



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 12-04005
)
Applicant for Security Clearance)

Appearances

For Government: John Bayard Glendon, Esq., Department Counsel
For Applicant: *Pro se*

03/06/2015

Decision

CURRY, Marc E., Administrative Judge:

The only debt that Applicant has not either satisfied or been paying through a payment plan is a debt for less than \$500 that he does not recognize and has not been able to identify. Applicant has mitigated the financial considerations security concern. Clearance is granted.

Statement of the Case

On April 25, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (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 (AG) implemented by the DOD on September 1, 2006.

On May 14, 2014, Applicant answered the SOR, admitting all of the allegations and requesting a hearing. On August 28, 2014, the case was assigned to another administrative judge. On October 20, 2014, after Applicant relocated, the case was transferred to me. DOHA issued a notice of hearing on January 21, 2015, scheduling the hearing for February 5, 2015. The hearing was held as scheduled, via video-teleconference. At the hearing, I received four Government exhibits (GE 1-GE 4) and six Applicant exhibits (AEs A-F). Also, I considered Applicant's testimony.

At the close of the hearing, I left the record open, at Applicant's request, to allow him to submit additional exhibits. Within the time allotted, he submitted 14 exhibits that I incorporated into the record as AEs G-T. DOHA received the transcript (Tr.) on February 13, 2015.

Findings of Fact

Applicant is a 48-year-old single man with one child, age 14. He was married previously from 1986 to 1989. In 2007, he reconciled with his ex-wife. Although they did not remarry, they have continued to live together. (GE 1 at 15-16) He supports his ex-wife's daughter with whom he is unrelated. (Tr. 66) Applicant has one child, age 14, from a relationship with an ex-girlfriend. Applicant continues to support his ex-girlfriend, paying her rent, and supporting their son and his ex-girlfriend's daughter with whom he is unrelated.

Applicant has a high school education and has taken some college courses. He served in the U.S. Army Reserve from 1983 to 1986. (GE 1 at 32) In 1987, he entered active duty, serving through 1988 after requesting and receiving an early termination. (Tr. 44) Because he left the Army before his contractual term expired, he was given a general discharge under honorable conditions, as opposed to an honorable discharge. (AE N)

Since 2011, Applicant has worked as the chief electrician for a contractor that supports the U.S. Merchant Marine. (GE 1 at 10; Tr. 21) He has been in this line of work for approximately 15 years.

The SOR alleges nine debts totaling approximately \$59,000. Subparagraph 1.a is a utility bill stemming from an account that his ex-girlfriend opened in his name without his knowledge. (Tr. 29) It totals \$1,503. Applicant satisfied the bill on February 13, 2015. (AE Q)

The debt listed in subparagraph 1.b is a federal income tax delinquency for tax years 2006 through 2009 totaling approximately \$41,130. (AE A) Applicant incurred this delinquency because, unbeknownst to him, his ex-girlfriend was claiming a deduction for their son every year when they had agreed that they would claim him on their respective income taxes in alternate years. (Tr. 31) Applicant consulted a tax debt resolution company who helped him negotiate a \$14,000 reduction in the delinquency (constituting late penalty fees) and organize a payment plan for the remainder. (Tr. 30)

Applicant has been paying \$515 per month, as planned, since January 2014. (AE E, AE R)

SOR subparagraph 1.c totals \$1,728 and is owed to a bank. Applicant does not know the origin of this debt. After trying unsuccessfully for approximately two years to get more information about the debt, Applicant satisfied it in February 2015. (AE H; Tr. 33)

SOR subparagraph 1.d is the balance of a truck loan, totaling \$6,857, that Applicant owed to the dealer after his truck was totalled in a car accident. (Tr. 33-34) The date that Applicant experienced the car accident is unknown from the record. Applicant paid the debt in full in February 2015. (AE I)

The debt listed in subparagraph 1.e is a delinquent cell phone bill totaling \$1,842. Applicant satisfied the debt in February 2015. (AE S)

The debt listed in subparagraph 1.f is for a bounced check from 2006. It totals \$1,673. With the help of a credit repair agency, Applicant identified the debt and paid it in February 2015. (AE J)

The debt listed in subparagraph 1.g totals \$450 and is owed to a collection agency. Applicant has not been able to ascertain its origin.

