



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



In the matter of:)	
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I)	ISCR Case No. 14-00349
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

07/25/2014

Decision

MASON Paul J., Administrative Judge:

Applicant has developed a definite plan to overcome his indebtedness. His recently approved home loan modification for his primary mortgage has translated into lower monthly mortgage payments. Since November 2012, he has reduced the second delinquent mortgage by almost \$23,000. His good-faith effort to resolve his debt delinquencies warrants a finding in his favor under the guidelines for financial consideration and personal conduct. Eligibility for access to classified information is granted.

Statement of the Case

Applicant completed and signed an Electronic Questionnaire for Investigations Processing (e-QIP), Government's Exhibit (GE) 1, on September 13, 2013. On March 14,

2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline (Guideline F) and personal conduct (Guideline E). The action was taken pursuant to 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 Department of Defense on September 1, 2006.

Applicant's answer to the SOR was notarized on April 1, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 30, 2014, for a hearing on June 25, 2014. The hearing was held as scheduled. The Government's three exhibits and Applicant's 13 exhibits (AE) were admitted into evidence without objection. The transcript (Tr.) was received on July 3, 2014. The record in this case closed the same day.

Findings of Fact

Applicant admitted all allegations of the SOR, but noted that the judgment listed at SOR 1.a is the subsequent status of the account at SOR 1.d, which had been in a charged-off status. In an email dated April 11, 2014, Applicant provided the following response to SOR 2.a: "I am not familiar to matters such as these and I thought that in order to have a judgment against you, that it was a matter of going to court and being told by the judge that you were at fault." Applicant noted that he has been a contractor for 10 years and knew that there was no reason to lie. (Email response to SOR 2.a)

Applicant is 34 years old. He has been married for more than 10 years and he has an eight-year-old daughter. He has been employed as an engineering technician since August 2003. He has held a security clearance since October 2003. He has no criminal record and he has never been involved in an offense involving alcohol or drugs.

Reasons for Financial Problems

Applicant fell behind on the listed accounts after his wife was laid off from her contractor job in November 2008. A second reason was the interest-only mortgage loan option he selected to purchase his residence that he has been living in since December 2003. The loss of his wife's income forced him to address the most important obligations first before handling the accounts of lesser significance. He had to temporarily discontinue his daughter's daycare and car pool more often. His wife resumed employment in August 2009, earning between \$45,000 and \$50,000 a year. They began addressing the debts in 2010. He consulted a financial counselor at his bank and also enrolled in a debt consolidation organization in 2011. The accounts will be discussed in the order they appear in the SOR. (AE A; Tr. 26-28)

SOR 1.a, \$5,463, oil credit card account that became a judgment in April 2012. Before becoming a judgment, the account, which totaled \$4,070 (**SOR 1.d**), was in a charged-off status in August 2010. Applicant explained that he was paying the account through the debt firm and the debt was current. He provided a debt firm statement listing six creditors. Three of those creditors appear in the SOR. The statement reflects that the firm made a payment of \$75 to the creditor on June 17, 2014. The statement indicates Applicant has been a client since August 29, 2011. The debt firm letter indicates that Applicant started the program on June 28, 2011. Missing from the documentation is a record of payments akin to the payment ledger Applicant submitted in response to SOR 1.h. (GE 2 at 14; AE B, G; Tr. 31)

SOR 1.b, \$516, auto loan. The account became delinquent in June 2013. Applicant mistakenly testified the account represents a credit card connected to his overdraft protection at his bank. There is no payment record or canceled check to support Applicant's contention that he paid the account on June 6, 2014. However, the May 2014 account balance is \$255. (GE 2, 3; AE C; Tr. 31)

SOR 1.c, \$43,778, primary mortgage. The account became delinquent in March 2012. Applicant explained that he was able to make the payment for a several months until the interest rate increased from 4.2% to 6.5%, resulting in a monthly mortgage increase of \$400, from \$1,500 to \$1,900. Under the home modification application that was initiated in November 2013, Applicant will be paying a reduced mortgage beginning at the end of June 2014. His monthly payments will decrease from \$1,900 to \$1,724. Applicant apparently was confused when he subsequently testified that he always paid the mortgage. He testified earlier that after his wife was laid off, he was eventually unable to pay the mortgage. His inability to explain the posted \$55,000 mortgage delinquency was the result of his confusion. (GE 2, 3; Tr. 42-47)

