



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS and APPEALS**



In the matter of:)
)
) ISCR Case No. 12-03984
)
Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

03/21/2014

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. Applicant has 22 delinquent, collection, or charged-off debts, which total more than \$31,000. He has made no payments on the debts and does not intend to do so. Applicant’s finances remain a security concern. Clearance is denied.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on September 23, 2013, the DoD issued an SOR detailing security concerns under Guideline F (Financial Considerations). DoD adjudicators could not find that it is clearly consistent with the national interest to grant or continue Applicant’s security clearance. On October 17,

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.

2013, Applicant answered the SOR and requested a hearing. On December 30, 2013, I was assigned the case. On December 30, 2013, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for the hearing convened on January 14, 2014. I admitted Government's Exhibits (Ex) 1 through 4 and Applicant's Exhibits A through J, without objection. Applicant and his wife testified at the hearing. The record was held open to allow Applicant to submit additional information. An additional letter (Ex. K) was submitted and admitted into the record without objection. On January 23, 2014, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, he admitted not paying the charged-off and collection accounts alleged in the SOR. He stated he was unable to pay because his wife lost her job. His admissions are incorporated herein. After a thorough review of the pleadings, testimony, and exhibits, I make the following findings of fact.

Applicant is a 35-year-old quality inspector who has worked for a defense contractor since June 2006, and seeks to maintain a secret security clearance. (Ex. 1, Tr. 27, Tr. 32) Applicant's co-worker and supervisor state: Applicant is upstanding, extremely dedicated, and has a work ethic second to none. (Ex. A, Ex. B)

From April 1999 to April 2005, Applicant was on active duty with the U. S. Air Force. He was a Staff Sergeant (E-5) when he was honorably discharged. While on active duty, he was awarded an Air Force Achievement medal. (Ex. E) From 2000 to 2004, he was deployed four months a year in support of Operation Joint Forge, Operation Deep Freeze, Operation Southern Watch, Operation Enduring Freedom, and Operation Iraqi Freedom. (Ex. E, Ex. K, Tr. 25) His service included Antarctic service. (Ex. E)

Applicant was rated at fifty percent disabled for hands and shoulders injuries by the Department of Veterans Affairs (VA). (Tr. 26) As of 2013, He receives approximately \$1,000 per month entitlement from the VA. (Tr. 27, Tr. 50)

Applicant's SOR lists 22 delinquent, collection, or charged-off debts, which total more than \$31,000. Those debts are: SOR 1.a (\$6,850 credit card account), SOR 1.b (\$1,379 credit card debt), SOR 1.c (\$124 collection account), SOR 1.d (\$1,595 telephone service account), SOR 1.e (\$980 telephone service account), SOR 1.f (\$165 medical account), SOR 1.g (\$204 medical account), SOR 1.h (\$166 medical account), SOR 1.i (\$151 medical account), SOR 1.j (\$530 department store account), SOR 1.k (\$168 medical account), SOR 1.l (\$2,883 credit card account), SOR 1.m (\$1,056 credit card account), SOR 1.n (\$1,405 credit card account), SOR 1.o (\$183 medical account), SOR 1.p (\$5,793 credit card account), SOR 1.q (\$4,949 credit card account), SOR 1.r (\$218 medical account), SOR 1.s (\$1,405 jewelry store account), SOR 1.t (\$967 credit card account), SOR 1.u (\$413 medical account), and SOR 1.v (\$226 medical account).

Applicant has made no payments on his delinquent debts. (Tr. 39) It is his intent not to pay his delinquent debts. (Tr. 42) He will stay current with his more recent debts, but allow his delinquent debts to be removed from his credit reports due to the passage of time. (Tr. 44)

In January 2012 and February 2012, Applicant was asked about his delinquent accounts during a personal subject interview (PSI). During the PSI, he was asked about each of the SOR delinquent accounts except for the two medical accounts listed in SOR 1.u (\$413) and SOR 1.v (\$226). (Ex. 4) When asked about his medical debts he could provide no information other than he owed the debts. (Tr. 45)

