



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



In the matter of:

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ISCR Case No. 14-03343

Applicant for Security Clearance

Appearances

For Government: Philip J. Katauskas, Esq., Department Counsel
For Applicant: *Pro se*

12/10/2015

Decision

MASON Paul J., Administrative Judge:

Applicant's character evidence from his coworkers and his father, together with his satisfaction of three listed collection accounts is insufficient to overcome the remaining security concerns arising from the financial considerations guideline. Eligibility for access to classified information is denied.

Evidentiary Rulings

During the hearing, Department Counsel asked Applicant if he had any corrections to make to his unverified April 2013 interview summary. He referred to the first paragraph of page one of the summary and testified that he was fired in February 2008, not February 2003. He indicated that he had no additional corrections to make to the interview summary.

He then indicated that he had no objection to the exhibit being entered into evidence. The correction was noted and GE 2 was admitted in evidence. (GE 2; Tr. 77-80)

Statement of the Case

Applicant completed and signed an Electronic Questionnaire for Investigations Processing (e-QIP), Government's Exhibit (GE) 1, on February 27, 2013. He was interviewed by an investigator from the Office of Personnel Management (OPM) on April 17, 2013. On July 28, 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.

On September 10, 2014, Applicant provided a notarized answer to the SOR. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 30, 2015, for a hearing on August 14, 2015. The hearing was held as scheduled. The Government's five exhibits (GE) 1-5 and Applicant's six exhibits (AE) A-F were admitted into evidence without objection. On August 26, 2015, Department counsel sent me an email Hearing Exhibit (HE) 1 expressing no objection to Applicant's two post-hearing exhibits (AE G, H) being entered into evidence. The two exhibits were received in evidence. The transcript (Tr.) was received on August 20, 2015. The record in this case closed on August 26, 2015.

Findings of Fact

The SOR alleges six delinquent accounts totaling \$95,036. Applicant admitted that he was responsible for five of the six delinquent accounts listed in the SOR. He indicated that he satisfied SOR 1.c, 1.e, and 1.f. He explained that SOR 1.b and 1.d were the same account. The credit reports show that the SOR 1.b creditor became a successor-in-interest to the SOR 1.d account in approximately August 2011. (GE 3, 4; AE A) SOR 1.d is resolved in Applicant's favor. The subtraction of the SOR 1.d account reduces the delinquent debt total to \$86,664.

Applicant is 41 years old and single. He has been employed as an engineering technician with a defense contractor since February 2009. He has held a security clearance since April 2009. (GE 1 at 11, 33)

SOR 1.a is a real estate mortgage with a total loan balance of \$76,492, is past due in the amount of \$27,344. The account was reported delinquent in February 2013. Applicant purchased a house in September 2003, securing a Federal Home Association

(FHA) mortgage. He was required to pay a \$36 monthly insurance premium on the mortgage.¹ From the end of 2003 to early 2008, he made regular monthly mortgage payments, including the monthly insurance premium. He testified he fell behind his mortgage payments because of a job termination in February 2008, and new employment in a lower paying job two weeks later. Another major reason for his late mortgage payments was increased drug activity and violence in his neighborhood that negatively affected his performance with his current employer. However, in April 2013, Applicant explained to the OPM investigator that he fell behind in mortgage payments because he spent an inordinate amount of money on leisure activities and did not keep sufficient funds in reserve to fully cover the monthly mortgage. He also mentioned the illegal drug activity and violence as a reason that he no longer wanted to pay his mortgage, which he stopped paying in March 2010. (GE 2 at 5; AE G, H; Tr. 50-54, 55, 68-69)

After Applicant began working for his current employer in February 2009, he indicated that he attempted a home loan modification (HLM). He abandoned the attempt when he discovered he would be paying twice the monthly mortgage that he had been paying. Applicant moved out of his house around March 2010, when his friend moved into the dwelling, and assumed mortgage payments for two years until 2012. Applicant told the OPM investigator that by the end of the summer of 2013, he wanted to sell the property (then in a pre-foreclosure status) by a deed-in-lieu of foreclosure. He anticipated the house would eventually be sold and he would pay the balance after the sale. In September 2014 (answer to SOR), he claimed that he was still trying to process the deed-in-lieu of foreclosure. Some time between September 2014 and the hearing in August 2015, he supposedly learned that he was too far behind in mortgage payments to execute the deed-in-lieu of foreclosure. Applicant's August 2015 credit report indicates a zero balance on the SOR 1.a mortgage. (Answer to SOR; GE 2 at 5; AE A at 6-7; Tr. 50-58, 65-69) The credibility of Applicant's HLM and deed-in-lieu of foreclosure claims is undermined by the lack of documentation to support these claims.

