



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



In the matter of:)
)
) ISCR Case No. 15-01325
)
Applicant for Security Clearance)

Appearances

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

09/21/2016

Decision

CURRY, Marc E., Administrative Judge:

Applicant did not falsify his 2014 security clearance application, as alleged. Therefore, there are no personal conduct security concerns. Conversely, Applicant failed to mitigate the financial considerations security concern. Clearance is denied.

Statement of the Case

On August 27, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F, financial considerations, and E, personal conduct. The action was taken under 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 DOD on September 1, 2006.

On October 15, 2015, Applicant answered the SOR, denying all of the allegations except subparagraph 1.a, and requesting a hearing. The case was assigned to me on

April 11, 2016. DOHA issued a notice of hearing on June 23, 2016, scheduling the hearing for July 20, 2016. The hearing was held as scheduled. Department Counsel submitted six exhibits that I identified and received as Government Exhibits (GE) 1 through 6. I identified and received one exhibit from Applicant (Applicant's Exhibit (AE) A). At the close of the hearing, I extended the record at Applicant's request, without objection, to allow him the opportunity to submit additional exhibits. Within the time allotted, he submitted five additional exhibits, identified and admitted as AE B through AE F. DOHA received the transcript (Tr.) on July 28, 2016.

Findings of Fact

Applicant is a 45-year-old married man with three children, ages 26, 19, and 17. He has a high school diploma, and has been working for a defense contractor as a security guard since 2002. He has held a security clearance since 2004. (Tr. 14-15)

Between 2008 and 2013, Applicant incurred approximately \$116,000 of delinquent debt, as alleged in SOR subparagraphs 1.a through 1.d. Subparagraph 1.a, totals \$1,812, and constitutes a judgment for delinquent homeowner dues. This debt stems from the sale of his town home at or about that time. Specifically, the homeowner dues were owed to a different entity than the mortgage, and were not included, as required, in the settlement documents. (Tr. 16) Applicant settled this account for \$750, and paid it, as agreed. (Answer at 2)

Subparagraph 1.b alleges a \$41,000 state income tax delinquency. A lien was entered against Applicant's property for this debt in 2013. Applicant disputes the tax delinquency. (Tr. 16) In June 2014, Applicant retained an attorney to assess "his potential liability or non-liability" for these delinquent taxes. (AE A) It is unclear what steps, if any, that Applicant's attorney performed to help Applicant resolve the tax controversy. On July 29, 2016, Applicant retained another attorney to assist him. (AE D) The tax lien remains outstanding. Applicant did not file his income tax returns in 2015. He is not sure if he filed them for 2014. (Tr. 54)

Subparagraph 1.c is a delinquent car note. Applicant incurred this debt after his car was stolen and his car insurance company refused to pay the balance. (Tr. 20) Applicant disputed this debt. While his dispute was pending, the car loan company sued him, obtaining a \$15,300 judgment on November 4, 2015. Three months later, in February 2016, the car loan company obtained a garnishment order. Since then, Applicant has paid \$4,625 through the garnishment. (AE G at 2)

Subparagraph 1.d is a mortgage allegedly delinquent in the amount of \$59,000. The mortgagee was purchased by another company in June 2011. (Answer at 4) According to Applicant, this debt was removed from his credit report after the purchase. Currently, Applicant is up-to-date on his payments to the new mortgagee. (AE E at 2)

Applicant began struggling financially in approximately 2007, when his wife, a mortgage loan officer whose income he was jointly dependent on to make ends meet,

lost her job after the national collapse of the real estate market. (Tr. 34) Approximately two years later, she was diagnosed with a disabling brain tumor. Her income has been limited to disability insurance payments since then. (Tr. 38)

Applicant completed a security clearance application in April 2014. Subparagraph 2.a alleges that he intentionally failed to disclose the homeowner's association judgment and the state tax lien, as required on Section 26 pertaining to delinquencies involving enforcement. Applicant contends that he was unaware of these delinquencies when he completed the application. (Tr. 15) The SOR also alleges that Applicant intentionally failed to disclose the car loan delinquency and the mortgage delinquency, in response to the Section 26 instruction to disclose delinquencies involving routine accounts. When Applicant completed the security clearance application, he was still challenging the car loan delinquency, contending that his car insurance company should pay it. He denied, and continues to deny the mortgage delinquency, contending that it was no longer in delinquent status when he completed the application.

Policies

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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 the 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."

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 for obtaining a favorable security decision.

Analysis

Guideline F, Financial Considerations

Applicant's history of financial problems triggers the application of AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations."

The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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 debt; 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 settled and paid the debt listed in SOR subparagraph 1.a. I resolve this allegation in his favor. Applicant incurred the debt alleged in subparagraph 1.c after his car was stolen and his insurance company refused to compensate him for his loss. Since then, he has been paying the debt through a garnishment, and he has satisfied nearly a third of the balance. Typically, paying debts through garnishment has limited probative value when assessing an applicant's financial stability. Given the surrounding circumstances that preceded the garnishment, and his progress in satisfying the judgment, I resolve subparagraph 1.c in his favor. As for subparagraph 1.d, he presented evidence that he was no longer responsible for this delinquency. I resolve it in his favor. Given the cause of Applicant's financial problems and these steps he has taken to satisfy them, I conclude that AG ¶ 20(b) applies.

Conversely, Applicant still has a significant outstanding income tax delinquency, as alleged in subparagraph 1.b, and he has yet to file his 2015 income tax returns. Although he disputes this income tax delinquency, he presented no evidence of any progress in resolving the dispute, and just retained another attorney one week after the hearing. I conclude that the steps taken to resolve the other delinquencies are sufficient to trigger the partial application of AG ¶ 20(d), but that neither AG ¶ 20(c), nor AG ¶ 20(e) applies.

Guideline E, Personal Conduct

The security concern under this guideline is as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. Of special interest is any failure to provide truthful

and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Applicant's responses to Section 26 of his 2014 security clearance application raise the issue of whether AG ¶ 16(a), "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities," applies.

Given that Applicant's delinquent homeowner dues stemmed from a mistake in the real estate settlement process when he sold his town home, his explanation that he was unaware of it when he completed the security clearance application is credible. Applicant had no responsibility to list the remaining alleged debts because he denied them in good-faith at the time he completed the security clearance application. Under these circumstances, I conclude that there are no personal conduct security concerns.

Whole-Person Concept

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They are as follows:

(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.

Applicant's financial problems were caused when he wife lost her job and later became disabled. Although he has made progress, his state income tax delinquency, the most significant debt, remains outstanding, and he neither presented evidence supporting his dispute, nor did he present any evidence of a time period for the resolution of the tax controversy. Under these circumstances, it is too soon to conclude that Applicant has mitigated the financial considerations security concern.

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

Subparagraph 1.a:

For Applicant

Subparagraph 1.b:	Against Applicant
Subparagraphs 1.c-1.d:	For Applicant
PARAGRAPH 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a-2.b:	For Applicant

Conclusion

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

MARC E. CURRY
Administrative Judge