



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



In the matter of:)
)
) ISCR Case No. 12-01868
)
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

12/13/2013

Decision

MASON Paul J., Administrative Judge:

Applicant’s financial problems were partially caused by matters beyond his control. Like most individuals trying to weather a weak economy, he attempted to resolve or restore currency to his delinquencies with credit cards, and to some degree is continuing to use this unsuccessful method. Financial counseling will enable Applicant to achieve better results in reestablishing control over his financial obligations. He has mitigated the financial issues by satisfying most of the outstanding accounts and, except for one account, he is meeting active payment plans with the remaining creditors. Eligibility for access to classified information is granted.

Statement of the Case

Applicant completed and signed an Electronic Questionnaire for Investigations Processing (e-QIP), Government's Exhibit (GE) 1, on July 11, 2011. He was interviewed by an investigator from the Office of Personnel Management (OPM) on August 8, 2011. The interview summary and Applicant's interrogatory responses appear in GE 4, dated May 6, 2013. Applicant agreed that the summary could be admitted into evidence at a hearing to determine his security suitability. (GE 4)

On June 5, 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 June 25, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 14, 2013, for a hearing on August 22, 2013. The hearing was held as scheduled. GE 1-GE 13 were admitted in evidence. Applicant's objections to GE 4-GE 8 will be discussed below in Rulings on Procedure. Applicant's 26 exhibits (AE A-AE BB) were admitted without objection.¹ His four additional post-hearing exhibits (AE DD-AE GG) were admitted into evidence without objection. His other post-hearing exhibits appear with exhibits already in the record. The transcript (Tr.) was received on September 3, 2013. The record closed on September 4, 2013.

Rulings on Procedure

Directive ¶ E3.1.8 indicates that an "applicant shall be notified at least 15 days in advance of the time and place of the hearing" An applicant may waive the requirement. See ISCR Case No. 04-12732 at 8 (App. Bd. Nov. 2 2006). On August 1, 2013, after Department Counsel discussed the 15-day notice requirement with Applicant, he stated he wanted to waive the notice requirement in order to have his hearing sooner. At the hearing, he confirmed his intent to waive his right to the 15-day notice requirement. (Tr. 12-13)

¹ AE S was returned to Applicant with a recommendation to resubmit the documents as a post-hearing exhibit. Applicant was also advised to submit a copy of his wife's Chapter 7 bankruptcy discharge. (AE CC) No bankruptcy discharge was submitted with Applicant's post-hearing exhibits.

Applicant objected to the admission in evidence of GE 4-GE 8. His objections were overruled. The primary reason for his objection to GE 4 and GE 5 was that events and situations described in the exhibits had changed since he provided the information. Applicant agreed and adopted the interview summary (GE 4) and he provided information and signed the interrogatory answers in GE 5. Applicant's agreement and signature in both exhibits constitute his admission of the information contained therein. The fact that information in the exhibits may have changed does not preclude the admissibility of both exhibits into evidence. The primary basis for Applicant's objection to GE 6- GE 8 was that the bankruptcy petition and schedules were those of his wife. His objection was overruled. The bankruptcy records promote the development of a full record by supplying useful information of the overall family expenses and use of credit instruments. The records also provide probative information about the family income, especially since Applicant's lay off in November 2009. (Tr. 24-31)

Findings of Fact

The SOR contains eleven allegations under the guideline for financial considerations. The delinquent debts identify a judgment for delinquent home association fees, credit card debt, medical accounts, a delinquent mortgage, and a cellular phone bill. Applicant admitted all factual allegations.

Applicant is 40 years old and has been married since April 2005. He has three young children. He has been employed as a certified internal auditor. Though his testimony on the subject is confusing, his e-QIP indicates his last full-time job ended when he was laid off in November 2009. He worked for two months in March and April 2012, before being laid off again due his employer's budget problems.

