



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 12-02449
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

March 26, 2014

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on October 20, 2011. (Government Exhibit 1.) On September 11, 2013, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F (Financial Considerations) concerning Applicant. 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 (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on November 11, 2013, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on January 6, 2014. This case was assigned to me on January 16, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 24, 2014. I convened the hearing as scheduled on February 13, 2014. The Government offered Government Exhibits 1 through 7, which were admitted without objection. Applicant submitted Applicant Exhibits A through H, which were admitted without objection, and testified on his own behalf. Applicant asked that the record remain open

for the receipt of additional documents. DOHA received the transcript of the hearing (Tr.) on February 27, 2014. Applicant timely submitted Applicant Exhibits I through N, which were all admitted without objection. The record closed on February 28, 2014. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

Applicant is 48, and married with two children. He is employed by a defense contractor, and seeks to retain a security clearance in connection with his employment.

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. Applicant admitted the allegations in the SOR under this Paragraph, other than 1.f, and 1.i. Those admissions are findings of fact. He also submitted additional information to support his request for a security clearance.

The SOR lists eight delinquent debts, totaling approximately \$90,204. This amount includes arrearages on two mortgage loans. The existence and amount of most of these debts is supported by credit reports dated November 3, 2011; May 7, 2013; August 19, 2013; January 6, 2014; and February 12, 2014. (Government Exhibits 3, 4, 5, 6, and 7.)

According to Applicant, his current financial difficulties began, “[a]t the end of 2011 [when] I received a significant pay decrease when the offsite program I had been working for 4 years was abruptly canceled.” He stated that financial problems were further caused by cost overruns during an extensive home and backyard remodeling project.¹ Finally, he was off work for several months after being diagnosed with bipolar disorder. That disorder is now under control with medication. (Government Exhibit 2 at 6.)

Applicant stated that his income was between \$225,000 and \$300,000 a year from approximately 2005 through 2011. His income then dropped to approximately \$150,000 a year, where it has remained. (Applicant Exhibits C, and J; Tr. 36-37, 43.) He admitted that during the time he was making the higher income, “I was living beyond my means. I spent a lot - like I said, a lot of money on my house. . . . We did some nice things with my family, stuff I would never been able to do had I not been in a [sic] situation.” (Tr. 65.) Regarding his debts Applicant stated, “I can honestly say, on all the stuff that I incurred, I believed that I would make good on all those obligations, and that circumstances beyond my control led to some of these things.” (Tr. 32.) (See Tr. 75-80, 94-95.)

¹Applicant testified that he spent over \$300,000 on the home remodeling project. (Tr. 44.)

Applicant first tried to resolve his debt issues by going to a credit repair company in August 2011. After three months of paying this firm over \$1,000 a month he elected to cancel the program in November 2011. (Applicant Exhibit H; Tr. 99-101.) As stated, this was also the time that the program Applicant had worked on for several years was canceled. Applicant had also recently been off work due to his bipolar disorder.

Because of the continuing issues regarding his ability to pay his debts Applicant elected to file for bankruptcy protection under Chapter 13 of the Bankruptcy Code on October 28, 2013. As part of the process, Applicant and his wife completed the required credit counseling. (Applicant Exhibit I.) His Chapter 13 plan was confirmed by the Bankruptcy Court on February 4, 2014. The plan shows that Applicant has a total of \$130,199 in unsecured debt. Assuming the plan to be successful the unsecured creditors will be paid approximately \$26,413. This means they will receive approximately 20.29% of the amount they are actually owed by Applicant.² He also owes \$21,894 in state and Federal taxes, which will be paid in full.³ Applicant's original plan payments are \$400 per month for 12 months, after which the amount will steadily increase over the five years of the plan. (Applicant Exhibits F, G, and K; Tr. 57-59.) Applicant submitted evidence showing that he has made the required four timely plan payments since the petition was filed. However, he admits that his budget is tight to pay all his debts every month, including the plan payments, throughout the life of the plan. (Applicant Exhibit L; Tr. 53, 86-93.)

The current status of the SOR-listed debts is as follows:

1.a. Applicant admits that he filed for Chapter 7 bankruptcy in 1997. His unsecured debts were discharged in February 1998. According to Applicant this bankruptcy was primarily caused by the failure of a business his wife was running, as well as costs connected to repairing his home after a natural disaster in 1994. (Tr. 31-32, 38-40.) Based on the time since this bankruptcy was filed, as well as the circumstances surrounding its filing, this allegation has no current security significance. It is found for Applicant.

1.b. Applicant admits that he is indebted to a creditor for a debt in the amount of approximately \$1,460. Applicant stated that he was not sure whether this debt was included in his Chapter 13 plan. (Tr. 54-56.)

1.c. Applicant admits that he is indebted to a creditor for a debt in the amount of approximately \$20,915. (Tr. 59-60.)

²Applicant did not submit the bankruptcy schedules, which set forth the amount claimed by the creditors for each debt. Accordingly, it is not possible to know with accuracy the amounts actually owed for the debts set forth in allegations 1.b, 1.c, 1.d, 1.f, 1.h, and 1.i.

³The arrearages on Applicant's mortgage and home equity line of credit (HELOC) will be discussed under the specific allegations concerning them.

1.d. Applicant admits that he is indebted to a creditor for a debt in the amount of approximately \$12,172. (Tr. 60.)

