



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



In the matter of:

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ISCR Case No. 14-02517

Applicant for Security Clearance

Appearances

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

06/30/2016

Decision

MASON, Paul J., Administrative Judge:

It is clear from the record that significant economic and medical events beyond Applicant's control hampered his ability to pay his debts in a timely manner. He has paid off three of seven delinquent accounts, and is providing regular payments on his past due mortgage balance. Considering the progress Applicant has made in satisfying the delinquent accounts, coupled with his ongoing financial counseling, there are clear indications that his debts are being resolved. 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 July 3, 2013. On July 21, 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 notarized answer to the SOR was signed on August 10, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 30, 2015, for a hearing on April 27, 2015. The hearing was held as scheduled. The Government's three exhibits (GE 1-3) were admitted in evidence without objection. Applicant submitted a 19-page post-hearing exhibit on May 26, 2015. That exhibit was admitted into evidence on May 27, 2015, without objection. The transcript (Tr.) was received on May 4, 2015. The record closed on May 27, 2015.

Findings of Fact

The SOR identifies ten delinquent debts representing medical accounts, charge cards, a mortgage, a home equity line of credit, and a signature loan. The delinquent accounts total about \$54,359. The accounts became delinquent between May 2008 and May 2013. Applicant admitted the delinquent accounts at SOR 1.a and 1.b. He denied the debts at SOR 1.c and 1.d, but indicated he was willing to pay the accounts upon locating the medical creditors. He denied the SOR 1.e debt claiming the account was paid in full. He denied the SOR 1.f debt because the listing is a duplicate of SOR 1.a. He denied the account at SOR 1.g because the listing is a duplicate of the account posted at SOR 1.e. His denial to the accounts at SOR 1.h and 1.i is based on his claim that both accounts were sold to another mortgagor. Finally, he disputed SOR 1.j debt as representing a duplicate listing of SOR 1.i. (Answer to SOR)

Applicant is 49 years old and has been married for 16 years. He has a 15-year-old son. Before beginning his current job as a mail clerk in July 2013, Applicant was in a layoff status for two years from a board of education position where he was employed since 1999. He has no criminal record; he has never used illegal drugs; and he has no alcohol-related issues in the last seven years. He seeks his first security clearance. (GE 1 at 29)

In June 2011, Applicant was laid off from his job as an office service clerk with a board of education which he had held since 1999. About the time he began his current

employment in July 2013, his wife was laid off. She subsequently found another job at the post office, though that employment ends in September 2015. Applicant also mentioned his wife's medical bills as a reason for his financial problems. (AE A at 7; Tr. 36-38) The delinquent accounts listed in the SOR are as follows:

SOR 1.a, \$1,003, credit card. The account became delinquent in October 2011. The original creditor sold the account to a collection agency that filed a judgment in November 2013. (SOR 1.f) The credit reports show that the two accounts represent the same delinquent account. Applicant's documentation reflects that he made 13 monthly payments between July 2013 and July 31, 2014, to satisfy the delinquent account. The payments averaged \$250 a month with one payment in August 2013, for \$752. The account is resolved. (GE 3 at 9; AE A at 3, 12; Tr. 30)

SOR 1.b, \$124, credit card. The account became delinquent in June 2013. Applicant testified that he paid the account, but presented no supporting documentation. The account appears in both government credit reports, but does not appear in Applicant's May 2015 credit report. The account is not resolved. (GE 2, 3; AE A 12-17; Tr. 31)

SOR 1.c, \$100, medical account. **SOR 1.d**, \$96, medical account. The accounts became delinquent in July 2009 and July 2012, respectively. The accounts appear in the government's credit reports, but not in Applicant's May 2015 report. He stated in his answer to the SOR that he would pay both accounts when he locates the creditor. At the hearing, after first testifying that he paid the account, he then indicated that he had researched the account, but could not locate the creditors. He appeared to be confused about the current status of the medical bills. The two accounts are still outstanding. (GE 2, 3; AE A at 12-17)

SOR 1.e, \$3,296, credit card. The account became delinquent in August 2011, and appears in the government and Applicant's credit reports. The collection agency filed a judgment in July 2013. (**SOR 1.g**) SOR 1.e (delinquent debt) and SOR 1.g (judgment) represent the same account. Applicant's May 2015 credit reflects that the judgment was satisfied on March 25, 2014. The account is resolved. (AE A at 10, 12, 15; tr. 31-32)

SOR 1.h, \$1,809, home equity line of credit (HELOC). The account became delinquent in March 2013. The account appears in July 2013 government credit report, but not in the more recent May 2014 government credit report. The account does not appear in Applicant's May 2015 credit report. Applicant indicated in his answer to the SOR that the account was sold to another mortgagor. He testified he was still making payments on the HELOC. The account is unresolved. (Answer to SOR; GE 2, 3; AE A at 12-17; Tr. 32)

