



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



In the matter of:)
)
) ISCR Case No. 15-03328
)
Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank, Esq., Department Counsel
For Applicant: Joshua I. Farmer, Esq.

03/27/2017

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 had a charged-off account and a collection debt, which together totaled less than \$17,000. The SOR also alleges he falsified his Electronic Questionnaires for Investigations Processing (e-QIP) by failing to list the debts. Applicant has mitigated the personal conduct and financial considerations security concerns. Clearance is granted.

History of the Case

On December 2, 2015, acting under the relevant Executive Order and DoD Directive,¹ the DoD issued a Statement of Reasons (SOR) detailing financial considerations and personal conduct security concerns. DoD adjudicators could not find that it was clearly consistent with the national interest to grant or continue Applicant's security clearance. On December 21, 2015, Applicant answered the SOR and requested a hearing. On May 18, 2016, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for a hearing to be convened on June 10, 2016.

¹ Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

At the hearing, Government's Exhibits (Ex.) 1 through 5 and Applicant's Ex. A through H were admitted without objection. Applicant testified at the hearing as did his spouse and supervisor. In July 2016, three additional documents were received and admitted as Ex. I, J, and K. On June 22, 2016, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's answer (Answer) to the SOR, he admitted one SOR debt for approximately \$14,000 and asserted the other debt of approximately \$2,600 no longer appeared on his credit report. He denied the falsification allegations. I incorporate Applicant's admissions as facts. After a thorough review of the pleadings, exhibits, submissions, and transcript, I make the following additional findings of fact.

Applicant is a 48-year-old test engineer who has worked for a defense contractor since April 2004, and he seeks to retain a security clearance. (Ex. 1, Tr. 94) From June 1988 through June 2008, Applicant served honorably in both the U.S. Army and U.S. Air Force,² retiring as an Army staff sergeant (E-6). (Ex. E) While in the military, he served in a designated imminent danger pay area. (Ex. E) His retirement pay is approximately \$1,500 monthly. (Tr. 72) The U.S. Department of Veteran's Affairs (VA) rates Appellant's disability at 80 per cent, which pays an additional \$1,400 monthly. (Tr. 95) His salary is approximately \$54,000. (Tr. 73) His retirement pay, disability pay, and salary total approximately \$90,000 annually. (Tr. 95) He has been married since February 1998 and has one daughter, aged 25. (Ex. 1, Tr. 15) His wife does not work outside the home.

Applicant's performance assessments indicate he is dedicated, dependable, competent, cooperative, hard-working, and can be relied on to complete assignments and keep commitments in a timely manner. (Ex. F, G) He is always thinking of ways to innovate existing procedures, is willing to help others, and performs to the high expectation of his job. (Ex. H) Applicant's supervisor, the program manager for the contract Applicant works on, has known Applicant for seven years. (Tr. 27) His supervisor stated Applicant is honest and trustworthy. (Tr. 28)

Applicant's spouse of 27 years manages the household's finances. (Tr. 34) From his years in the military, he had the utmost trust in his wife's capabilities to handle their finances and her handling of the household finances continued after his retirement from the Army. (Tr. 74) In the future, he will take a more active role in the household's finances. (Tr. 104) In 2014, his spouse applied for a vehicle loan which was declined by the auto dealership. (Tr. 39) The dealership indicated their credit rating was bad and they would not make a loan. The dealership never said that it was the delinquent account in SOR 1.b. that was the credit problem. (Tr. 35, 64) The dealership indicated the Applicant's balances were too high as was their debt-to-income ratio. (Tr. 47, 48)

² Applicant served in the U.S. Air Force from 1987 to 1991 and served in the U.S. Army from February 1993 through July 2008. (Tr. 15)

Her mother³ pulled their credit report and discovered the delinquent account listed in the SOR. His wife never informed Applicant about the debt or about her and his mother's efforts to handle the financial situation. (Tr. 37)

Applicant's wife contracted the creditor and arranged to have \$200 automatically debited from her checking account monthly. (Tr. 40) She had intended to continue the payments until the debt was paid. However, after four months, the creditor stopped taking the money from the checking account. (Tr. 40) The account was removed from their credit report.

When the auto dealership would not finance the car, a vehicle loan was obtained through the credit union. (Tr. 45) Applicant assumed the dealership had declined their loan because they had too many credit cards and were spread thin in regards to their debt-to-income ratio. (Tr. 77) Once the credit union vehicle loan was secured, Applicant gave no further thought as to why the dealership had declined to make a loan.

