



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



In the matter of:)
)
) ISCR Case No. 14-01659
)
)
Applicant for Security Clearance)

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

04/06/2015

Decision

MASON, Paul J., Administrative Judge:

Applicant satisfied two judgments in August 2010 and August 2011. He did not satisfy a minor satellite television bill until after the hearing. He still owes federal taxes of almost \$21,000 for tax year 2011 on a delinquent credit card account that has been in arrears since May 2008. His wages are currently being garnished for a signature loan account. Applicant's evidence in mitigation fails to overcome the security concerns activated by the guideline for financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

Applicant completed and signed an Electronic Questionnaire for Investigations Processing (e-QIP), Government's Exhibit (GE) 1, on August 23, 2013. On July 14, 2014, the Department of Defense (DOD) issued a Statement of Reasons (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; 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 signed on September 11, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 30, 2014, for a hearing on January 22, 2015. The hearing was held as scheduled. The Government's four exhibits (GE 1-4) and Applicant's three exhibits (AE A-C) were admitted into evidence without objection. Applicant's nine post-hearing exhibits were admitted in evidence without objection. Department Counsel made two observations regarding AE E, I, and J. It was noted that no account number appeared on AE E.¹ The transcript (Tr.) was received on January 30, 2015. The record closed on February 6, 2015.

Findings of Fact

Applicant is 52 years old. He has been married for 24 years. He has a daughter 29 years old and a son 19 years old. He has more than three years of college credits and intends to receive a degree. He has completed a computer program course in nonprofit management. He has been employed as a sustainment analyst for a defense contractor since March 2010. From July 2009 to March 2010, Applicant was an insurance salesman. He was unemployed between February 2009 and July 2009. Between April 2006 and March 2009, Applicant was the owner and operator of a laundromat. During a portion of the period that he was owner of the laundromat (September 2008 to February 2009), he also worked as a shift supervisor for a privately-operated corrections halfway house. From June 2002 to March 2007, Applicant was a chief operating officer of a church. Between March 1980 and October 2002, he served in the United States Army National Guard. He received an honorable discharge at the rank of first lieutenant. He has held a security clearance since 1981. He seeks continuation of his clearance. (GE 1 at 10-13, 16, Tr. 17, 23-25, 69)

¹ See Department Counsel's February 9, 2015 letter(part of AE D) identifying Applicant's post-hearing exhibits.

Cause of Applicant's Financial Problems

After taking out a \$500,000 business loan and a home equity loan of \$169,000, Applicant opened a laundromat in April 2006. He worked there about 20 hours a week during his full-time employment as a shift supervisor at a corrections halfway house and an officer at a church. Applicant was terminated from the church position in March 2007 because of a difference of opinion. Then, the nation's economy slipped into a serious recession which had a negative impact on Applicant's laundromat business. In October 2008, he filed a Chapter 11 Bankruptcy under the laundromat's business name. The bankruptcy was converted to a Chapter 7, and the business debts were discharged in September 2011. Debts discharged included the \$500,000 business loan, utility bills, smaller bills, and marketing services. He was laid off from the corrections halfway house in February 2009, and was not reassigned to another location. He discontinued an insurance job when he was hired by his current employer in March 2010. At this time, Applicant testified that he contacted his creditors and worked out a payment plan with all of them. (GE 1 at 35; Tr. 23, 25-27, 46, 55-56, 64-65, 68-69)

Applicant testified that he settled several unlisted accounts and had documentation to show proof of settlement. Though he provided no documentation of the payment of the unlisted accounts, his testimony is supported by the credit reports dated September 2013 and March 2014. The reports show that the unlisted accounts were in a collection status before they were satisfied. The credit bureau reports show that Applicant is individually liable for the accounts listed in the SOR. The six listed accounts and judgments, which total \$45,356, will be discussed in the order they appear in the SOR. (GE 2, 3; Tr. 70-74)

SOR 1.a, judgment, \$1,470 (credit card). This creditor filed a judgment in February 2011, and intended to garnish Applicant's wages, but decided not to after Applicant negotiated a reduced payment plan. Later in February 2011, he started making monthly payments of \$50 to \$100, and settled the judgment in August 2011. (AE A; Tr. 27-30)

SOR 1.b, judgment, \$1,279 (legal firm used to establish his laundromat business). The creditor filed the judgment in March 2010. Applicant incorporated the business himself, then he hired the firm to be legal counsel as he progressed through the loan and building process, and the process of acquiring the equipment and opening the business. Applicant became delinquent on the firm's legal fees. He considered the service a business and not a personal expense, and claimed his attorney told him the service could be included in his bankruptcy. He did not present any documentation to support his business expense claim. He also stated that the original delinquent account balance was about \$5,000, and he had been making payments to the creditor, but submitted no documentation in support. (Answer to SOR; Tr. 32-35)