SOR 1.b is a charged off account with a total loan balance of \$7,980. The account was opened in February 2002 and was reported charged off in September 2011 by the original creditor. Applicant received a loan in early 2002 and purchased a boat for \$14,000. He made timely payments of \$167 a month until March 2003, when he was hospitalized for a week and could not work for two weeks. With no income for two weeks, he missed one or two scheduled monthly payments. Even though he fell behind the contractual payment schedule, he continued to make late payments. When continued payments caused him to fall behind on other debts like his mortgage, he stopped making payments altogether in April 2010. The boat was repossessed in 2011. Applicant testified that he made a serious

¹ Applicant explained that if the mortgagor becomes delinquent on the loan payments after consistently making loan payments (including the monthly mortgage premium), he is not responsible for the mortgage loan balance. (AE G; Tr. 57, 73)

effort in 2013 to negotiate a settlement with the SOR 1.b creditor. The creditor told him that nothing could be done because of the age of the debt. (GE 2 at 3; GE 3 at 6; GE 4 at 2; answer to SOR; AE A at 8; Tr. 58-59, 69-71) Applicant's claims of trying to settle the account lack credibility without substantiating documentation. SOR 1.b account remains unpaid.

SOR 1.c is a collection account for \$1,856. The cellular account was opened in June 2011, and was reported delinquent in March 2013. Applicant accepted the collection agency's settlement offer of \$1,113, and began payments of \$101 a month in February 2014. His credit report shows the account as paid for less than the full amount. (Answer to SOR; AE A, D; Tr. 61-62) The SOR 1.c account is resolved.

SOR 1.e is a collection account for \$256. The cellular account was opened in September 2006, and was reported delinquent in September 2011. Supporting documentation indicates that the account was paid off upon Applicant's \$200 payment on August 14, 2014. (AE E) The SOR 1.e account is resolved.

SOR 1.f is a medical collection account for \$100. The account was opened in September 6, 2006, and was reported delinquent on June 2007. Applicant's September 9, 2014 bank statement reflects a payment of \$100 to the original creditor on August 18, 2014. (AE F) The SOR 1.f account is resolved.

On the subject of financial counseling, Applicant indicated that he used a consumer credit counseling service that contacts one's creditors and tries to consolidate payments while seeking a reduction in interest rates. Applicant provided no evidence of how he used the service. After listening to a definition of financial counseling, Applicant responded that he never had professional financial counseling. Instead he pointed to his credit report and credit score as evidence of an improvement in his financial management practices. Applicant understood what a budget was, but was not using one to manage his finances. He believed that he could use a budget. In April 2013, Applicant's net income was \$3,400; his monthly debts and expenses totaled \$2,003; his monthly savings was \$200; leaving a discretionary monthly remainder of \$1,197. His assets included \$600 in savings, \$2,000 in a checking account, and \$8,000 in a retirement account. Applicant could not account for how the \$1,197 remainder was being used, but surmised that his miscellaneous expenses were more than his \$250 estimate. (GE 2 at 6; AE A; Tr. 75-77)

Character Evidence

Three character witnesses testified in Applicant's behalf. Witness A has worked for Applicant's employer for 35 years and met Applicant in 2009. They have worked together in the engineering lab for three or four years. The lab employees are impressed with Applicant's performance because he has learned the lab testing procedures in half the time

of most employees. Applicant told witness A that his is paying his cell phone account. Witness A recommends Applicant for a position of trust. (Tr. 28-34)

Witness B has been working for Applicant's employer since 2009, and has worked with Applicant for the past three years. Witness B's comments to the supervisors about Applicant's performance have always been positive. According to witness B, Applicant is working with his creditors. Witness B recommends Applicant for a position of trust. (34-42)

Witness C, Applicant's father, retired from Applicant's employer after a 40-year-career. Witness C, who believes that Applicant is working with the banks to pay off his debts, is aware of Applicant's delinquent mortgage. Witness C recommends Applicant for a position of trust based on his reliability. (Tr. 42-49)

On August 13, 2015, character reference D wrote that after his hire two years ago, Applicant trained him by improving his engineering skills and helping his career. Reference D views Applicant as a team-player and a good teacher. Applicant's landlord reported in a letter that Applicant has been a tenant for more than four years. He pays his rent in a timely manner and respects the property. (AE B, C)

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.