SOR 1.e, \$542, credit card account that became delinquent in September 2012. Applicant is individually liable for this account. The debt firm statement reflects a payment of \$17 to the creditor on June 17, 2014. There is no record of payments or current debt balance. (GE 2; AE L)

SOR 1.f, \$3,240, charge account. The last activity on this account was in August 2010, with the account reported delinquent in March 2013. A payment of \$75 was made on June 17, 2014. There is no record of payments. (GE 2, 3; AE E)

SOR 1.g, \$254, telephone account. The last activity on this account was in October 2011. Applicant claims he did not know about the account because he was not notified by the creditor. On June 17, 2014, Applicant provided documentation of settling the account for \$120 on June 17, 2014. This account is resolved. (GE 2; AE F; Tr. 33)

SOR 1.h, \$75,000, second mortgage. The last activity on this joint account was in July 2010. The payment ledger reflects sporadic payments until November 2012, when the payments became regular. The mortgage account has been reduced by almost \$23,000. (GE 2; AE E; Tr. 33, 50-51)

SOR 2.a. In his e-QIP signed and certified by Applicant on September 30, 2013, in response to “Section 26: Financial Record: Delinquency Involving Enforcement & Delinquency Involving Routine Account-In the past seven (7) years, have you had a judgment entered against you; In the past seven (7) years have you defaulted on any type of loan; In the past seven (7) years have you been over 120 days delinquent on any debt not previously entered?”

SOR 2.a (Section 26) contains three questions: (1) a question about a judgment; (2) a question about a defaulting on a loan; and, (3) a question about being over 120 days delinquent on any debt not previously entered. As noted at the outset of this section, Applicant explained that he did not know the correct meaning of “judgment” until an OPM investigator explained the term to him. Though he did not provide an explanation for not disclosing at least three delinquent debts (non-mortgage) that were over 120 days delinquent, SOR 2.a only alleges that he deliberately omitted his primary mortgage as alleged under SOR 1.c. Citing his wife’s primary handling of the family’s financial responsibilities as the reason Applicant was unaware of the delinquent status of SOR 1.c, Department Counsel indicated that the Government was not concerned about the Guideline E allegation. I agree. (AE M; Tr. 34)

Applicant’s wife earns between \$45,000 and \$50,000 a year. Applicant earns about \$65,000 a year. Applicant’s wife handles most of the finances and pays the bills. As far as the budget is concerned, money is earmarked for specific bills at the beginning of the month, e.g., childcare, utilities, groceries, and other recurring bills. Applicant and his wife transfer their earnings to savings, then transfer it back to checking. They withdraw the money by check card to pay the bills. After the monthly expenses are paid, Applicant has about a \$200 monthly remainder that he spends on his daughter. He has a small savings account of about \$1,000, and his retirement account totals approximately \$22,000. Applicant always files and pays his taxes. (Tr. 51-53, 56-57)

Character Evidence

Applicant submitted four character statements from supervisors and one statement from a coworker. In a statement dated June 24, 2014, witness H (chief) indicated that Applicant has never had security issues since 2003 when he first began working at the facility. The chief noted that in the future, Applicant should provide advance notice to the security office about his security clearance hearing. Witness I, the range manager, has been Applicant’s supervisor, coworker, and friend since 2003. Applicant has demonstrated

that he is a caring and trustworthy person. In the 10-year period Witness J has been Applicant's supervisor, he has always demonstrated necessary responsible conduct of a team player. Witness K stated in an undated character endorsement that he and Applicant have worked in the same division since December 2009. He has always found Applicant to be trustworthy and loyal.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the potentially disqualifying and mitigating conditions of the AG. These conditions should be evaluated in the context of nine general factors known as the whole-person concept to bring together all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision regarding security clearance eligibility. 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 the potential, rather than actual, risk of compromise of classified information.

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. . . ." An applicant has the ultimate burden of persuasion of establishing that it is clearly consistent with the national interest to grant him a security clearance.