SOR 1.c, judgment, \$3,511 (credit card). After a judgment was filed in November 2009, Applicant started making payments of \$100 a month through automatic withdrawals in March 2010. He received a settlement offer of about \$1,500, and settled the judgment by August 2010, when the warrant of satisfaction was filed with the court. (AE F; Tr. 36-39)

SOR 1.d, charged off delinquent account, \$29,997 (credit card). The last activity on the card was May 2008. Applicant indicated that he contacted the creditor two or three weeks before the hearing, and they told him they had sent him a federal tax Form 1099-C (cancellation of debt). Applicant indicated that if he wanted to set up a payment plan, he would have to write a letter to the creditor and they would consider crafting a plan. Applicant noted that a payment plan would be difficult to implement with his son's tuition payments due. When he received the Form 1099-C, he sent his accountant an email to redo his 2011 federal taxes to reflect an increase in his 2011 taxable income by almost \$21,000. (AE D, I, J; Tr. 39-40, 53-55)

SOR 1.e, delinquent debt, \$99 (satellite television). The last action taken by Applicant on the debt was April 2010. After mistakenly believing the satellite bill was included in his Chapter 7 bankruptcy that was discharged in 2011, his attorney recommended in October 2014 that he pay the debt because of the small amount. He did not pay the bill during the fall of 2014 because he forgot about it and he had no documentation other than what he received from the courts. No additional explanation was provided concerning "courts." Applicant also testified at the January 22, 2015 hearing that he paid the satellite bill by debit card in the week before the hearing (January 12-January 16, 2015). In his explanatory statement included in his post-hearing exhibits, he stated he paid the bill on January 28, 2015, six days after the hearing. The paid receipt shows that the bill was paid on January 28, 2015. (Answer to SOR; AE D, E; Tr. 41-44, 66-67)

SOR 1.f, collection account, \$9,000 (finance, line of credit). The last activity on this account was in December 2012. Applicant testified that he was trying to work out a payment plan with the creditor, but they began garnishing his check in 2011. Applicant provided his leave and earning statements for three pay periods at the end of 2014 and the beginning 2015 that show Applicant's earnings were being garnished. (GE 4 at 4; AE B at 2; Tr. 44-45)

Applicant is current on his filing of federal and state tax returns, but he owes \$3,000 for tax year 2013 because insufficient money was being withdrawn from his paycheck, according to his accountant. He has been making monthly payments of \$150 on the taxes since May or June 2014. Applicant owes about \$2,500 in federal taxes for tax year 2012, because he cashed a mutual fund and did not declare capital gains. He owes no state taxes. (Tr. 56-62)

On the subject of management of finances, Applicant indicated that he and his wife have kept a written monthly budget for 23 years. The information is either in printout form or on a spreadsheet in his computer. He acknowledged that he could submit the budget to show the status of his finances. No documentation was submitted. Regarding financial counseling, Applicant testified that he paid a debt firm \$90 a month for about seven or eight months in 2009. When he read through the debt's firm's documentation that most of the monthly cost went toward the firm's administrative fees rather than his delinquent debts, he decided to handle the debts himself. Applicant's accountant, who has advised him once or twice a year since 2008, recommended that he seek repayment plans with each creditor. Aside from doing his taxes, the accountant has never advised him on how to reduce his expenses. (Tr. 77-81)

Regarding his financial obligations, Applicant reduced the amount of tuition he is paying by having his son transfer from a university that costs \$52,000 a year to one that costs \$30,000 a year. In addition to reducing the times he dines out, he has cut back on vacation cruise expense by taking a \$2,000 cruise rather than a \$5,000 cruise. (Tr. 82-84)

Character Evidence

On January 22, 2015, reference A, a retired first lieutenant, provided a character endorsement for Applicant. The reference met him in Army National Guard in June 1980. He supervised Applicant in two periods in the 1980s, and in his position as an analyst since March 2012. Based on his observation, the reference considers Applicant trustworthy, loyal, and a real professional. (AE C)²

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

² AE H is a copy of AE C.

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.

An individual's financial obligations are generally personal matters except where the evidence indicates that the individual is not paying his debts as agreed. Unless there are extenuating circumstances, failure to pay delinquent debts triggers questions about a person's judgment and trustworthiness. One who is financially irresponsible may also show a lack of responsibility in the proper handling of classified information.

The applicable disqualifying conditions under AG ¶ 19 are:

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

After taking out a business loan and a home equity loan totaling about \$669,000, Applicant opened a laundromat business in April 2006. When the nation's economy slid into a recession by 2008, his business faltered and he began to rely heavily on his personal credit cards and a line of credit to keep his laundromat viable. The judgments and accounts, which have been delinquent for up to six years, total over \$45,000. The evidence is sufficient to raise the above disqualifying conditions.