A person who holds a security clearance occupies a fiduciary position with the government that rests on trust and confidence. The Government trusts the person to execute security regulations in a responsible manner. The Government also trusts the person to pay his debts as they become due.

The applicable disqualifying conditions under AG ¶ 19 are:

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

On July 28, 2014, the issuance date of the SOR, Applicant had incurred five delinquent debts totaling \$86,664. The accounts became delinquent between June 2007 and February 2013. He stopped paying the SOR 1.a mortgage in March 2010. One month later, he stopped paying the SOR 1.b account (boat). Two cellular accounts and one medical account were transferred for collection. AG ¶¶ 20(a) and 20(c) apply.

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) does not apply. The unresolved status of the SOR 1.b account, which has been charged off since September 2011, continues to raise doubt about Applicant's trustworthiness and judgment.

Applicant gains no mitigation under the first prong of AG ¶ 20(b). His medical problem in 2003 resulting in no income for a two-week period, was an unforeseen event that had a negative impact on his ability to pay his other debts. However, the mitigation that Applicant received in 2003 during the two-week period and when he resumed work, is no longer available because the debt is still delinquent 12 years later. Similarly, Applicant's unanticipated job termination and two-week unemployment in February 2008, were events beyond his control. On the other hand, his unemployment was brief. He found new employment two weeks later even though the pay was less. In February 2009, Applicant began working for his current employer. There is no documented evidence demonstrating that Applicant acted responsibly under the circumstances to address either the SOR 1.a or 1.b accounts. AG ¶ 20(b) does not apply.

AG ¶ 20(c) requires financial counseling that provides indications the delinquent debts are being resolved or under control. Though he mentioned a consumer credit counseling service, he provided no explanation of how he used the service. When asked about financial counseling, he pointed to his credit report and credit score as evidence of better financial practices. The absence of documentation to corroborate his testimonial claims of trying to resolve the SOR 1a. and 1.b accounts provides no mitigation under AG ¶ 20(c).

AG ¶ 20(d) may provide mitigation when an applicant makes a good-faith effort to repay debts. Good-faith has been defined by the DOHA Appeal Board as conduct that demonstrates reasonableness, prudence, and an adherence to duty and obligation. An applicant must do more than merely rely on a legally available option (such as bankruptcy) to claim the benefit of the condition. See, ISCR Case No. O2-30304 at 3 (App. Bd. Apr. 20, 2004), quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001). By analogy, Applicant's reliance on the mortgage insurance provision that released him from liability for

the SOR 1.a mortgage contract does not carry the same weight as documentation demonstrating a good-faith effort to repay the mortgage lender. Applicant receives no mitigation under SOR 1.b. He earns only limited mitigation for the three other listed accounts because he did not satisfy the accounts until they had been transferred for collection and after the security investigation began.

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 41 years old. He is an engineering technician who has been employed in that position since February 2009. Witnesses A and B have worked with Applicant for the last three or four years. He is a quick-learner who gets the job done in a timely fashion. All witnesses recommend Applicant for a position of trust. Applicant has been a good teacher and role model in advancing reference D's career.

Applicant's evidence in mitigation, including his satisfaction of three collection accounts during the security clearance investigation, is insufficient to grant his security clearance application. The first reason for denial is the loan he obtained to purchase the boat in 2002 that was charged off in September 2011, and is still delinquent. The second reason for denial is the manner in which Applicant was released from the mortgage contract. As noted in the financial considerations discussion, the mortgage insurance mechanism that released Applicant's liability does not represent a good-faith effort to pay the mortgage lender. The third reason for denial is based on the fact that Applicant has received no financial counseling. As indicated in his responses to the OPM investigator in April 2013, he needs a budget so that he can monitor his expenditures and generally

improve the management of his finances. With no plan for resolving the SOR 1.b creditor, I am unable to conclude with complete confidence that Applicant's current financial problems will not persist in the future. Having weighed all the evidence in light of the factors of the whole-person concept, Applicant's evidence in mitigation does not overcome 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):	AGAINST APPLICANT
Subparagraphs 1.a, 1.b:	Against Applicant
Subparagraphs 1.c-1.f:	For 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