



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



In the matter of:

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ISCR Case No. 14-00354

Applicant for Security Clearance

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

05/29/2015

Decision

MASON Paul J., Administrative Judge:

Applicant's wife returned to the workforce in 2012. Applicant obtained part-time work in 2013. Their extra earnings have made more money available to pay or settle 10 of the 12 delinquent accounts listed in the Statement of Reasons (SOR). 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 12, 2013. On March 7, 2014, the Department of Defense (DOD) issued a SOR detailing security concerns under the financial considerations guideline (Guideline F). The action was taken pursuant to

Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD in September 1, 2006.

Applicant's answer to the SOR was notarized on April 30, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 27, 2015, for a hearing on February 12, 2015. The hearing was held as scheduled. The Government's three exhibits (GE) and Applicant's 12 exhibits (AE) A-L were admitted into evidence without objection. The record remained open until February 20, 2015, to allow Applicant an opportunity to provide additional documentation. He provided documentation (AE M) on February 19, 2015. The record in this case closed when the hearing transcript (Tr.) was received on February 23, 2015.

Findings of Fact

Applicant admitted all the delinquent accounts in the SOR, which alleges three judgments and nine delinquent accounts. The delinquent accounts represent credit cards, a homeowner's association (HOA) debt, medical accounts and a delinquent secondary mortgage, which is the largest overdue debt. The total amount of delinquent debt is approximately \$89,634. He accumulated the debt between 2008 and January 2013. He blamed his financial problems on reduced hours at work, which caused him to use his credit cards to their limits to remain current on his secondary mortgage. When he fell behind on mortgage payments, his house was foreclosed and sold. Because his wife is working again and he has a second job, he is slowly making progress in paying the delinquent accounts.

Applicant is 35 years old. He has been married since March 2002, and he has three children, two daughters 14 and 11 years old, and a son 9 years old. Applicant has been working as a security guard since 2003. He was granted a security clearance in 2005.

Applicant's e-QIP shows that he has been consistently employed as a security guard since 2003. He could normally rely on 20 to 25 hours of overtime. Between August 2008 and April 2010, his employer instituted a reduction in security personnel, eliminated his overtime, and cut his regular hours from 40 to 36.¹ His wife was not working at the time, and he was unable to locate part-time employment until 2013. (GE 1 at 13; Tr. 27, 37-39)

¹ Though Applicant testified that his reduction in hours occurred in 2006, I find the information in his e-QIP to be more accurate primarily because the dates have a closer correspondence to when the accounts became delinquent. See GE 2 and 3.

Present Status of Accounts listed in the SOR

The accounts will be addressed in the order that they appear in the SOR. Applicant's exhibits have been re-labeled in alphabetical order. There is no AE A or AE H. On March 26, 2014, Applicant settled the judgment at SOR 1.a with a payment of \$3,500. (AE C) Applicant was advised on June 30, 2014, that the HOA debt was paid in full on June 30, 2014. (AE B) The judgment owed to the creditor at SOR 1.c remains outstanding. Applicant was told by the creditor in November 2014 that they were going to review his account. He has not contacted them since then. GE 2 reflects that Applicant owes \$1,831 to the creditor at SOR 1.c.

Applicant still owes the secondary mortgage identified at SOR 1.d. In July 2010, the mortgagor agreed to accept \$500 on June 28, 2010, as the initial payment, with subsequent payments of \$300 on the 28th day of every month until the account was paid. The bank ledgers show a payment of \$500 made on June 29, 2010, and two payments totaling of \$1,500 were made on July 28 and July 29, 2010. Applicant's earnings were insufficient to maintain the payment plan and he discontinued payments. (AE M; Tr. 39-41)

On March 26, 2014, Applicant was notified by the collection agency for SOR 1.e that the account was resolved for \$3,500. (AE D) On February 17, 2014, Applicant was notified by letter that the account identified at SOR 1.f was settled in full on February 15, 2014. (AE E) The same collection agency notified Applicant that the account identified at SOR 1.g was settled on March 3, 2014. (AE F) Documentation reflects that the SOR 1.h account was paid in full on March 6, 2014. (AE G) The account listed at SOR 1.i was settled on October 30, 2013. (AE I)

On February 25, 2014, Applicant was advised by letter that the account identified at SOR 1.j was paid in full on February 24, 2014. (AE J) The SOR account at SOR 1.k was satisfied on November 14, 2013. (AE K) On November 1, 2013, Applicant received a letter from the collection agency indicating that the SOR 1.l account was paid. (AE L)

Applicant was able to save some money and address the delinquent accounts after he obtained part-time employment in 2013. He currently has a retirement account and contributes \$40 to \$50 from his paycheck every pay period. Though he has not received formal financial counseling, he recalled watching a financial counseling program about debt consolidation that recommended saving money and paying the smaller debts first. Applicant has stopped using credit. Instead, he saves his money and only makes cash purchases or makes no purchases at all. (Tr. 44-46)

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 evidence supports application of AG ¶¶ 19(a) and 19(c). From 2008 to 2013, Applicant accumulated three judgments and nine past-due accounts totaling more than \$89,600 in delinquent debt that he was unable to repay. The March 2014 SOR shows that the judgments and accounts had not been paid. The record contains no evidence of irresponsible spending, or of alcohol-related or gambling-related debts.

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.

AG ¶ 20(a) has partial application based on the documented efforts Applicant took before receiving the SOR to resolve several of the delinquent debts. Those efforts earn Applicant some consideration under the mitigating condition.

In 2008, the United States was in the throes of a profound recession. Applicant's employer responded to the economic event by trimming its workforce, eliminating overtime, and reducing regular work hours for employees. His wife was not working at the time, and Applicant could not find a second job. Unfortunately, Applicant turned to his credit cards to replace debt with more debt. In a relatively short period of time, he could no longer use his credit cards because they had reached their credit limits. Unable to pay his HOA and his mortgage, the HOA filed a judgment and his house was foreclosed and sold. He collected 10 additional debts. The first prong of AG ¶ 20(b) applies. The second prong of AG ¶ 20(b) merits significant application based on Applicant's responsible and mature efforts to resolve 10 of the 12 delinquent debts.

The July 2010 documentation confirming three payments to the mortgagor indicates that Applicant made a good-faith effort but was unable to repay the account identified at SOR 1.d. His verified actions regarding 10 of the 12 overdue accounts convince me that

he will continue to seek a successful resolution for the delinquent debts at SOR 1.c and 1d. AG ¶ 20(d) has substantial application.

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 has been in the security profession for more than 11 years. He is married with two young daughters and one young son. His financial problems stem from matters beyond his control. In 2008, the country was experiencing a recession that shared some of the same characteristics of the Great Depression. Applicant's employer responded to the recession by cutting expenditures. Applicant's reduced earnings were not enough to pay his mortgage or his bills. He fell behind and eventually lost his house.

In 2012, Applicant's wife returned to the workforce. In 2013, he found a second job. As his exhibits show, later in 2013, he began to pay the delinquent debts long before he received the SOR in March 2014. In about 18 months, he has made responsible improvements in his financial condition. Considering the evidence under the specific conditions and the factors of the whole-person concept, I conclude that Applicant has successfully mitigated the security concerns associated with the financial considerations guideline.

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.l:

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