



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



In the matter of:)
)
) ISCR Case No. 14-05300¹
)
Applicant for Security Clearance)

Appearances

For Government: Pamela C. Benson, Esq., Department Counsel
For Applicant: *Pro se*

09/27/2016

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense's (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. He was delinquent on three student loans and on two collection accounts. His financial problems were contributed to by the condemnation of his condominium due to mold and a substantial reduction in pay, when his prior employer lost a contract. He filed for Chapter 13, Wage Earners Plan, bankruptcy protection to address his debts. Applicant has mitigated the financial considerations security concerns. Clearance is granted.

History of the Case

Acting under the relevant Executive Order and DoD Directive,² on April 24, 2015, the DoD issued a Statement of Reasons (SOR) detailing security concerns. On May 24,

¹¹ The Statement of Reasons list the case number as 14-04457 and the File of Relevant Material list the case number as 14-05300.

² Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*

2015, Applicant answered the SOR and elected to have the matter decided without a hearing. Defense Office of Hearings and Appeals (DOHA) Department Counsel (DC) submitted the Government's case in a File of Relevant Material (FORM), dated September 18, 2015. The FORM contained five attachments (Items). On September 29, 2015, Applicant received a copy of the FORM, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. On October 17, 2015, Applicant responded to the FORM. DC had no objection to the material submitted, and it was admitted as Item A. On December 1, 2015, I was assigned the case.

Findings of Fact

In Applicant's Answer to the SOR, he admitted owing three student loan obligations totaling approximately \$37,700. (Item 1) He asserted he had been making payments³ on these loans the past few years. (Item 1) He denies owing the credit union on two collection accounts totaling \$7,646 and admitted owing the same credit union on two accounts totaling \$5,280, which had been charged off. (Item 1) He denies owing the U.S. Department of Veterans Affairs (VA) \$1,256.⁴ He admitted an \$81 cable bill. I incorporate Applicant's admissions as facts. After a thorough review of the pleadings, exhibits, and submissions, I make the following additional findings of fact.

Applicant is a 36-year-old labor supervisor who worked for a defense contractor with an annual salary of \$96,000 until the contractor lost the contract in the fall of 2014.⁵ At that time, he was hired by another defense contractor making \$70,000 annually. His reduction in annual pay was approximately 27 percent. From December 1999 through December 2007, Applicant served in the U.S. Army National Guard. From August 2005 through August 2006, he served in Iraq. (Item 2) In December 2007, he was honorably discharged. He has never married, and has no children.

On Applicant's January 2014 Electronic Questionnaires for Investigations Processing (e-QIP), he listed a \$110,000 mortgage on his condo, which had water leaks, mold, and the ceiling collapsed in various places. (Item 2) He stated he had hired an attorney to assist him with the mortgage. He also listed owing \$6,500 on a credit card and line of credit (SOR 1.f and 1.g) and owing \$14,000 to another creditor. (Item 2)

(January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

³ Applicant's required monthly payments on these three student loans totaled \$381. (Item 4) His April 2015 credit report indicates he was making monthly payments of \$201 on these three loans. (Item 4)

⁴ Applicant's January 2014 credit report lists this debt as a government overpayment. (Item 3) His April 2015 credit report shows a zero amount past due on this account. (Item 4)

⁵ Applicant's Notice of Layoff, as of October 10, 2014, is part of Applicant's Answer as is an employment offer from the job paying \$70,000 annually obtained in November 2014. (Item 1)

In Applicant's March 2014 Personal Subject Interview (PSI), his delinquent accounts were discussed. He stated he had been working with an attorney since 2012 to address his debts; he would be working closely with an attorney through 2014 to repair his credit; and he would be filing for bankruptcy protection. (Item 5)

Applicant's financial difficulties were compounded by his September 2007 purchase of a condominium for \$115,000 with a 30-year mortgage.⁶ (Item 1) The purchase itself did not cause his financial problems, but the physical state of the condominium caused him numerous and continuous problems.

In November 2010, Applicant noticed problems with water leaks, mold, and later with the ceiling collapsing in various places. His attempts to rectify the problem are extremely well documented in the case file. (Item 1) However, his attempts to correct the problems were unsuccessful, and in February 2012, the condo was condemned. The county health department⁷ condemned not only his unit, but the entire building. (Item 1) Due to the condemnation, Applicant was required to leave the condo. (Item 5) His January 2014 credit report lists his mortgage both as being "Pays as Agreed"⁸ and as a foreclosure. (Item 3)

Applicant rented a room from his sister and moved into her basement. (Item 1) Until May 2013, he continued making timely payments on his mortgage for the condo that was no longer habitable. (Item 3) He was advised by his bankruptcy attorney to stop paying some of his accounts.

Applicant has received numerous student loans. Although he was making payments on his student loans he became delinquent on them. In August 1999, he obtained a \$17,923 loan on which he was \$5,300 delinquent. In November 1998, he obtained a \$13,503 loan on which he was \$4,168 delinquent, and in August 1997, he obtained a \$6,327 loan on which he was \$1,909 delinquent. The three loans combined totaled \$37,753, on which he was more than \$11,000 delinquent. As previously stated, the three loans are included in Applicant's bankruptcy, which will allow him to bring them to current status under the supervision of the bankruptcy trustee. (Item A) Student loans are not dischargeable in bankruptcy.

In the late 1990's and early 2000's, Applicant obtained student loans from additional lenders. He obtained \$11,600 in loans from Sallie Mae, \$15,600 from another lender, and \$13,000 from a third lender. (Item 3, 4) These student loans have all been paid either by an automatic deduction from Applicant's bank account or through insurance. (Item 3, 4, 5) All together more than \$40,000 in other student loans were paid.

