



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



In the matter of:

ISCR Case No. 15-02760

Applicant for Security Clearance

Appearances

For Government: Andrew Henderson, Esq., Department Counsel

For Applicant: *Pro se*

October 20, 2016

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is alleged to be delinquent on 13 debts in the total amount of approximately \$713,000. His 13 delinquencies were identified on an April 2013 Chapter 13 bankruptcy that was dismissed in 2014. The majority of Applicant's debts were resolved as a result of the creditors forgiving the debts. Applicant failed to demonstrate any of the mitigating conditions fully apply. Eligibility for access to classified information is denied.

Statement of the Case

On November 22, 2014, Applicant submitted a signed Electronic Questionnaires for Investigations Processing (e-QIP.) On March 2, 2016, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 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) effective September 1, 2006.

On May 22, 2016, Applicant answered the SOR (Answer), and requested a hearing before an administrative judge. The case was assigned to me on June 27, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 5, 2016, scheduling the hearing for July 22, 2016. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 7. GE 1, GE 2, and GE 4 through GE 7, were admitted without objection. Applicant objected to GE 3, a credit report dated November 30, 2011, because it was "old." It was admitted over Applicant's objection. (Tr. 15-16.) Applicant offered eight exhibits (AE), marked AE A through AE H. Department Counsel had no objections to AE A through AE H, and they were admitted. Applicant testified on his own behalf. The record was left open for receipt of documentation until August 5, 2016. Applicant submitted ten additional documents, marked AE I through AE R. Department Counsel had no objections to AE I through AE R, and they were admitted. DOHA received the transcript of the hearing (Tr.) on July 29, 2016.

Findings of Fact

Applicant is 63 years old. He is married and has two adult children. He has worked for his employer for over 25 years. He has held a security clearance since 1992. (GE 1; Tr. 23-24, 63.)

As listed in the SOR, Applicant was alleged to be delinquent on 13 debts in the total amount of approximately \$713,000. Applicant denied all of the debts alleged in SOR ¶¶ 1.a through 1.n. His debts are identified in the credit reports entered into evidence and/or Applicant's Chapter 13 bankruptcy filing. (Answer; GE 3; GE 4; GE 5; and GE 6.) After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant attributed his financial problems to "losses in [his] rental property" relating to the 2008 recession. At that time, he owned: a single-family home purchased prior to 1987 that he used as his residence; a "fourplex" unit purchased with his brother in approximately 1995; and a second single-family home purchased in 1987. He explained he had a "liquidity problem," whereas he couldn't sell any of his properties to pay off debts until a few years later. (Tr. 22-23.) He also admitted he incurred large credit card bills as a result of remodeling his house and financing his children's college educations. (Tr. 31-34, 41-42.)

Prior to 2013, he attempted to manage his growing delinquencies by hiring a debt management firm to settle his debts. However, the company he hired changed ownership and Applicant was not happy with the service. He closed the account and decided to file bankruptcy. (Tr. 61.)

Applicant filed Chapter 13 bankruptcy in April 2013. He listed liabilities of approximately \$1.5 million and assets of over \$1.4 million. He testified the bankruptcy filing was converted to a Chapter 11 by his attorney in July 2013, because the values of his assets were over the limit required to file Chapter 13. It was dismissed, at his request, in August 2014. (GE 6; GE 7; AE A; Tr. 36, 43.) Applicant elected to sell off his

second single-family home to repay some of his delinquent accounts. (AE A; AE C; Tr. 44.)

Applicant was alleged to be indebted on two time share accounts in the amount of \$24,010 (subparagraph 1.b) and \$15,040 (subparagraph 1.d). The \$24,010 debt was listed twice on the SOR in allegations 1.b and 1.c, but represents a single debt. Applicant purchased the time share properties, in separate states, in approximately 2006. The timeshare accounts were foreclosed upon in 2011. Applicant testified he received a 1099 cancellation of debt for the two timeshare accounts. Applicant presented documentation that shows subparagraph 1.d was resolved through reclaimed collateral and \$14,281.16 was forgiven. However, he did not have documentation to show the account identified in allegation 1.b was forgiven at hearing. Applicant's most recent credit report dated August 4, 2016, presented in his post-hearing exhibits, shows this debt as closed and notes "credit grantor reclaimed collateral to settle defaulted mortgage." It is also resolved. (GE 5; AE C; AE E; AE Q; Tr. 28-29, 48-51.)