Applicant's financial problems began in January 2009 when relatives discontinued babysitting one of his children while he and his wife worked. Daycare expense of \$1,000 a month caused him to fall behind in his monthly mortgage payments in February 2009. In September 2009, Applicant's wife had a baby and took eight weeks of maternity leave, earning only 60% of her regular salary. When she returned to work full-time in November 2009, the employer of her part-time job reduced her hours. The daycare cost increased for two young children. Finally, Applicant was laid off in November 2009.

The listed accounts will be addressed in the order they appear in the SOR. ¶ 1.a, \$10,807, judgment, home owners association (HOA) condominium fees. The judgment was filed February 2012. Beginning in late February 2013, Applicant began negotiating with the creditor's law firm to resolve the judgment. On August 28, 2013, the judgment was satisfied as a part of a resolution of ¶¶ 1.a and 1.h of the SOR. The final agreement is set forth in the discussion of ¶ 1.h below. (GE 4; AE V, AE W; Tr. 74-75)

¶ 1.b, \$7,801, judgment, credit card. The account became delinquent in July 2011. A judgment was filed in October 2012. On August 27, 2013, Applicant began negotiating a settlement with the creditor. On September 4, 2013, the creditor's collection firm presented two options for settlement. Applicant presented a counteroffer which was rejected on September 10, 2013. (GE 3; AE EE; Tr. 117) The account remains unpaid.

¶ 1.c, \$121, medical account. The account became delinquent in January 2012. Documentation reflects the account was satisfied in June 2012, by credit card. (GE 3; AE I)

¶ 1.d, \$1,158, credit card. The account became delinquent in October 2012. On May 11, 2013, Applicant was advised by letter that the collection agency would settle the account for \$811, to be paid in monthly installments of \$67, and would be completed in April 2014. Applicant has been making this payment. (GE 3, 4; AE M, S)

¶ 1.e, \$694, credit card. The account became delinquent in November 2012. On September 5, 2013, Applicant was advised by letter from the original creditor that the current balance was \$0. (GE 3; AE N; Tr. 119-120)

¶ 1.f, \$1,131, credit card. The account became delinquent in April 2010. Applicant has been making payments on this account since June 2013, but has not established a settlement or payment plan with the creditor. Applicant made a \$10 payment in June, July, and August 2013. (GE 3; AE O; Tr. 122)

¶ 1.g, \$8,126, credit card. The account became delinquent in March 2010. Applicant has been making payments on this account since June 2013, but has not established a settlement or a payment plan with the creditor. He made a \$50 payment in June, July, and August 2013. (GE 3; AE O; Tr. 122)

¶ 1.h, \$210,000, mortgage. The account became delinquent in September 2012. Applicant informed the OPM investigator in August 2011, that he was trying to negotiate a loan modification agreement with the lender. When the modification agreement apparently failed, Applicant applied for a deed in lieu of foreclosure which required him to relinquish the property to the lender who would then forgive the loan. As a part of the agreement, the lender agreed to pay Applicant's HOA fees identified in ¶ 1.a. Those fees have been paid. A September 2013 credit report indicates that the "credit grantor received [the mortgage] deed for collateral in lieu of foreclosure on a defaulted mortgage." The mortgage lender assigned a realtor to find a buyer. (GE 3, GE 4 at 6; AE X, AE DD at 50; Tr. 89-90, 108-110)

¶ 1.i, \$100, cellular telephone debt. The creditor advised Applicant by letter in June 2013, that the account was paid in full on December 14, 2005. (AE Q)

¶ 1.j, \$2,156, credit card. The account became delinquent in October 2012. On May 14, 2013, the creditor notified Applicant that he could settle the account for \$971 in three payments by July 2014. Applicant has been making payments. (GE 2, GE 3; AE S, DD at 33; Tr. 122-123)

¶ 1.k, \$3,891, student loan. The account became delinquent in September 2012. Applicant provided documentation showing that he has been making monthly payments on the account since February 2013. A payment plan shows that on August 21, 2013, the account balance was reduced to \$3,512, with the next monthly payment of \$51 due on September 13, 2013. (GE 4; AE S; Tr. 141-142)

Because of his professional experience and background, and his wife's input in negotiating settlements and payment plans, Applicant does not believe he needs financial counseling.

