



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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-----) ISCR Case No. 12-04297
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)
Applicant for Security Clearance)

Appearances

For Government: Fahryn Hoffman, Esquire, Department Counsel
For Applicant: *Pro se*

10/31/2014

Decision

HOWE, Philip S., Administrative Judge:

On December 13, 2011, Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP; SF 86). On March 21, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) 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) effective within the Department of Defense on September 1, 2006.

Applicant acknowledged receipt of the SOR on April 14, 2014. He answered the SOR in writing on April 22, 2014, and requested a hearing before an administrative judge. Defense Office of Hearings and Appeals (DOHA) received the request after that date. Department Counsel was prepared to proceed on June 16, 2014, and I received the case assignment on June 19, 2014. DOHA issued a Notice of Hearing on June 26, 2014, and I convened the hearing as scheduled on July 24, 2014. The Government

offered Exhibits 1 through 7, which were received without objection. Applicant testified and submitted no exhibits at that time. DOHA received the transcript of the hearing (Tr.) on August 4, 2014. I granted Applicant's request to keep the record open until August 21, 2014, to submit additional matters. On August 20, 2014, he submitted Exhibits A through I, without objection after the hearing. The record closed on August 21, 2014. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR Applicant admitted the factual allegations in ¶¶ 1.b and 1.c of the SOR, with explanations. He denied the factual allegations in ¶¶ 1.a, 1.d, 1.e, and 1.f of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 56 years old and married for the third time. He works for a defense contractor. Applicant has three children from his first marriage. He has had several employers over the years. He has worked for the same company since 1995. Applicant served in the U.S. Army for seven years on active duty from 1978 to 1985 and then in the Army Reserve from 1985 to 2005. He received an honorable discharge in 2005. (Tr. 31, 32, 37, 40; Exhibits 1, 5; Answer)

Applicant claims he could not work for certain periods of time since 2010. He asserts several three-week periods in 2010, six-to-seven weeks total in 2011, and April and May 2011, all causing financial hardship for him. He had gastric bypass surgery, back and knee problems, and other medical issues. He also claimed several periods of employment layoffs between 1991 and 1995. When unemployed he worked at lower-paying jobs but had difficulty paying his debts in those times, according to Applicant. (Tr. 35-38)

Applicant has six debts listed in the SOR. They total \$22,811. (Tr. 24-29, 53-87; Exhibits 2-7; Answer)

Applicant contracted for an internet business provider's plan and the creditor alleges he now owes \$10,676 (Subparagraph 1.a). Applicant paid \$750 to buy into the website program and then agreed to a monthly fee. Applicant and his wife assert they got nothing from the creditor to assist them in building their website and delivery business. Applicant refuses to pay this amount or any money to the creditor because he says it is a "scam." The creditor is the subject of a class action lawsuit in which Applicant filed a claim that he enclosed as an exhibit. It was filed in 2009 but no specific resolution pertaining to Applicant was submitted in any documents. This account is not resolved because of the litigation involved. He has not written to the credit reporting agencies to dispute this debt. Applicant submitted as exhibits copies of internet commentary by other investors designed to lead the reader to believe the creditor was a fraudulent operator. Applicant has not resolved this debt because he sincerely thinks he has a valid defense to this debt. (Tr. 74-87; Exhibits 4, A, F-I)

Applicant owes \$952 to a payday lender (Subparagraph 1.b) since 2011. He admits this debt. Applicant claims he talked to the creditor about this debt but has not made any payments because of other obligations to his family, such as the mortgage and food. The two credit reports submitted as exhibits show the debt is "charged off" by the creditor. Applicant testified that he sent in an installment agreement with his SOR Answer, but the only documents attached to his Answer pertained to another debt and his federal income tax debt. This debt is not paid. (Tr. 25, 26, 69-71; Exhibits 2, 5 (pages 24, 25), 7; Answer)

Applicant owes a collector \$1,191 (Subparagraph 1.c). This debt is a car loan. Applicant admits this debt and claims he is making payments on it. It is current now. \$645 is now due but is not past due. Applicant has resolved this delinquency by making payments on an installment payment plan. (Tr. 26, 27, 71-73; Exhibits 2, 7)