⁶ The mortgage was held by the same credit union listing the two charged-off accounts (SOR 1.f and 1.g) and the two collection accounts (SOR 1.d and 1e). (Item 2)

⁷ The county's Department of Environmental Resources documents are included in the record. (Item 1)

⁸ Applicant's January 2014 credit report lists six other accounts, all with zero balances, as having been paid as agreed. (Item 3)

Applicant's January 2014 credit report lists two charged-off accounts (SOR 1.f, \$2,661 and SOR 1.g, \$2,619) and two collection accounts (\$3,720 and \$3,391), all with the same credit union. (Item 3) His April 2015 credit report only lists two collection accounts (\$3,935 and \$3,711). (Item 4) No charged-off accounts were listed in the more current credit report. The accounts had increased by \$215 and \$320. Applicant's bankruptcy filing lists the mortgage and only two accounts owed to the credit union. (Item A)

On August 23, 2015, Applicant filed for Chapter 13, Wage Earners Plan, bankruptcy protection, which will require him to make \$367 monthly payments for 60 months. (Item A) On October 15, 2015, the bankruptcy documents were reviewed by Applicant's attorney and the bankruptcy trustee. (Item A) There is no signed order by the bankruptcy court. The filing listed assets of more than \$14,000 and more than \$155,000 in liabilities, which included the \$110,000 mortgage, the three student loans (SOR 1.a, 1.b, 1.c) totaling almost \$38,000, and two additional credit union accounts (\$2,619 and \$3,000). (Item A) His total liability excluding student loans and the mortgage is less than \$8,000. The filing lists his car as a 2007 model. (Item a)

Applicant's bankruptcy filing lists a monthly gross income of \$6,042, payroll deductions of \$1,837, and monthly expenses of \$3,829. (Item A) This leaves a net monthly income of \$376, which is the amount of his monthly payments to the bankruptcy trustee. (Item A)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order (EO) 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his or her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is

inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage their finances to meet their financial obligations.

Applicant was \$14,597 past due on three student loans and had two collection accounts totaling \$7,646. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Five financial considerations mitigating conditions under AG ¶ 20 are potentially applicable:

(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 current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), 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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's April 2015 credit report indicates the VA debt (\$1,256) has zero amount past due. His latest credit report lists two credit union collection accounts, but does not list any charged-off credit union accounts. Applicant's bankruptcy filing lists only the mortgage and two additional accounts owed the credit union. I find the two charged-off credit union accounts and the two collection credit union accounts are the same obligations.

In February 2012, Applicant's condo, along with the entire building, was condemned by the county health department due to mold and water damage. Even after being forced to leave his condo in February 2012, he continued making his mortgage payments in a timely manner until May 2013. He was paying even though he could not live there. In October 2014, Applicant's annual income decreased by more than 27 per cent, when his then-employer lost a contract.

AG ¶ 20(a) applies. His credit report shows numerous accounts that were paid as agreed. It is the condemnation of the condo and the large reduction in his annual income that led to his financial problems. These are unusual circumstances that were beyond his control. For the same reasons, AG ¶ 20(b) applies. Based on the events in his life, he has acted responsibly under the circumstances.

The mitigating condition listed in AG ¶ 20(c) partially applies since it appears his financial problems are being resolved and are under control. There has been no evidence Applicant has received financial counseling. The mitigating condition listed in AG ¶ 20(d) applies to the debt in SOR 1.h (\$1,256) because there is no past-due amount owed on that debt. There is no indication the \$81 cable bill has been paid, but that amount is sufficiently small as not to be of security concern.

Applicant's three delinquent student loans are being paid through his Chapter 13 wage earner's plan. Often payment of a debt through bankruptcy proceeds is seen as not being a "good-faith effort" to repay creditors. However, the original required monthly payments on his three student loans totaled \$381. He is paying \$367 monthly to the bankruptcy trustee. Since bankruptcy does not discharge student loans, the bankruptcy is an appropriate mechanism, in this particular case, to address his debts.

It is arguable that Applicant may not honor his monthly payments to the trustee because the plan only recently started. I look to Applicant's payment on his other student loans and see that he had earlier obtained a Sallie Mae loan of \$11,600, \$15,600 from another lender, and \$13,000 from another lender. All three of these student loans were paid. Having paid other student loans, I believe he will comply with the wage earners plan.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at 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 participation is 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 an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant honorably served in the U.S. Army National Guard. From August 2005 through August 2006, he served in Iraq. I do not take lightly that he has gone into harm's way for his country. The debts incurred were not the type that indicates poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. Money was not spent frivolously nor spent on luxuries. He is not living beyond his means. He drives a 2007 car. His three student loans and two credit union accounts are included in his bankruptcy repayment plan.

Applicant's financial problems were caused by circumstances beyond his control. In 2012, his condo was condemned due to mold, and in 2014, he had a sizable reduction in pay. Both events were through no fault of Applicant. Even after he was no longer allowed to live in his condo due to the condemnation, he continued to make his monthly mortgage payments from when he left in February 2012 through May 2013. This shows good faith on his part. His credit report shows numerous additional accounts on which he paid as agreed. More than \$39,000 in other student loans not listed in the SOR were satisfied. Paying these student loans gives me confidence he will make his monthly payments to the bankruptcy trustee in a timely manner.

The issue is not simply whether all his debts are paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(a)(1)) Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his 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, Financial Considerations: FOR APPLICANT

Subparagraphs 1.a – 1.i: For Applicant

Conclusion

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

CLAUDE R. HEINY II
Administrative Judge