Character Evidence

Applicant provided character references from his wife and three certified public accountants (CPA). His wife considers him to be a dedicated loving husband, a responsible father, and a devoted member of his church. Two CPAs wrote references indicating they had worked with him for two years. Since it is unlikely that two character references from two different individuals, on two different days, supposedly in two different locations, would describe Applicant's attributes using virtually the same words, I do not attach much probative value to either reference. The last CPA wrote a statement on August 19, 2013. In the two years that Applicant worked on his audit team, the CPA assessed Applicant's job performance as excellent based on his motivation to complete tasks and the praiseworthy comments from clients. (AE T)

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.

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 SOR identifies accounts that became delinquent between March 2010 and November 2012. Most of the accounts were in an unpaid or partially paid status on June 5, 2013, when the SOR was mailed to Applicant. Two of the accounts are judgments. 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;

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

Applicant receives some mitigation under AG ¶ 20(a). Though he still has remaining balances to pay, his track record of payments and settlements no longer casts doubt on his reliability, trustworthiness, and judgment.

Applicant is entitled to partial mitigation under AG ¶ 20(b). His financial problems began when he had to begin paying \$1,000 a month for day care in February 2009. Those problems were compounded by his wife's reduced income while on maternity leave and decreased income from her part-time job when she returned to full-time work in November 2009. Applicant's lay off in the same month escalated his financial difficulties. Full mitigation is unavailable for Applicant because of the delay in addressing his debts after being advised that his debts were a concern of the Government in August 2011.

Applicant gains partial credit under AG ¶¶ 20(c). While he has never had financial counseling, with his wife's help, he settled five accounts, including the judgment identified in ¶ 1.a.

Applicant receives full mitigation under AG ¶ 20(d) for making a good-faith effort to satisfy all his delinquent debts. He has paid off or settled five accounts. He has agreed to two payment plans and is complying with the payment terms of those plans. Payment plans have not been established with three other creditors. But he has been making periodic payments to two of those creditors between July and September 2013. Even though he has not been successful in finalizing a payment plan with the judgment creditor identified in ¶ 1.b, he has not stopped trying to reach an amicable solution. The documentation convinces me that Applicant no longer has any obligation for the mortgage identified in ¶ 1.h.

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 40 years old. He has been married to his wife since 2005 and has three young children. In addition to his wife's favorable character reference, the reference of the third CPA (August 19, 2013) demonstrates that Applicant is a diligent worker whose work product is respected in the field.

The record contains some evidence that precludes Applicant from security clearance access. There is no evidence of action by Applicant to adjust his financial practices when he realized he had to start paying \$1,000 in daycare in February 2009. He should have devoted more time in locating other employment after his layoff in November 2009. It may not have been the ideal position in his field, but gainful employment may have reduced Applicant's overuse of the listed credit cards and saved his wife from having to file bankruptcy in September 2012.

On the other hand, the record presents a track record of payments to some of the listed creditors since February 2013, before the SOR was published. An applicant is not required to resolve every debt alleged in the SOR. The most important evidence an applicant must present is a plan and a "meaningful track record" of debt reduction. ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) Applicant has paid several accounts and has active plans for paying other accounts. Based on his progress with 10 of 11 accounts, I am confident he will continue to negotiate with the ¶ 1.b creditor. Applicant's perseverance and persistence in resolving the listed accounts with limited funds convinces me he will make the necessary adjustments for avoid future problems of a similar nature. Financial counseling will facilitate these adjustments by increasing Applicant's grasp of budgeting, payment plans, and expense reduction, so that he does not have to pay bills with credit cards. Financial counseling will teach Applicant to manage his funds in a responsible manner. Having weighed the disqualifying and mitigating conditions under Guideline F, and in the context of the whole-person concept, Applicant has mitigated the security concerns arising under the financial considerations and personal conduct guidelines.

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): FOR APPLICANT

Subparagraphs 1.a-1k: For Applicant

Conclusion

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

Paul J. Mason
Administrative Judge