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 only limited application because Applicant still owes over \$21,000 in federal taxes related to the creditor identified at **SOR 1.d**. He also is paying a \$9,000 garnishment to the creditor identified at **SOR 1.f**, which he claims he has been paying since 2011, but presented only three leave and earning statements that show garnishment payments at the end of 2014 and the beginning of 2015. He did not enter into a payment plan with the creditor identified at **SOR 1.b** until after the hearing. Applicant still owes for the two debts and federal taxes for tax year 2011.

Applicant's periodic unemployment and a failed laundromat business constitute two unforeseen reasons for his financial problems that are mitigating under AG ¶ 20(b). His termination from his church position occurred in March 2007. His termination from the corrections halfway house position occurred in February 2009. Overall, Applicant's unemployment carries little weight in mitigation because he has been continuously employed since March 2010.

Applicant's business failure was beyond his control because he had no way of anticipating the nation would experience a recession of such magnitude. However, he did not act responsibly under the circumstances when he decided to rely on credit cards to keep his laundry open. He has only himself to blame for accumulating delinquent credit card debt that he could not repay. Three of the six listed accounts became judgments in 2010 and 2011. He set up payment plans and satisfied two of the three judgments, but he did not set up a payment plan to resolve the judgment at **SOR 1.b** until after the hearing. AG ¶ 20(b) has only limited application.

Applicant' contact with a debt firm for six or seven months in 2009 has negligible probative value under AG ¶ 20(c) because Applicant indicated that most of the monthly cost of the firm service was absorbed in administrative fees. His consultations with his accountant once or twice a year since 2008, focused on repayment plans and not reduction in expenses. While he testified that he and his wife have kept a monthly budget for the past 23 years, and reduced expenses in other ways, he submitted no documentation in support of his claims. On balance, The limited mitigation Applicant receives under AG ¶ 20(c) is based on his favorable action to seek bankruptcy protection in 2008 that resulted in liabilities being discharged in September 2011.

Applicant has satisfied three of the six listed debts. Two accounts were paid after both creditors filed judgments. Applicant did not arrange a payment plan to pay the third judgment until after the hearing. He did not pay the satellite television debt until after the hearing, and following an unsuccessful attempt to have this debt somehow discharged as a business expense in his 2011 bankruptcy. Even though the delinquent debt listed at **SOR 1.d** was canceled as a result of the Form 1099-C, he still owes federal taxes on the increased income for 2011, along with the signature loan identified at **SOR 1.f**. The mitigation which Applicant receives for payment of the unlisted debts that appear in GE 2 and 3 is reduced by the fact that those debts were in a collection status. Judging by the totality of the evidence, Applicant receives only limited mitigation under AG ¶ 20(d).

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.

The factors of the whole person-concept that support Applicant's security clearance eligibility are meaningful. Applicant is 51 years old. He has been married for 24 years and has two children. He received an honorable discharge in October 2002, after serving 22 years in the Army National Guard. He has earned the respect of reference A for professionalism and trustworthiness.

On the other hand, there is more evidence in the record that does not support his security clearance approval. The national economy experienced a serious setback that resulted in many business failures. Applicant's laundromat failed because customers were not washing their clothes as much. He probably believed that he would be able to survive a temporary recession. The poor judgment he demonstrated in overusing his credit cards is counterbalanced by his seeking bankruptcy protection in 2008, and receiving a Chapter 7 discharge in September 2011.

While he has paid two judgments, he did not set up a payment plan to pay the third judgment until January 28, 2015, after the hearing. The only action Applicant has taken concerning the **SOR 1.d** account (which has been delinquent since May 2008) is to receive a Form 1099-C, and notify his accountant to redo his 2011 federal taxes. Applicant was not candid about the action he took to satisfy the satellite television bill identified at **SOR 1.e**. He testified he paid the debt in the week before the January 22, 2015 hearing. In his post-hearing submission, he stated he paid the bill on January 28, 2015, which his documentation substantiates. His misrepresentation damages his overall credibility, notwithstanding the small size of the bill. Applicant has not furnished persuasive evidence that clearly shows he has regained control over his financial problems. Considering the evidence as a whole, including Applicant's continuing financial difficulties, his misrepresentations about when he paid the satellite television bill, the absence of financial management documentation to support his testimonial assertions, and his ongoing federal tax problems, he has not mitigated the security concerns raised under the guideline for financial considerations.

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):	AGAINST APPLICANT
Subparagraphs 1.a, 1.c, 1.e:	For Applicant
Subparagraphs 1.b, 1.d, 1.f:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Paul J. Mason
Administrative Judge