



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 12-02704 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Ray T. Blank, Jr., Esq., Department Counsel
For Applicant: *Pro se*

12/11/2013

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. The judgment, two charged-off accounts, and two collection accounts listed in the Statement of Reasons (SOR), total approximately \$170,000. The debts remain unaddressed. The financial considerations security concerns remain. Clearance is denied.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on June 5, 2013, the DoD issued a Statement of Reasons (SOR) detailing security concerns. DoD adjudicators could not make the preliminary affirmative finding that it is clearly consistent with the national interest to grant or continue Applicant’s security clearance.

¹ 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 (Directive); and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

On July 25, 2013, Applicant answered the SOR and elected to have the matter decided without a hearing. Defense Office of Hearings and Appeals (DOHA) Department Counsel submitted the Government's case in a File of Relevant Material (FORM), dated September 10, 2013. The FORM contained eight attachments. On September 23, 2013, Applicant received a copy of the FORM, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions.

Responses to the FORM are due 30 days after receipt of the FORM. Applicant's response was due on October 23, 2013. As of November 4, 2013, no response had been received. On November 6, 2013, I was assigned the case.

Findings of Fact

In Applicant's Answer to the SOR, he denied one debt (SOR 1.e, \$115,000) and admitted the remaining judgment, two charged-off accounts, and one collection account. I incorporate Applicant's admissions as facts. After a thorough review of the pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 48-year-old communication security custodian who has worked for a defense contractor since May 2010. In December 2006, while in the U.S. Navy, he held a top secret clearance with sensitive compartmented information (SCI) access. He was on active duty with the U.S. Navy from July 1984 through July 2008, at which time he was honorably retired. Following retirement, he was unemployed for one month, worked eight months for an employment agency, and five months for a cable company. In November 2009, he worked as a government civilian employee and in May 2010 obtained his current job. His current salary is approximately \$55,000 and his annual military retirement is approximately \$29,000. The record contains no information about Applicant's duty or work performance.

Applicant purchased two homes over a number of years. One went to foreclosure and he is current on payments on the other. In October 2001, he purchased a home for \$172,000. (Item 5) In 2003, he refinanced the loan, which increased his debt to \$217,000. In 2005, he also obtained a \$30,000 home equity loan on the property. In April 2005, he purchased a new home, left his former residence, and obtained two tenants to cover the mortgage payments on his former residence. (Item 5) A few months after obtaining the tenants, one left and the rental payments received from the other were insufficient to cover the entire mortgage payments. Applicant made up the difference. In 2007, Applicant realized he could no longer make up the difference on the rental property and also make his mortgage payments on his new residence. (Item 5)

In August 2007, Applicant was to deploy to an overseas location with the Navy. He attempted to sell the property, but needed \$325,000 to cover the two loans on the house. (Item 5) The real estate market had declined and he was unable to sell the home. He attempted a short sale on the property, but the banks holding the mortgages were unwilling to allow a short sale. In March 2008, Applicant returned from his

deployment to discover the mortgages on his rental property had been sold. He failed to make the mortgage payments. In December 2009, the house went to auction and no purchaser was found.

In 2005, Applicant purchased his current residence for \$555,000 with a \$444,000 first mortgage and a \$111,000 second mortgage. (Item 5) He asserts he was current on the home until his August 2007 deployment. The house had an adjustable rate mortgage (ARM). In June 2007 and December 2007, the ARM rate increased and Applicant fell further behind on payments. In 2007, while deployed to the Middle East, he worked out a three-month loan modification with the creditor (SOR 1.e) to address the past-due payments. (Item 4) The plan was to make sufficient payments so that a loan modification could be made on the loan.

In January 2010, the first mortgage (\$444,000) was sold to another bank. Applicant's loan modification request began anew. In 2011, the new bank approved the loan modification. (Item 4) The modifications list the new loan balance of \$542,076, which included \$101,758 in past-due interest and expenses. The interest rate was reduced from 6.75% to 2.5% and the lender agreed to forego \$54,000 of deferred principal each year for three years if he remained in good standing on the loan. (Item 5) He is current on this note.

The FORM contains three credit bureau reports (CBR) dated: November 1, 2011 (Item 6), January 22, 2013 (Item 7), and March 20, 2013 (Item 8). Each CBR shows the \$444,000 first mortgage being transferred to Applicant's current mortgage holder. All three CBRs indicate the second mortgage (\$111,000) remains in collection status and was not transferred or sold to Applicant's current mortgage company.

Applicant listed the SOR debts on his October 27, 2011 Electronic Questionnaires for Investigations Processing (e-QIP). In March 2013, he also acknowledged owing the debts when he completed written financial interrogatories. (Item 5)