From July 2010 to February 2011, Applicant employed a credit restoration and consultation service to assist him in restoring his credit. (Ex. 4, Ex. C) He asserts his reason for not paying his delinquent accounts as, "My credit advisor told me not to pay any account that was delinquent or at collections, and to just keep up with my current accounts." (Ex. 4, Tr. 29) He asserts the credit service told him not to pay his delinquent debts until verified through the credit service. The credit service was paid \$700 for the assistance provided. (Tr. 29, 38) The only written document Applicant received from the credit service was a one-page letter. (Ex. C, Tr. 38) The only recent financial counseling Applicant has received was in 2012 when he talked with someone by telephone. (Tr. 49)

Applicant in his PSI stated that in 2011 and 2012, the credit service was to send letters to all his creditors disputing his delinquent debts. (Ex. 4) However, at the hearing, Applicant stated he was unaware of any negotiations or contact with his creditors on his behalf by the credit service. (Tr. 38)

In August 2013, Applicant answered written financial interrogatories. (Ex. 4) He indicated he had not made any payments on the SOR delinquent accounts. His monthly net remainder (monthly income less monthly expenses and monthly debt payment) was approximately \$3,000. (Ex. 4, Tr. 30) As of mid-August 2013, his total income year to-date was approximately \$47,700 and his wife's income, as a paralegal, was \$23,067. (Ex. 4) His joint household income for 2012 was more than \$100,000. (Ex. J)

Applicant married in June 2006. In 2008, complications during his wife pregnancy caused her to stop working, which dropped the household annual income from \$60,000 to \$38,000. (Ex. 4, Tr. 34) During 2008 and 2009, Applicant and his wife used credit cards to make up for the lost household income. (Ex. 4) In the later part of 2009, his wife obtained a new job and has been employed full time since then. (Tr. 37) In November 2009, his wife filed for divorce. (Ex. D) In 2011, they reconciled and they returned to living together. (Tr. 36) He has three children ages 5, 6, and 13. (Tr. 33)

In 2008, Applicant's household income was approximately \$64,000 and he received a tax refund of approximately \$6,800. (Ex. F) In 2009, the joint household income was approximately \$52,600 and his refund was approximately \$6,300. (Ex. G) In 2010, Applicant's income was approximately \$56,000 and he received a refund of approximately \$4,000. (Ex. H) In 2011, Applicant's income was approximately \$69,000

and his refund was approximately \$2,600. (Ex. I) He had taken a \$2,700 early distribution from his retirement fund in order to bring his mortgage current.(Tr. 41) He stated he had been paying a monthly late fee because he had been paying his mortgage late for a long time. (Tr. 41) The money from his retirement fund allowed him to become current on his monthly payments. (Tr. 41) In 2012, Applicant's household income was approximately \$109,000² and he received a refund of approximately \$5,000. (Ex. J) Joint returns were filed for tax years 2008, 2009, and 2012. (Ex. F, Ex. G, Ex. J) He filed as single in 2010 and as head of household in 2011. (Ex. H, Ex. I)

Applicant is current on his mortgage. (Tr. 30) As of August 2013, he was making \$800 monthly payments on a mortgage balance of \$63,000. (Ex. 4) In December 2011, he purchased a pickup truck for \$38,290 with monthly payments of \$600. (Ex.2, Ex. 3, Tr. 48) He is current on his monthly vehicle payments, which, as of July 2013, had a balance of \$29,000. (Ex. 3, Tr. 30, Tr. 48) No money is owed on his wife's 2007 automobile. (Tr. 49) He has approximately \$25,000 in his 401(k) retirement plan. (Tr. 31) He has approximately \$2,000 in his checking account and \$4,000 in his saving accounts. (Tr. 40 – 41) He has two credit cards and his wife has four. (Tr. 47)

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

² Applicant's joint income included approximately \$5,800 in cancelled debt income. (Ex. J) Applicant did not explain what debt has been cancelled. No IRS Form 1099-C's, which is the form showing debt that has been canceled, forgiven, or discharged, were submitted showing the nature of the cancelled debt.

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 *also* 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. He has 22 delinquent, collection, or charged-off debts, which total more than \$31,000. Nine of Applicant's debts are under \$250 each. 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 knew of the Government's concern over his delinquent accounts more than two years ago, *i.e.* during his January 2012 and February 2012 personal subject interviews. At that time, he was asked about each of the SOR debts except for the last two medical debts listed in SOR 1.u (\$413) and SOR 1.v (\$266). He was again apprised of the Government's concern when he was asked to respond to financial written interrogatories in August 2013. In September 2013, the SOR put him on notice that it was inconsistent with the national interest for him to have access to classified information because of his delinquent debt. He has made no payments on any of his delinquent debts and does not intend to make any payments.