Applicant is alleged to owe income taxes to two states, \$1,883 to one state and \$5,353 to another (Subparagraphs 1.d, and 1.e). He denies he owes these taxes. Applicant attributes his tax problems to his tax preparer's failure to maintain currency on tax regulations from 2005 to 2010. As a result, errors were made. After taxes were not taken from a bonus he received in 2007, Applicant owed taxes on that amount. He testified he is now current on all his federal and state taxes. However, his exhibits submitted after the hearing did not contain any documentary evidence to show the taxes were paid. Applicant claims he called the tax department of one state, and was told he owed nothing, but that it would take him more time to obtain a tax transcript to show he did not owe it any money. Applicant testified that he saw a release letter for the \$5,353 taxes after he paid them in May 2006 and could submit it but he did not submit any document after the hearing in the form of a release letter. The credit report from February 2014 does not list either tax debt as owing. However, the judgment and lien report submitted by Department Counsel shows the current state of residence tax lien for \$1,883 is owed as of February 2014. The tax lien for \$5,353 is shown on the same document as unsatisfied and still owing. The weight of the evidence, including Applicant's uncertain and unspecific answers, shows that these tax debts are not resolved. (Tr. 27-29, 42-49, 53-60; Exhibits 1-7, A; Answer)

In explanation of his tax problems, Applicant admits he did not pay sufficient money to the U.S. Internal Revenue Service (IRS) and his original state of residence in 2005, 2006, 2008, 2009, and 2010. He owed \$1,600 to his former state of residence and over \$13,000 to the IRS. Applicant claims he entered payment arrangements with the two governments. He pays the IRS \$325 monthly. When that installment payment plan is concluded, he will pay \$30 monthly to the state. His Answer included documents pertaining only to an IRS tax debt. The IRS debt is not alleged in the SOR. Nor is more than one tax debt to that particular state alleged in Subparagraph 1.e of the SOR. Applicant asserted he was certain he did not owe any taxes but could not verify his claim and seemed uncertain about the history of these tax debts.. (Tr. 27, 28, 42-49, 53-60; Exhibits 1-7, A; Answer)

Applicant owes a finance company \$2,756.00 on a truck loan for the money he borrowed in the first state of his residence (Subparagraph 1.f). Applicant claims he paid this debt after it was arbitrated through the local court system in Applicant's current state of residence (the second state). This action occurred in 2005 and resulted in an award to the plaintiff finance company in the amount of \$2,756 plus \$500 in attorney's fees and court costs of \$192, for a total of \$3,448. This debt was paid by wage garnishment deductions from Applicant's income. Applicant submitted a court order from September 2007 related to this debt in which the second state court judge dismissed the garnishment order because the debt was paid through wage garnishment in the first state. Applicant also submitted a Satisfaction of Judgment document from August 22, 2007, showing the debt was paid in the first state. However, Applicant acknowledged in answers to the Department Counsel during the hearing that about \$1,100 is owed on this debt and that with additional time after the hearing he could submit documents from his company's payroll office to show that money was garnished and paid. Applicant never submitted such documents. Therefore, his assertion cannot be verified. This debt is not resolved. (Tr. 62-67; Exhibits 2, 5, 6, D, E; Answer)

Applicant admits he was evicted from an apartment in November 2011 for \$2,300 in unpaid rent. Applicant submitted documents showing a wage deduction order based on a judgment obtained by that landlord. That debt is not alleged in the SOR. Applicant claims it was paid by garnishment deductions. (Tr. 35; Exhibits 1, 5, B, C; Answer)

Since 2003 Applicant borrowed money from a couple of payday lenders, but primarily one such lender. He took those loans regularly and at least 25 are listed in the December 2011 credit report. He repays these monies on the installment basis. He claims he does this borrowing to help him over times he is unemployed or laid off by his employer. Applicant's credit report from 2011 shows a number of other borrowings from various lenders, most of which have been repaid. He had three tax liens filed against him since 1996 and three creditor judgments filed since 2005. Applicant borrows and repays money on a regular basis to cover the gaps between his income and expenses. (Exhibits 2, 5 (pages 19-21), 6, 7; Answer)