1.e. Applicant admits that he is indebted to a creditor for a delinquency on a HELOC in the amount of approximately \$6,164. (Tr. 60-61.) This debt is specifically included in the approved Chapter 13 bankruptcy plan, in the amount stated, which I take to be correct. (Applicant Exhibit G.)

1.f. Applicant denies that he is indebted to a creditor for a debt in the amount of approximately \$1,291. He believes this may be the same debt as that set forth in allegation 1.b. (Tr. 61-62.)

1.g. Applicant admits that he is indebted to a creditor for a delinquency on the first mortgage on his family residence in the amount of approximately \$43,295. (Tr. 63.) This debt is specifically included in the approved Chapter 13 bankruptcy plan, in the amount stated, which I take to be correct. (Applicant Exhibit G.)

1.h. Applicant admits that he is indebted to a creditor for a debt in the amount of approximately \$14,863. (Tr. 63.)

1.i. Applicant denies that he is indebted to a creditor for a debt in the amount of approximately \$1,893. He believes this may be part of the debt set forth in allegation 1.c. (Tr. 61-62.)

Once again, without seeing the schedules filed with Applicant's bankruptcy plan, it is impossible to determine whether the debts set forth in the SOR are included in the plan. In addition, it cannot be determined whether the debts set forth in allegations 1.f, and 1.i are duplicates of other debts in the SOR.

Mitigation

Applicant submitted a number of performance-related certificates of achievement and appreciation. He also submitted communications from management concerning his work, showing that he is a well-regarded and respected employee. (Applicant Exhibits A and M.) His most recent performance review showed that he "Consistently Exceeds Expectations." (Applicant Exhibit N.)

Policies

Security clearance decisions are not made in a vacuum. 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 and mitigating conditions, which are to be used as appropriate 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 over-arching 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, "Any 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. 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, "The 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."

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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized in Section 7 of Executive Order 10865, "Any 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." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Paragraph 1 (Guideline F, Financial Considerations)

The security concern relating to the guideline for Financial Considerations is set out 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.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. AG ¶ 19(b) may also have application, "indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt." Similarly under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. Finally, AG ¶ 19(e) is of concern, "consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis."

Applicant has over \$130,000 in unpaid unsecured debts.⁴ Pursuant to his Chapter 13 bankruptcy plan these creditors will receive approximately 20% of the amount they are owed, if the plan is completed. This is in addition to Applicant paying approximately \$20,000 in back taxes, and approximately \$50,000 in arrearages on his home mortgage and HELOC. He will have to maintain his current payments on his house, an investment property, three cars, and his normal monthly expenses as well. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where "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." AG ¶ 20(b) states that the disqualifying conditions may be mitigated where "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." Also, AG ¶ 20(d) states it can be mitigating where, "the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."

⁴The SOR lists over \$52,000 in unpaid delinquent unsecured debt. I take the amount stated in the bankruptcy plan as being more accurate.

Applicant's financial difficulties have been in existence since at least 2011, if not before. By his own admission, during the four to six year period when he was making a substantially higher income, Applicant did not use good judgment concerning his finances. It is obvious that he spent a considerable amount of money on home remodeling, as well as other expenses, in the expectation that he would make that amount of money indefinitely. He made a relatively feeble attempt to resolve his financial situation in 2011, with his hiring of a credit repair firm for three months. However, he did not really attempt to resolve the situation until he filed for Chapter 13 bankruptcy protection in October 2013, after the SOR in this case was served on him.

Applicant's testimony was vague and opaque concerning his current, and past, financial situations. He did not have a good grasp of what debts were included in his bankruptcy, and failed to submit information to me that would clarify the situation. However, assuming that all the debts alleged in the SOR are included, that fact does not change the ultimate outcome.

Applicant has made four monthly payments of \$400 each to the Chapter 13 trustee. While this is a good start, in this case, given his long-standing inability to control his finances, it is not enough of a track record. That is particularly true where, as here, Applicant admits that making the payment is difficult every month. Not only that, over time the payments will increase until the end of the plan.

In conclusion, looking at Applicant's entire financial situation at the present time, the evidence does not support a finding that "there are clear indications that the problem is being resolved or is under control," as is required by AG ¶ 20(c). Paragraph 1 is found against 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 the relevant circumstances. 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. The administrative judge must 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. The discussion under Guideline F, above, applies here as well. Applicant has had financial problems for several years, which have not been resolved. He has a history of not paying his extensive debts, and it is too soon, even with the bankruptcy filing, to show that he is now trustworthy and reliable. Applicant's conduct with regards to his finances was not mitigated.

Under AG ¶ 2(a)(3), his conduct is recent and continuing. I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I also cannot find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); or that there is little to no likelihood of continuation or recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with questions and doubts as to 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 situation. Accordingly, the evidence supports denying his request for a security clearance.

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
Subparagraph 1.a.:	For Applicant
Subparagraph 1.b.:	Against Applicant
Subparagraph 1.c.:	Against Applicant
Subparagraph 1.d.:	Against Applicant
Subparagraph 1.e.:	Against Applicant
Subparagraph 1.f.:	Against Applicant
Subparagraph 1.g.:	Against Applicant
Subparagraph 1.h.:	Against Applicant
Subparagraph 1.i.:	Against 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

WILFORD H. ROSS
Administrative Judge