A summary of Applicant's judgment, accounts charged off, accounts placed for collection and other unpaid obligations and their current status follows:

| | Creditor | Amount | Current Status |
|---|----------------------------------|----------|---|
| a | Judgment. | \$9,992 | Unpaid. Account turned over for collection in August 2007. As of July 2013, he was awaiting the collection firm to assign payment options. |
| b | Charged-off credit card account. | \$13,599 | Unpaid. Applicant asked the creditor to reduce the debt, which the creditor initially refused to do. (Item 5) In July 2013, he asserted the creditor agreed to accept \$9,609 and he was establishing a repayment plan. (SOR Answer) No documentation was presented showing a plan or payments. |

| | Creditor | Amount | Current Status |
|---|---|-----------|--|
| c | Charged-off account for a home equity loan. | \$31,045 | Unpaid. Applicant stated he took no action because the property was foreclosed upon by the bank. (Item 4) In September 2012, he said he had received an offer of settlement from the creditor offering to settle this debt for \$3,222. (Item 5) In July 2013, he said the creditor agreed to settle for 10 to 30 percent of the debt and he expected to receive the offer amount in July 2013. No documentation was received showing an offer or payment on the offer. |
| d | Cell phone collection account. | \$312 | Unpaid. Applicant provided no documentation showing this debt was paid. He states this was his stepson's account, which went into default while he was deployed. He asserts it was incorrectly reported in his name. In 2011, he stated he would contact his stepson to resolve the matter. (Item 4) In September 2012, he stated he was attempting to resolve this debt with the creditor. (Item 5) In his SOR answer he said the debt was no longer owed, but provided no documents supporting this assertion. |
| e | Second mortgage collection account. | \$115,000 | Unpaid. All three CBRs (Items 6, 7, and 8) list this as a collection account and do not indicate that it was transferred to Applicant's current mortgage company. The CRBs do show the first mortgage (\$444,000) was so transferred. |
| | | \$169,948 | Total debt listed in SOR |

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered 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 the adjudicative process. The administrative judge's overarching 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.

The protection of the interests of 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 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.

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. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security 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. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order (EO) 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

Applicant has a history of financial problems. The judgment, two charged-off accounts, and two collection accounts total approximately \$170,000. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

(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.

Applicant does not fully meet any the mitigating factors for financial considerations. His financial difficulties are both recent and multiple. He produced limited evidence of circumstances beyond his control, and he has not acted responsibly in addressing his debts. He has received no credit or financial counseling, nor has he demonstrated that his financial problems are under control, or that he has a plan to bring them under control.

Under AG ¶ 20(a), Applicant's financial problems were contributed to by the downturn in the real estate market. His first home, which he converted into rental

property, went to foreclosure. More than \$300,000 in the first and second mortgages were addressed by the foreclosure. However, he still owes \$31,000 for a home equity loan (SOR 1.c) on the property. AG ¶ 20(a) does not apply.

Under AG ¶ 20(b), Applicant experienced a downturn in the real estate market, but experienced only one month of unemployment following his 2008 retirement from the Navy. The majority of the debt on his first property caused by the decline in real estate prices has been forgiven. The home equity loan remains. AG ¶ 20(b) does not apply.

Applicant asserted he intends to pay the judgment (SOR 1.a) and the two charged-off accounts (SOR 1.b and c). He has made no payments and there is no evidence he has received financial counseling or that his financial problems are being resolved. He has yet to address the five debts. AG ¶ 20(c) and ¶ 20(d) do not apply.

Applicant has disputed the cell phone debt (SOR 1.d) and the second mortgage on his current residence (SOR 1.e). For AG ¶ 20(e) to apply he must not only have a reasonable basis to dispute the debt, but must also provide documented proof to substantiate the basis of the dispute, which he has not done.

Applicant asserts the \$115,000 second mortgage on his property has been modified into his current mortgage note. He cites the CBRs as proof thereof. The CBRs indicate the first mortgage (\$444,000) was indeed transferred to the holder of his current mortgage, but the CRBs also indicate the second mortgage remains in collection status. He has provided no documentation showing both mortgages were included in the modification.

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 the facts and circumstances surrounding this case.

There is some evidence favorable to Applicant. From July 1984 through July 2008, he served on active duty with the U.S. Navy retiring honorably. While in the Navy, he was called on to deploy to overseas locations in support of his country. When he completed his October 2011 e-QIP, he listed all of his delinquent accounts. He has remained in contact with some of his creditors and is still attempting to reach settlement offers on his delinquent accounts.

The disqualifying evidence under the whole-person concept is more substantial. Even though the annual household income is approximately \$84,000 and he states he would like to pay his past-due delinquent debts, he has made no payments on them. He has had no recent contact with the holder of his second mortgage. His failure to repay his creditors, at least in reasonable amounts, or to arrange payment plans, reflects traits which raise concerns about his fitness to hold a security clearance.

In not requesting a hearing, Applicant chose to rely on the written record. However, in so doing he failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding his circumstances, articulate his position, and mitigate the financial security concerns. He failed to offer evidence of financial counseling or provide documentation regarding his past efforts to address his delinquent debt. By failing to provide such information, and in relying on only a brief explanation, financial considerations security concerns remain.

In choosing to have this matter handled without a hearing, I am unable to evaluate Applicant's demeanor, appearance, or credibility. From the record, I am unable to find Applicant was sincere, open, and honest in his statement that he intended to pay all of his delinquent debts. Even if I found he intends to pay his delinquent debts, there is no evidence of payment on his debts.

The issue is not simply whether all of Applicant's debts have been paid – they have not – it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(a)(1).) Overall, the record evidence leaves me with questions and doubts about 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 considerations.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a security clearance. The awarding of a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under Applicant's current circumstances, a clearance is not warranted. In the future, if Applicant has paid the judgments and delinquent accounts, established compliance with a repayment plan, or otherwise substantially addressed his

delinquent obligations, he may well demonstrate persuasive evidence of his security worthiness. However, a clearance at this time is not warranted.

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, Financial Considerations: | AGAINST APPLICANT |
| Subparagraphs 1.a – 1.e: | 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 a security clearance. Eligibility for access to classified information is denied.

CLAUDE R. HEINY II
Administrative Judge