Applicant was indebted to a bank for a home equity debt in the amount of \$39,615, as alleged in SOR allegation 1.e. Applicant testified this debt was part of a class action law suit against the creditor and the entire loan was completely forgiven as a result of a judgment against the creditor. Applicant's June 2016 credit report reflects this account as paid and closed. This debt is resolved. (GE 4; GE 5; Tr. 52.)

Applicant was indebted on a credit card in the amount of \$13,994, as alleged in SOR allegation 1.f. Applicant testified he made payments on this debt whenever he could afford them. Prior to the hearing, he documented he last made a payment in August 2015. He testified that he had not made a payment on this debt recently. In his post hearing exhibits, Applicant presented copies of two cancelled checks to this creditor. The first check was dated July 8, 2016, and was for \$100. The second was dated July 30, 2016, and showed a payment of \$5,200 to this creditor. Attached to the proof of payment was an offer from the creditor to settle this debt for \$5,200. This debt is resolved. (GE 5; AE C; AE J; AE K; AE L Tr. 38, 54-55.)

Applicant is indebted on a credit card in the amount of \$7,572, as alleged in SOR allegation 1.g. Applicant failed to present documentation of making any payments to this creditor at hearing. In Applicant's post-hearing documentation, he claimed that this debt is now held by a collection agent and showed that he made a \$300 payment on August 4, 2016, to the collection agent. However, the documentation he presented failed to document the relationship between the original creditor and the collection agent. Further, he failed to show a payment agreement beyond this alleged one-time payment. This debt is not resolved. (GE 5; AE C; AE P; Tr. 55-57.)

Applicant was indebted on a credit card in the amount of \$6,424, as alleged in SOR allegation 1.h. Applicant testified this debt has been charged off. He claimed to have received a 1099 cancellation of debt from this creditor, and presented a 1099-C from this creditor cancelling a debt of \$5,395.17 as of September 2014. This debt is resolved. (AE A; Tr. 38, 58-59.)

Applicant is indebted on a delinquent account in the amount of \$4,913, as alleged in SOR allegation 1.i. Applicant claimed to have been making monthly payments of \$100 on this debt. The record was left open to allow him to show documentation of those payments. In his post-hearing documentation, Applicant presented excerpts from bank statements that show he made \$100 payments to this creditor on June 1, 2016; June 29, 2016; and July 29, 2016. Applicant is addressing this debt. (AE R; Tr. 59.)

Applicant is indebted on a credit card in the amount of \$13,994, as alleged in SOR allegation 1.j. Applicant testified that he was not able to locate this debt on his credit report. He believes his wife paid the debt. In his post hearing documentation, he included an excerpt of an August 4, 2016 credit report, which identified all displayed accounts with this creditor in good standing. He noted that the accounts displayed did not include the one listed in the SOR. This account is unresolved. (AE M; Tr. 59-60.)

Applicant was indebted on a delinquent debt in the amount of \$16,314, as alleged in SOR allegation 1.k. This debt was resolved in October 2014. It was paid through Applicant's escrow account upon the closing of the sale of his second single-family property. It is resolved. (AE A; AE C; Tr. 45-47, 60.)

Applicant was indebted on a delinquent debt in the amount of \$15,900, as alleged in SOR allegation 1.l. Applicant testified this debt has been charged off. He presented a 1099-C from this creditor cancelling a debt of \$13,506.67 as of September 2014. It is resolved. (AE A; Tr. 38, 58-59.)

Applicant was indebted on a delinquent debt in the amount of \$528,000, as alleged in SOR allegation 1.m. This debt was resolved in October 2014. It was paid through Applicant's escrow account upon the closing of the sale of his second single-family property. (AE A; AE C; AE F; Tr. 45-47.)

Applicant was indebted on a delinquent debt in the amount of \$1,962, as alleged in SOR allegation 1.n. This debt was resolved in October 2014. It was paid through Applicant's escrow account upon the closing of the sale of his second single-family property. (AE A; AE C; Tr. 45-47.)

