



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 11-12824
)
)
Applicant for Security Clearance)

Appearances

For Government: Philip J. Katauskas, Esq., Department Counsel
For Applicant: *Pro se*

06/23/2014

Decision

MASON Paul J., Administrative Judge:

The credit reports show two mortgage accounts that have been delinquent since March 2009. Applicant's April 2013 personal financial statement and other financial documentation indicate that he has resources to address the mortgage accounts, but has decided to wait until the accounts are removed from his credit reports. Applicant's payment of the listed cable television account and other unlisted accounts is insufficient to overcome the security concerns associated with the financial considerations guideline. Eligibility for access to classified information is denied.

Statement of the Case

Applicant completed and signed an Electronic Questionnaire for Investigations Processing (e-QIP) on March 24, 2011. He was interviewed by an investigator from the Office of Personnel Management (OPM) on June 29, 2011. The interview summary and Applicant's interrogatory responses to financial issues appear in Government exhibit (GE) 2, dated April 29, 2013. Applicant agreed with the interview summary and answered affirmatively that the summary could be admitted into evidence at a hearing to determine his security suitability. (GE 2)

On December 13, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline (Guideline F). 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 answer to the SOR was notarized on January 14, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 20, 2014, for a hearing on April 11, 2014. The hearing was held as scheduled. The government's six exhibits (GE 1-6) and Applicant's nine exhibits (AE A-A I) were admitted into evidence without objection. His post-hearing exhibit (AE J) was admitted into evidence without objection. The transcript (Tr.) was received on April 21, 2014. The record closed on April 28, 2014.

Findings of Fact

The SOR contains three allegations under the guideline for financial considerations. The delinquent debts include two delinquent mortgage accounts totaling approximately \$142,000, and one cable television account amounting to \$55. Applicant admitted all factual allegations. He paid the cable account (SOR 1.b), but he has not acted on the two mortgage accounts (SOR 1.a, 1.c) because the accounts will be removed from his credit report in August or October 2014. He has paid other delinquent accounts not listed in the SOR.

Applicant is 44 years old. He has been married since October 1997, and has two children, a son 11 years old, and a daughter 7 years old. He was naturalized as a United States (U.S.) citizen in December 1999. In December 2000, he received a bachelor's degree in computer science. He suspended his pursuit of a master's degree in computer science because of family and financial responsibilities. He has been employed as a senior software engineer for a defense contractor since April 2007. His wife has also been working

for the same employer for an unidentified period of time. Before Applicant's current employment, he worked for three years as a software engineer for another defense contractor. He has held a security clearance since March 2004. Applicant's wife was laid off in November 2013, but resumed working in late March 2014.

Background of Financial Problems

Applicant purchased his first home for \$375,000 in 2005, where he and his family lived for the next three years. In early 2008, he converted his first home to a rental. He purchased, refurbished, and moved his family into a second home and found a tenant for his rental. He testified that he rented the first home for three months in early 2008, until the renter could no longer pay the rent. Applicant could not find another renter and was unable to sell the house because of a depressed real estate market. He testified that he contacted the creditor (mortgage lender) several times to negotiate a modification of the two mortgages on the converted rental because he had no resources to cover the monthly payments. He indicated the creditor did not respond. The house was foreclosed and sold by the creditor for \$179,000, and purchased by a third party in August 2008 for \$208,000. Applicant testified that the creditor (mortgage lender) provided him with a 1099-C (cancellation of debt), informing him that he owed \$29,000 in income on the sale of the rental (difference between purchase price and sale price). No 1099-C was entered into the record. Applicant submitted AE J (Internal Revenue Service (IRS) transcript for 2007), claiming that one of the entries represents additional taxes paid on the sale of the rental. (GE 2; AE C, J; Tr. 30-36, 56-62)

Significantly, Applicant made no mention in his June 2011 interview summary of a 1099-C form that he testified receiving from the creditor (mortgage lender). The government credit reports show that the two mortgage accounts were opened in September 2005, and have been delinquent since March 2009. Applicant testified that after talking with a number of unidentified individuals, he believes the mortgage accounts will be removed from his credit report in August or October 2014. He did not believe he was at fault for not paying the accounts because he considered his retirement funds were better suited for the next potential round of employment layoffs that could occur. (GE 2, 3, 4, 5; AE E, F, G; Tr. 38-39)

During the security investigation, Applicant provided an updated status of other accounts that are not listed in the SOR. His documentation reveals that three or four of the seven unlisted accounts were determined to be duplicates and the remaining three accounts were satisfied. An unlisted tax lien (unpaid taxes) was withdrawn in December 2008, after Applicant submitted documentation proving that he was not working in the state during the time period in issue. He satisfied the account at SOR 1.b on March 17, 2014. (GE 2, 3, 4, 5; AE D, E, F, G; Tr. 40)

Applicant indicated he has not accumulated additional debt since 2007.¹ In 2012, a credit counselor advised him not to open any more credit accounts. (Tr. 36)

According to his April 2013 personal financial statement (PFS), Applicant's net monthly income was about \$8,400. He had \$4,500 in monthly expenses. His monthly debt payment to creditors was \$1,806, and his net monthly remainder was \$2,144. He estimated the value of his real estate, bank savings, stocks and bonds, and transportation vehicles totaled about \$352,000. The total account value in Applicant's salaried savings plan for April 9, 2013 was almost \$84,000. (GE 2, attachment, PFS)

Character Evidence

For the years 2007 through 2011, Applicant's yearly overall performance evaluations were "successful." His performance review for 2012 was rated as satisfactory and meeting all of the customer's requirements.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the potentially disqualifying and mitigating conditions of the AG. These conditions should be evaluated in the context of nine general factors known as the whole-person concept to bring together all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision regarding 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. . . ." An applicant has the ultimate burden of persuasion of establishing that it is clearly consistent with the national interest to grant him a security clearance.