Analysis

Financial Considerations

The security concern for financial considerations is set forth 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

The applicable disqualifying conditions under AG ¶ 19 are:

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

The SOR identifies eight accounts that became delinquent between July 2010 and June 2013. The largest delinquent accounts are two mortgages. Applicant's inability to satisfy the accounts places his financial delinquencies within the scope of AG ¶¶ 19(a) and 19(c).

Four mitigating conditions under AG ¶ 20 are potentially pertinent:

- (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 reliability, trustworthiness, and good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control 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.

The nation experienced an economic slump beginning in about 2007 that did not start to improve until 2010. Individuals lost their jobs, their homes, and their sense of security. When his wife lost her job in November 2008, Applicant quickly discovered that the loss of a second income meant immediate family adjustments. He demonstrated good judgment by paying his debts in order of importance. He temporarily eliminated babysitting expenses by withdrawing his daughter from daycare. He participated in additional car pooling. In 2011, he consulted with his bank's financial counselor on three to five occasions. In June 2011, he enrolled in a debt consolidation firm. He entered six delinquent accounts into his debt plan. Three of the accounts are listed in the SOR and Applicant has established individual plans for the other three debts. There are clear indications that his delinquent debts are being resolved or under control. AG ¶¶ 20(a), (b), (c), and (d) apply.

In November 2013, Applicant initiated a home loan modification process to reduce his mortgage. At the end of June 2014, Applicant's mortgage was reduced from about

\$1,900 to \$1,724 under the home loan modification agreement. Since he began regular payments in November 2012, Applicant has reduced his delinquent second mortgage (SOR 1.h) by almost \$23,000. The implementation of his modification agreement, the documented payment record showing a substantial reduction of the second mortgage, and his satisfaction of the telephone debt, entitle Applicant to additional mitigation under AE ¶ 20(d).

Personal Conduct

The security concern for personal conduct is set forth in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 contains one disqualifying condition that is potentially pertinent:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personnel security statement, or similar form to conduct investigations, determine employment qualifications, award benefits and status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

When Applicant executed his e-QIP in September 2013, he did not disclose his delinquent primary mortgage in Section 26 of the form. He testified at the hearing that his wife manages the finances. Based on his demeanor at the hearing, it appears that Applicant clearly thought that he had always paid the mortgage, but the credit reports show that the mortgage became delinquent. I conclude that Applicant did not deliberately omit the debt from the security form.

Whole-Person Concept

I have examined the evidence under the disqualifying and mitigating conditions of the financial guideline. I have also weighed the circumstances within the context of nine variables known as the whole-person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors:

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 the participation was 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 a commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

Applicant is 34 years old. He has been married to his wife since 2004 and has an eight-year-old daughter. He has worked as an engineering technician for his employer since December 2003. Based on 10 years of observation at work, Applicant has never caused any kind of security problem on the job. Based on the same period of work-related contact, the range manager and his supervisor consider Applicant to be a trustworthy person who always demonstrates a team player attitude. A coworker since December 2009, has found Applicant to be trustworthy and loyal.

Applicant still has seven unpaid delinquent debts. The two most serious accounts are the mortgages. However, in June 2014, he began making reduced payments for his primary mortgage under a home loan modification agreement. He now has almost two hundred extra dollars each month to dedicate to the other listed delinquent accounts. The financial counselor at his bank or at the debt firm can certainly supply beneficial advice on helping Applicant establish a written budget that monitors his expenses to potentially increase the amount of extra funds. Either counselor can show Applicant how to become more involved in managing the family financial obligations.

Since November 2012, Applicant has reduced the second delinquent mortgage by almost \$23,000. An applicant is not required to resolve every debt alleged in the SOR. The most important evidence an applicant must present is a plan and a "meaningful track record" of debt reduction. ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) Applicant has paid one account and has payment track records of different duration for the other listed accounts. Having weighed the disqualifying and mitigating conditions under Guideline F and Guideline E, and in the context of the whole-person concept, Applicant has mitigated the security concerns arising from the financial considerations and personal conduct guidelines.

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-1h: For Applicant

Paragraph 2 (Guideline E): FOR APPLICANT

Subparagraph a: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Paul J. Mason
Administrative Judge