SOR 1.i, \$24,443, HELOC. This account became delinquent in July 2013. The account is entered twice in the government's July 2013 credit report, once as a HELOC and once as an unidentified loan. The account is classified as open in the first entry and closed

in the second entry. Both entries show the account as charged off. Though the account does not appear in Applicant's May 2015 credit report, there is an entry identifying another mortgagor holding a mortgage account with a charged off balance of \$24,444, one dollar more than the account listed in the SOR. The account was closed on March 20, 2015, with a zero balance. The account appears to resolved. (Answer to SOR; GE 2, 3 at 6; AE A at 14)

SOR 1.j, \$23,291, real estate mortgage. The account became delinquent in March 2013. Applicant indicated the account was transferred to a second mortgagor. The government's May 2014 credit report reflects that the SOR mortgagor opened the account in 2006 with the account becoming delinquent in December 2013. The second mortgagor obtained the account in June 2014. The account is still delinquent, but Applicant has been making monthly payments of at least \$2,056 a month from June 2014 through March 2015. (GE 2, 3 at 1; AE A at 13)

Applicant testified that his wife utilizes a mental budget in managing the finances of the family. After receiving some financial counseling through his church in December 2012, they attended a more comprehensive church-sponsored program in April 2015, addressing budgeting, monitoring expenditures, and other financially related subjects. Applicant provided an undated budget spreadsheet showing his income and expenses, with a monthly remainder of minus \$16 after paying his expenses. Neither Applicant nor his wife use credit cards. The credit reports show that Applicant incurred no additional delinquent debt after May 2013. (GE 2, 3; AE A at 1-2; Tr. 34-35, 41-42)

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.

Unless there are extenuating circumstances, failure to pay voluntarily incurred delinquent debts triggers questions about a person's judgment and trustworthiness. One who does not pay his financial obligations in a timely and responsible fashion 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.

The SOR lists ten delinquent accounts. However, two of those accounts are duplicates. SOR 1.f is a duplicate of a 1.a. SOR 1.g is a duplicate of 1.e. The credit reports reflect that SOR 1.i was closed with a zero balance in March 2015. The seven delinquent debts total approximately \$29,719. Six of the seven accounts became delinquent between 2011 and 2013. One medical account became delinquent in 2009. AG ¶¶ 19(a) and (c) are applicable.

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.

Applicant warrants some mitigation under AG ¶ 20(a) even though the two medical accounts (SOR 1.c, 1.d) and the mortgage (SOR 1.j) are still delinquent. Applicant began a repayment plan to resolve SOR 1.a (1.f) in July 2013, almost a year before the SOR was published, and has satisfied that account. He paid SOR 1.e (1.g, judgment) three months before the SOR was published. Between June 2014 and March 2015, Applicant made 10 monthly mortgage payments of \$2,056 on his delinquent mortgage. In sum, the action exhibited by Applicant establishes unmistakable evidence of trustworthiness and good judgment in regaining control over his financial delinquencies.

Applicant is entitled to mitigation under both prongs of AG ¶ 20(b). He was unemployed for two years before obtaining his current job in July 2013. When he resumed work, his wife lost her job and became seriously ill. Though she is now working again, she may be searching for a job in September 2015. The record reflects that Applicant acted responsibly under the circumstances (second prong of AG ¶ 20(b)) to resolve his delinquent debts.

Applicant received financial counseling in 2012. In April 2015, he received more extensive counseling. His budget shows that he must continue with financial counseling to uncover ways to reduce his expenses where he can. Judging by the totality of the evidence, I find ample reasons to conclude there are clear indications that Applicant's financial problems are being resolved in a good-faith manner. AG ¶¶ 20(c) and (d) apply.

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 49 years old. He has been married for 16 years and has a 15-year-old son. Having observed his demeanor and conduct at the hearing, I found Applicant's testimony was credible. Even with the unemployment problems of Applicant and his wife, coupled with his wife's medical condition, he exercised good judgment in addressing most of the delinquent accounts. He started a repayment plan on one listed account almost a year before the publication of the SOR. He satisfied another listed account three months before the date of the SOR. Though his mortgage is still delinquent, he is making regular payments on the past due portion of the mortgage. Additional financial counseling and more participation in family budgetary matters will enable Applicant to have working knowledge of the family's financial obligations and what steps to take to avoid similar financial issues in the future. He should contact one of the three credit agencies to locate and address the medical accounts while seeking a way to resolve his delinquent mortgage. Considering the evidence as a whole, specifically Applicant's responsible conduct in satisfying the delinquent creditors and the credible evidence of financial counseling, he has mitigated the security concerns arising from 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):	FOR APPLICANT
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Subparagraphs 1.a-1.j:	For Applicant
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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