¹ He admitted in his June 2011 interview summary that a \$13,496 tax lien was filed against him in November 2010 for filing incorrect tax returns for 2007, 2008, and 2009. GE 3 reflects the lien was released in July 2011. (GE 3)

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 applicable disqualifying conditions under AG ¶ 19 are:

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

The credit reports and Applicant's admissions prove that he is responsible for two delinquent mortgage accounts totaling about \$142,000. He obtained a first and second mortgage to purchase a home in 2005. The accounts have been delinquent since March 2009. Although Applicant is able to repay the mortgage accounts, he is unwilling to repay them because he believes they will be removed from his credit report in the near future. AG ¶¶ 19(a) and 19(c) are applicable.

Four 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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

While there is no evidence that Applicant has incurred additional financial problems since the release of the federal tax lien in July 2011, he has taken no documented steps to address the two mortgages after they became delinquent in March 2009. Applicant's inaction continues to cast doubt on his trustworthiness and judgment. AG ¶ 20(a) does not apply.

AG ¶ 20(b) is a two-prong condition requiring an applicant to demonstrate that his financial issues were caused by matters outside his control, and that he "acted responsibly under the circumstances." A serious real estate market downturn in 2008 was clearly a contributing cause of Applicant's inability to sell his rental property or modify the two delinquent mortgages. However, the limited mitigation Applicant receives under the condition is due to the absence of documented evidence showing that he acted responsibly to resolve the delinquent mortgage accounts. Simply waiting for delinquent accounts to be removed from a credit report does not represent good judgment in the management of one's financial obligations.

Applicant's discussion with a credit counselor in 2012 has no application under AG ¶ 20(c) because the two mortgage accounts have not been resolved.

Applicant receives limited mitigation under AG ¶ 20(d) because he paid the cable television bill, even though he did not address the account until March 2014, after he received the SOR. He asserted that the two mortgage accounts would be removed from his credit report in August or October 2014. I interpret his remarks as his plan to resolve the delinquent accounts by waiting for them to be removed under provisions of the Fair Credit Reporting Act. DOHA's Appeal Board has held that even though an applicant's debts may soon be removed from his credit report, this removal does not eliminate their review for security purposes:

...the removal of those debts from his credit report does not make them disappear as if they never existed or preclude the Judge from considering other record evidence that shows those debts exist. The security significance of Applicant's credit history does not turn on whether Applicant's debts could or could not be legally listed on a credit report after the passage of seven years. ISCR Case No. 02-14950 at 4 (App. Bd. May 15, 2003; See ISCR 98-0111 at 3 (App. Bd. Nov. 13, 1998)

In addition, while Applicant may legally rely on the running of a limitations statute to avoid paying the mortgage accounts, his reliance does not qualify as a good-faith effort to satisfy debts. See ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001) Even though the

Directive does not define “good-faith,” the DOHA Appeal Board has indicated the term “requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.” ISCR Case No. 06-14521 at 2 (App. Bd. Oct. 15, 2007) (quoting ISCR Case. No. 03-20327 at 4 (App. Bd. Oct. 26, 2006).

In sum, Applicant’s plan to wait for his debts to be removed from his credit report does not constitute a good-faith effort to resolve the mortgage accounts. Applicant receives only limited mitigation under AG ¶ 20(d).

Whole-Person Concept

I have examined the evidence under the disqualifying and mitigating conditions of the financial guideline. 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 44 years old. He is married and has two children. He has been working for his current employer since 2007. His successful performance evaluations from 2007 through 2012, coupled with his resolution of the cable account in March 2014, weigh in his favor.

Weighing against the favorable evidence is the fact that the two mortgage accounts have been delinquent for about four years. There is insufficient documentary evidence to conclude that the mortgage accounts have been extinguished by AE J (IRS transcript for 2007). The credit reports show that the two accounts continue to be delinquent as of November 2013, despite Applicant’s continuous employment since 2007 and having available resources since at least April 2013, to address both accounts. Rather than honoring his financial obligations, Applicant has chosen to wait until both accounts are removed from his credit report. His conduct constitutes poor judgment and

untrustworthiness. Having weighed and balanced the disqualifying conditions with the mitigating conditions, and in the context of the whole-person concept, Applicant has not sufficiently mitigated residual judgment and trustworthiness concerns arising from the financial considerations guideline.

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
Subparagraphs 1.a, 1.c:	Against Applicant
Subparagraph 1.b:	For 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