuracy. He informed the rental company staff that he believes he was overcharged. He also submitted online notification to the credit bureau that he disputes the debt, and his dispute is reflected in his 2012 and 2013 credit reports. Applicant receives only partial credit under AG ¶ 20(e) because he did not provide evidence for the basis of his claim.

Whole-Person Analysis

Under the whole-person concept, an administrative judge must evaluate the applicant's security eligibility by considering the totality of an applicant's conduct and all the circumstances. An 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

During about two years of significantly lowered income, Applicant accrued significant debt and it has taken several years to regain his financial footing. He has made substantial progress in reducing his debt load. He was able to satisfy several judgments in 2008, as well as other debts that do not appear in his SOR. He planned to resolve the remaining debts by paying the small ones first, and working toward paying the larger ones. He IMPLEMENTED THIS PLAN BY paying four of these smaller debts and by making consistent payments on another debt, all before the SOR was issued in November 2012. He testified that he paid five additional debts, though he was unable to provide supporting documentation. In line with his debt-resolution plan, he has not yet begun payments on the largest debt. In addition, he believes it is inaccurate, and has disputed it with the creditor and the credit bureau. Applicant has a substantial monthly remainder to resolve his remaining debts. He was candid about his financial problems, and his testimony was credible. I conclude, based on his track record, that he will continue to resolve the remaining debts. An applicant is not required to establish that he has paid off each and every debt listed in the SOR. He must only show, as Applicant has, that he has a plan to resolve his debts and taken significant actions to implement it.⁸

Overall, the record evidence satisfies the doubts raised about Applicant's suitability for a security clearance. For these reasons, I conclude he has mitigated the security concerns raised by the cited adjudicative guideline.

⁸ See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Formal Findings

Paragraph 1, Guideline F FOR APPLICANT

Subparagraphs 1.a – 1.m For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to allow Applicant access to classified information. Applicant's request for a security clearance is granted.

RITA C. O'BRIEN
Administrative Judge