Applicant took an early distribution from his 401K to pay off some of his delinquent accounts. As a result, he incurred a large state tax obligation of \$31,525. His wages are currently being garnished to resolve this state tax obligation. He resolved his federal tax lien, which resulted from the same transaction. He pledged to not use credit cards or lines of credit in the future. (AE D; AE H; Tr. 34, 61.)

Applicant participated in a significant amount of personal travel between 2007 and 2009. (Tr. 27.) He recently returned from a ten-day trip to Hawaii. (Tr. 27.)

Applicant's performance review from 2015 reflects that he received an award for his performance. He was complimented for his good leadership skills and management skills. (AE G.) A friend of Applicant's wrote a character reference letter and indicated that Applicant is a man of his word and has good judgment. (AE I.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing 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 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." 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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable clearance 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18, as follows:

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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

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

Applicant has a history of financial indebtedness documented by the credit reports in evidence and his Chapter 13 bankruptcy petition, which substantiate all of the allegations. The evidence raises security concerns under both of these disqualifying conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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 financial problems are ongoing. He has two unresolved delinquent accounts, as identified on the SOR in subparagraphs 1.g and 1. j. The debts identified in subparagraphs 1.b (and duplicated in 1.c), 1.d, 1.e, 1.h, and 1.i were forgiven by the creditors. While he no longer is legally liable for those debts, Applicant failed to demonstrate that his poor judgment that created his excessive indebtedness has been corrected. Forgiveness of the debts is not the same as paying them. He has not demonstrated that future financial problems are unlikely. Mitigation under AG ¶ 20(a) has not been established.

Applicant blamed his financial problems on losses in his rental properties and the decline of the real estate market due to economic factors beyond his control. However, he also acknowledged overspending on his credit cards. He admitted financing the remodeling of a house and his children's college educations. His rental losses may have been a circumstance beyond his control. However, he failed to act responsibly under the circumstances, and did not address his debts in a timely manner. Mitigation under AG ¶ 20(b) has not been fully established.

Applicant provided no evidence of effective financial counseling. Further, there are no clear indications that his financial problems are under control. While he made a good-faith effort to repay subparagraphs 1.f, 1.k, 1.m, and 1.n, and he is making payments on the debts alleged in subparagraph 1.i, he failed to present sufficient evidence that he has a plan to resolve the debts identified in SOR subparagraphs 1.g and 1. j. The debts identified in subparagraphs 1.b (and duplicated in 1.c), 1.d, 1.e, 1.h, and 1.i were forgiven by the creditors. Although they are resolved, the means by which it was done does not demonstrate good financial judgment on behalf of Applicant. In this case, his conduct shows an indifference to his financial responsibilities that goes directly to his security clearance eligibility. As a result, they are also found against Applicant. Mitigation under AG ¶¶ 20(c) and 20(d) has not been fully established.

AG ¶ 20(e) requires Applicant to provide documented proof to substantiate the basis of the dispute or provide evidence of actions to resolve the issue. While Applicant denied his debts in his Answer, he has not provided evidence of any formal dispute or a basis for one. Mitigation under AG ¶ 20(e) has not been established.

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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant has worked for a government contractor for over 25 years. He performs well at his job. His friend who wrote a letter of support indicated Applicant is honest and trustworthy. His financial problems are partially attributable to the economic decline in the real estate market. However, he is a mature adult and responsible for his choices and financial obligations. He voluntarily incurred debts that he has been unable or unwilling to resolve. Additionally, his pay is being garnished to resolve an unpaid state tax obligation. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Financial Considerations security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a:	Against Applicant
Subparagraphs 1.b:	Against Applicant
Subparagraphs 1.c:	Against Applicant
Subparagraphs 1.d:	Against Applicant
Subparagraphs 1.e:	Against Applicant
Subparagraphs 1.f:	For Applicant
Subparagraphs 1.g:	Against Applicant
Subparagraphs 1.h:	Against Applicant
Subparagraphs 1.i:	For Applicant

Subparagraphs 1.j:	Against Applicant
Subparagraphs 1.k:	For Applicant
Subparagraphs 1.l:	Against Applicant
Subparagraphs 1.m:	For Applicant
Subparagraphs 1.n:	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.

Jennifer I. Goldstein
Administrative Judge