



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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ISCR Case No. 11-13421

Applicant for Security Clearance

Appearances

For Government: Jeff Nagel, Esq., Department Counsel

For Applicant: *Pro se*

May 31, 2013

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

The Statement of Reasons (SOR) identified Applicant as owing 7 delinquent debts totaling \$382,025. Additionally, Applicant discharged approximately \$10,000 in debt through Chapter 7 bankruptcy in March 2003. Applicant has resolved his debts. Based on a review of the testimony, pleadings, and exhibits, eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on July 14, 2011. On February 5, 2013, 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 February 25, 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 29, 2013. DOHA issued a notice of hearing on April 3, 2013, scheduling the hearing for May 2, 2013. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 7, which were admitted without objection. Applicant offered Exhibits (AE) A through H, which were admitted without objection. Applicant testified on his own behalf. The record was left open until May 23, 2013, for the receipt of additional documentation. On May 23, 2013, Applicant presented seven additional documents, marked AE I through AE O. Department Counsel had no objections and they were admitted into evidence as identified. DOHA received the transcript of the hearing (Tr.) on May 8, 2013.

Findings of Fact

Applicant is a 42-year-old government contractor. He has worked for his current employer since 2011. Applicant served on active duty in the Navy for 20 years, and retired as a petty officer first class (E-6) in May 2011. During his military service, he deployed to both Afghanistan and Iraq. He held a security clearance the entire time he was on active duty. Applicant possesses an MBA in Logistics. He married his current wife in 2012. He was previously married to his ex-wife for ten years. They divorced in May 2011. Applicant has two children with his ex-wife, ages 5 and 11. He also has a step-son, age 17. (GE 1; Tr. 36-42, 71-73.)

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 7 delinquent debts totaling \$382,025, and a discharge of previous debt through Chapter 7 bankruptcy in 2003. Applicant admitted the debts in his Answer as alleged in SOR ¶¶ 1.a, 1.b, 1.c, 1.d, and 1.h. He denied SOR ¶¶ 1.e, 1.f, and 1.g. (Answer.)

Applicant filed Chapter 7 bankruptcy in November 2002. Prior to his marriage, both Applicant and his ex-wife incurred a large amount of credit card debt. Applicant was current on all of his accounts at the time of their marriage, but after their marriage, his ex-wife would pay her accounts, but did not always make Applicant's payments. As a result, his accounts became delinquent. Applicant contacted an attorney and was advised to file bankruptcy. He followed the attorney's advice and approximately \$10,000 worth of debts were discharged through bankruptcy in March 2003.(GE 2; Tr. 60.)

From Approximately 2003 to late 2008, Applicant's ex-wife satisfied their bills in a timely manner. However, when their marriage began to deteriorate, she again began mismanaging their finances. Applicant attributes all of his current delinquent debts to his ex-wife's mismanagement of their finances while he was deployed for extended periods. Applicant gave her power of attorney and she handled their bills during the course of their marriage. All of their marital debts were assigned to Applicant in the divorce

proceedings because he was employed and his former spouse was not. Applicant testified that he has been addressing his debts since the divorce as he had funds available. (GE 2; AE A; Tr. 34, 42-46.) His SOR listed debts are as follows:

Applicant was indebted on a delinquent account totaling \$3,035, as alleged in SOR ¶ 1.a. This account was opened by Applicant's ex-wife. Applicant contacted this creditor concerning this debt. He was told the account was being handled by a law office. However, when he contacted the law office, it found no outstanding accounts that matched Applicant's social security number. Applicant is attempting to resolve this debt but can't locate the creditor. (AE I; AE L; Tr. 44-46.)

Applicant was indebted on a delinquent account totaling \$2,949, as alleged in SOR ¶ 1.b. Applicant testified this debt was for a loan his ex-wife procured. Applicant testified that he began making monthly payments of \$109 on this debt. Applicant settled this account on April 26, 2013, for \$1,474. He provided a copy of his bank statement showing a \$1,474 payment to this creditor on April 26, 2013. Applicant has addressed this debt. (AE F; AE G; AE M; Tr. 47.)

Applicant was indebted on a delinquent account totaling \$2,200, as alleged in SOR ¶ 1.c. Applicant believes this debt is a duplicate of SOR ¶ 1.a. However, the account numbers on his April 30, 2013 credit report entries for these debts identified in ¶ ¶ 1.a. and 1.c. are not the same. This debt is unresolved. (Tr. 47-48.)

Applicant was indebted on a delinquent mortgage totaling \$91,663, as alleged in SOR ¶ 1.d. Applicant purchased this property in late 2009. Applicant's ex-wife lived in the home. Applicant attempted to rent the home out, but due to the decline in the housing market, the area was unsafe and he could not secure renters. Applicant also attempted to short sell the home or get a loan modification, but the bank was not willing to negotiate with Applicant. This home was subsequently foreclosed upon. This debt is listed as a zero balance on his April 30, 2013 credit report. This debt is resolved. (GE 7; AE A; AE I; Tr. 49-51.)