Because Applicant has multiple delinquent debts and his financial problems are continuing in nature, he receives no application of the mitigating conditions listed in AG ¶ 20(a). Applicant's handling of his finances, under the circumstances, casts doubt on his current reliability, trustworthiness, or good judgment.

Applicant receives only partial application of the mitigating conditions listed in AG ¶ 20(b). His wife was unemployed in 2008, but has been employed full time since 2009. Additionally, Applicant and his wife were separated from 2009 through 2011. They have been reunited for more than two years. Their income in 2012 exceeded \$100,000. Applicant has had sufficient opportunity to address his financial delinquencies. Yet even the nine debts of less than \$250 each have yet to be paid. In the two years since reuniting with his wife, he has failed to act timely or responsibly under the circumstances. He failed to resolve his debts and failed to reduce his delinquencies.

Good-faith requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. Accordingly, an applicant must do more than merely show that he is waiting for his delinquent accounts to be removed from his credit reports due to the passage of time in order to claim the benefit of the good-faith mitigating condition. ISCR case No. 02-30304 at 3 (App. Bd. April 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001)).

The Appeal Board explained that circumstances beyond one's control can cause unresolved debt, and are not necessarily a bar to having access to classified information stating:

However, the Board has previously noted that an applicant is not required to be debt free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his [or her] circumstances and develop a reasonable plan for repayment, accompanied by "concomitant conduct," that is, actions which evidence a serious intent to effectuate the plan. See ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008).

ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009). Applicant admitted responsibility for and took reasonable and responsible actions to resolve his SOR debts, establishing some good faith.³

³ The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his or her control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties. ISCR Case No. 05-11366 at 4 n.9 (App. Bd. January 12, 2007)(citing ISCR Case No. 03-13096 at 4 (App. Bd. November 29, 2005); ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. December 1, 1999). I find he has not acted in a reasonable manner.

The mitigating condition listed in AG ¶ 20(c) applies only minimally because, his most recent financial counseling consisted of a telephone call in 2012 and a credit service in 2009 telling him not to pay his delinquent debts, and it does not appear that his delinquent financial debts are being resolved.

The mitigating condition listed in AG ¶ 20(d) does not apply because, to date, Applicant has made no effort to address his delinquent accounts. He has not contacted any of his creditors and tried to arrange repayment plans. He has not established any payment plans. Applicant has failed to act aggressively, timely, or responsibly to resolve his delinquent debts. The mitigating condition listed in AG ¶ 20(e) does not apply because Applicant does not dispute the delinquent accounts.

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 in favor of mitigation. In 2008, Applicant's became unemployed due to pregnancy complications, and the household income was reduced by 45 percent. Applicant used credit cards to make up the lack of income. Additionally, Applicant and his wife were separated from 2009 through 2011. Applicant and his wife are paying their current debts. They are not

living beyond their means. His wife drives a 2007 vehicle. He honorably served in the U.S. Air Force where his injuries resulted in being rated by the VA as 50% disabled.

The disqualifying evidence under the whole-person concept is more substantial. In 2009, when Applicant's wife was again employed full time, no payments were made on the delinquent debt. It has been more than two years since Applicant become aware of the Government concerns over his finances. His 2012 household income was more than \$100,000. His monthly net remainder is between \$2,000 and \$3,000. He has not made any payment on his delinquent debts and does not intend to do so. His long-standing 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.

An applicant is not required to establish that he has paid off each and every debt listed in the SOR. All that is required is for him to demonstrate he has established a plan to resolve his delinquent debt and has taken significant action to implement that plan. I must reasonably consider the entirety of Applicant's financial situation and his actions in evaluating the extent to which that plan is credible and realistic. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan may provide for payment on such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

The issue is not simply whether all 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).) Applicant does not intend to pay his delinquent debts. 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 recommended. In the future, if Applicant has paid his delinquent obligations, established compliance with a repayment plan, or otherwise substantially addressed his past-due 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.v: 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