The debt listed in subparagraph 1.h is a loan totaling \$12,558. Applicant borrowed this money after he quit his job in 2010, and used the money primarily to retain an employment agency to help him find a job and to purchase Christmas gifts. (Tr. 55) In April 2014, Applicant contacted the collection agent and negotiated an agreement to satisfy this debt through \$500 monthly payments. (Tr. 36) Per the creditor, Applicant has been paying the debt, as agreed, and he has reduced the balance to \$9,500. (AE D, AE K)

The debt listed in subparagraph 1.i is a utility bill. It became delinquent in October 2007. (GE 4 at 10) Over the years, Applicant has had trouble managing bill payments because of the length of time he has typically been out to sea. (Tr. 37) Applicant paid this account in February 2015. (AE L)

Applicant attributes his financial problems to trouble managing two households while working on a job in which he is away from home four to eight months at a time, and to a lengthy unemployment between 2010 and 2011. (Tr. 29; AE G at 2) Although Applicant left his job voluntarily,¹ he did not anticipate that it would take nearly a year to get another job. Applicant's efforts at debt satisfaction were delayed by the amount of time he spends at sea. (AE G at 2)

¹Applicant's company was purchased by another company. He left shortly after the purchase because his new employer had " a different [management] scheme" that was incompatible with his management style. (Tr. 53)

Applicant filed for Chapter 13 bankruptcy protection in 2006. (Tr. 46) The petition was dismissed a year later after he failed to comply with the payment plan. In approximately 2006, Applicant put his home on the market anticipating to short sell it. (Tr. 44) Subsequently, a buyer purchased it for a price that covered the cost of the remaining mortgage. (Tr. 44)

Applicant earns between \$130,000 and \$140,000 per year. (Tr. 47) Per agreement with his ex-girlfriend, he does not pay child support because he pays for his son's private school education.² With the help of the credit repair agency, Applicant has developed a money management plan that helps him better keep track of his expenses. (AE M)

Policies

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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 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 national security."

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 for obtaining a favorable security decision.

Analysis

Guideline F, Financial Considerations

Under this guideline, "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." (AG ¶ 18) Over the years, Applicant incurred approximately \$55,000 of delinquent debt.

²\$1,600 per month. (Tr. 65)

AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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; and

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

Applicant’s financial problems predate his unemployment in 2010. Moreover, his job loss was not a circumstance beyond his control as he voluntarily left it. Nevertheless, Applicant could not have reasonably anticipated that he was going to be unemployed for nearly a year, given that he had no history of job instability. Also, most of his problems keeping track of his debts stem from difficulties with managing his finances while being out to sea four to eight months per year.

Currently, of the nine SOR debts, Applicant has satisfied seven of them entirely (SOR subparagraphs 1.a, 1.c-1.f, and 1.i), totaling approximately \$14,400, and has been making significant monthly payments on two of them (subparagraphs 1.b and 1.h) for 11 to 13 months, respectively. The only debt that remains outstanding is a bill for less than \$500 that Applicant has been unable to identify.

Applicant has been managing his debt payments through a spending plan that he developed with the help of a credit repair agency. Consequently, I conclude that AG ¶ 20(b) partially applies despite some of Applicant’s financial problems predating his unemployment, and that AG ¶¶ 20(c) and 20(d) also apply. I conclude Applicant has mitigated the financial considerations security concerns.

Whole-Person Concept

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They are as follows:

(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.

Applicant is a generous man who financially supports two children with whom he is not legally obligated to support. Over the years, generosity may have crossed the line into irresponsibility as Applicant was juggling the finances of two households while living at sea more than half of the year. Nevertheless, Applicant has stabilized his financial situation and now appears to recognize the relationship between good money management and the maintenance of his security clearance. Considering this case in the context of the whole-person concept, I conclude Applicant has mitigated the security concern.

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-1.i:	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.

MARC E. CURRY
Administrative Judge