Applicant was indebted on a student loan totaling \$9,788, as alleged in SOR ¶ 1.e. Applicant's ex-wife stopped paying his student loan approximately six months before their divorce. Applicant provided documentation that shows he consolidated his student loan with another creditor. His April 30, 2013 credit report reflects that his consolidated student loan is in good standing. This debt is resolved. (GE 7; AE B; AE C; Tr.51-53.)

Applicant was indebted on a auto loan totaling \$390, as alleged in SOR ¶ 1.f. Applicant testified he paid off the debt in 2011. The creditor sent Applicant the title for the vehicle once the debt was paid off. He presented a copy of the title showing no liens on the vehicle, as evidence this debt was paid. This delinquency is satisfied. (AE D; Tr. 53-54.)

Applicant was indebted on a totaling \$272,000, as alleged in SOR ¶ 1.g. This debt is for a delinquent mortgage. Applicant and his ex-wife purchased this home in October 2008, so that his ex-wife could like closer to her ailing mother. They mistakenly believed sat the time that they would be able to rent out their other property. Applicant's ex-wife stopped making payments on the mortgage in December 2008. Applicant testified he attempted to sell this property but was unable to get a short-sale approved. The bank advised him his only option was foreclosure. He followed that advice. Applicant's credit report dated July 28, 2011 reflects that the property was foreclosed upon. It states, "creditor reclaimed collateral to settle defaulted mortgage" and lists a zero balance due. This debt is resolved. (GE 2; GE 4; Tr. 54-58, 68.)

Applicant now manages his finances. He rents an apartment and has no immediate plans to invest in real estate. He has money left over at the end of the month, which he is using to pay off his delinquent accounts. He has only one credit card and that card has a zero balance. He is current on his child support. (Tr 60-66, 71.)

Applicant is well respected by a senior chief that served with him in the Navy. The senior chief opined that Applicant's current financial problems are the direct result of his recent divorce and should not reflect negatively on Applicant's character and integrity. Applicant was awarded the Navy and Marine Corps Achievement Medal; a Navy Unit Commendation; three Meritorious Unit Commendations; the Navy "E" Ribbon; and five Good Conduct Medals. (AE J; AE N.)

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 debt that he discharged through bankruptcy in 2003. He continued to accrue additional delinquent mortgage and consumer debts after 2007. 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;

(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, but Applicant is actively working to resolve those that are still outstanding. Applicant satisfied two debts as listed in SOR ¶¶ 1.b. and 1.f. He consolidated the debt in ¶ 1.e and is current on his payments to that creditor. The debts in SOR ¶¶ 1.d and 1.g were satisfied through foreclosure. He is in the process of researching the debts listed in SOR ¶¶ 1.a and 1.c. Applicant's financial difficulties began shortly after Applicant's marriage to his ex-wife. They continued for the duration of their marriage, which resulted in divorce. Applicant's ex-wife's mismanagement of their funds is directly to blame for Applicant's

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).

financial problems. AG ¶ 20(b) does not apply because Applicant was on notice of his mismanagement after he was forced to file bankruptcy in 2002. However, AG ¶ 20(a) applies because Applicant and his ex-wife are now divorced. He is handling his finances and addressing his creditors one-by-one, as funds are available. He plans to pay off all of his debts. Given his circumstances, Applicant is now acting responsibly and can be expected to continue to work at resolving his remaining delinquencies. Future financial problems are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, or good judgment. Further, there are clear indications that Applicant's financial problems are now under control and that he has initiated a good-faith effort to resolve his debts. AG ¶¶ 20(c) and 20(d) apply.

Applicant did not present evidence that he is disputing any of his delinquent accounts. 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 a senior chief that worked with him. He honorably served in the Navy for over 20 years and was deployed in combat zones. His financial delinquencies were caused by the mismanagement of their funds by his ex-wife. Applicant is no longer married to her. He has diligently worked to slowly repay his delinquent obligations, with the exception of the mortgages, which have been resolved through foreclosures. Applicant has matured, and now understands the importance of maintaining a watchful eye on all of his finances. He no longer purchases things which he can not afford.

As indicated above, an applicant is not required to establish that he has paid every debt listed in the SOR. All that is required is that an applicant establish a plan to

resolve the financial problems and take significant actions to implement the plan. Applicant has responsibly resolved almost all of his financial problems, thereby demonstrating the significant action required. He has sufficient income to avoid financial problems in the future. His finances do not constitute a security concern.

Overall, the record evidence leaves me without doubt as to Applicant's present eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

JENNIFER I. GOLDSTEIN
Administrative Judge