Applicant submitted as part of his answers to the DOHA interrogatories documents pertaining to debts and events not alleged in the SOR. He has a "repayment plan option" for a charged-off loan from a credit union in 2013 for \$552 payable at \$125 bi-weekly. He included credit reporting agency documents showing a state tax lien and the truck loan entries were deleted from that one company's records. Applicant also included documents pertaining to the apartment lease and small claims lawsuit referred to previously. He included letters pertaining to a speeding arrest in 2011. Next, he included documents pertaining to an employee corrective action taken regarding him by his employer in 2007 that resulted in him taking off three days without pay. Then he included several pages of documents pertaining to his military service. Finally, he again submitted IRS documents pertaining to his federal tax debt. (Exhibit 5)

Applicant submitted a personal financial statement in answer to the DOHA interrogatories in Exhibit 5 (page 69). That document from December 2013 shows about \$30,000 in debt owed, including three debts alleged on the SOR. The statement also shows a net remainder after taxes and debt payments of \$1,743 for Applicant. He claimed he did not have that money in cash each month because he was paying it to creditors and for other matters. Applicant was imprecise on where his net remainder funds are spent each month. (Tr. 90-107; Exhibit 5)

Policies

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 useful 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 (AG ¶ 2(a)). 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 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." 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, an "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. 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 potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 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

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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. Two conditions are applicable to the facts found in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated \$22,811 in delinquent debt from 1996 to the present time that remains unpaid. Applicant has six delinquent debts listed in the SOR. AG ¶ 19 (a) and (c) apply.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Four conditions may be 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 attributes some of his financial problems to his illnesses in 2010 and 2011. He had gastric bypass surgery, back and knee problems, and other medical issues. He acted responsibly by trying to find lower-paying jobs during those periods of unemployment and his medical conditions to pay his bills. AG ¶ 20 (b) has partial application except that Applicant still incurred debts during those years.

Applicant is confused and uncertain about the status and history of his delinquent debts. He is not currently paying his five debts in an orderly manner. There are not clear indications from the evidence he presented that the financial problems are under control and are being resolved. AG ¶ 20 (c) does not apply.

AG ¶ 20 (d) does not apply because Applicant has not shown good-faith efforts to repay his delinquent debts. His answers and exhibits made it difficult to determine the current status of the debts. He received the SOR in March 2014 and had sufficient time to gather his documents and make an organized presentation designed to persuade the finder of fact that he resolved each alleged debt. He did not meet that burden of proof and was obviously confused about what he owed and when he could pay it.

If Applicant has a reasonable basis to dispute the first debt listed in the SOR, that being owed to the internet business developer he found that might have allowed him to create his own home business, he has not worked to assert it in any forum. He must do so to have the mitigating condition apply. He just denies he owes it. Applicant submitted evidence he tried to join a class action lawsuit against the creditor, and that other investors concluded the developer was a fraud who only took their money and provided no assistance as promised. However, the claim form Applicant submitted was signed by him but not dated properly, so it cannot be determined if he sent it and is included in the class action. The current status of the lawsuit was not presented. Applicant has not written to the credit reporting agencies to object to the debt on his report nor taken other action with legal authorities to rid him of this debt, although he said he was going to do that some time ago. AG ¶ 20(e) does not apply because Applicant has not pursued his

remedies. Furthermore, the internet comments of various writers who allegedly dealt with the same creditor are not verified and are really only, at best, second-level hearsay.

None of the other mitigating conditions have any applicability to Applicant's case.

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 an applicant's conduct and all the 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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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. Applicant displayed a history of poor financial management without submitting any evidence that he has changed his behavior. He resolved one of the debts, but none of the other five with any certitude supported by any objective documents. His actions demonstrate poor judgment, untrustworthiness, and unreliability regarding his security position.

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 did not mitigate the Financial Considerations security concern. Also, I conclude the whole-person concept against Applicant.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a to 1.b, 1.d to 1.f:	Against Applicant
Subparagraph 1.c:	For 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.

PHILIP S. HOWE
Administrative Judge