When Applicant completed his April 2014 Electronic Questionnaires for Investigations Processing (e-QIP), he revealed no financial delinquencies. He stated he was unaware of either of the two delinquent accounts listed in the SOR. (Answer, Tr. 62) He never reviewed his credit reports prior to completing the e-QIP. (Tr. 76)

In 2005, Applicant had obtained a \$20,000 remodeling loan (SOR 1.b, \$14,166). (Ex. 2, Tr. 49) Shortly after leaving the Army in 2008, he went to a debt consolidation company⁴ in hopes of lowering the interest rates on their accounts and lowering their monthly payments through consolidation. (Tr. 57) Before going to the consolidation company, he was current on his monthly payments on this loan and all his accounts. (Tr. 86) He had no delinquent debt at the time. (Tr. 57) He paid the consolidation company \$800 monthly and then the company would pay the debts from a list of debts provided by Applicant. (Tr. 50, 69) He made regular monthly payments for approximately six months on the debt to the consolidation company. (Tr. 84) After working with the debt consolidation company, the loan was no longer on his credit report, only to reappear when the vehicle loan application was made in August 2014. (Ex. 2, Tr. 39)

After making payments for six months, Applicant realized the consolidation company was doing very little to pay his creditors. He filed a complaint with the Better Business Bureau (BBB) when the consolidation company failed to do much on Applicant's behalf. (Tr. 85) The BBB said they would deal with the consolidation company. Applicant never followed up on action taken by the BBB believing the matter was being properly resolved. He later learned the company went out of business. (Tr. 50)

³ Applicant's mother is a credit union official. (Tr. 36)

⁴ Applicant provided no documentation about his involvement with the company and the company is no longer in business. (Tr. 21)

In November 2014, Applicant made an unsworn declaration during an enhanced subject interview (ESI), in which he stated he intended to continue his efforts to contact the creditor and intended to pay the debt if it was owed. (Ex. 2)

Applicant's September 2014 credit report, lists this same loan (\$20,255) with a zero balance. (Ex. 3) The credit report lists the account as having been timely paid and closed by the consumer. Monthly payments on the loan were \$227. (Ex. 3) The same debt is also listed on the same credit report as being in collection (\$14,166) and also as an "Account in Dispute." (Ex. 3) In January 2016, the creditor offered to settle the debt for \$4,052. (Ex. A) Applicant accepted the offer and paid the debt. (Ex. A, Tr. 43)

The September 2014 and March 2015 credit reports lists a \$2,598 collection account (SOR 1.a, \$2,598). (Ex. 3, 4) In his November 2015, the account was listed as charged-off. (Ex. 5) Applicant contacted the creditor and the creditor's recovery department could not locate the account following a check of their various databases. (Tr. 68) He was told that one account had been paid in full in March 2015 and there was no record of any additional account. (Tr. 54) The creditor suggested that Applicant should file a dispute with the credit bureau because there was no record of any additional account. (Tr. 55) He did so. As of May 26, 2016, the creditor indicated by letter that the account had a zero balance and had been put in a "Paid/Closed with Zero Balance" status. (Ex. B, C) Applicant's May 2016 credit report, lists two accounts with the creditor listed in SOR 1.a. (Ex. D) Both are listed with a zero balance.

In August 2014, Applicant started taking action to get his finances under control. (Tr. 65) They had learned of the "snowball effect"⁵ on a financial radio show and started paying his smaller bills and rolling the payments to address the bigger payments. (Tr. 65) He paid off his credit card debts. (Tr. 66)

Applicant is current on his automobile and truck payments, which are automatically paid each month. (Tr. 55) His house payments and utility bills are current. (Tr. 71)

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 ¶

⁵ The debt snowball method is a debt reduction strategy where an individual pays off debts in order of smallest to largest, gaining momentum as each balance is paid off. When the smallest debt is paid in full, the individual rolls the money they were paying on that debt into the next smallest balance.

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 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 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination of 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

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 creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong 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 his finances to meet his financial obligations.

Applicant had a charged-off account and a collection account, which together totaled \$16,764. 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 provided documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue;

Applicant contacted the creditor of the charged-off account listed in SOR 1.a and was told that one account had been paid in full in March 2015. He was also told there was no record of any additional account. The creditor's recovery department suggested that Applicant should file a dispute with the credit bureau, which he did. As of May 26, 2016, the creditor indicated the account with them had a zero balance and was in a

“Paid/Closed with Zero Balance” status. His May 2016 credit report lists two accounts with this creditor; both are listed with a zero balance.

Applicant also had a collection account that has now been satisfied in full. He obtained a remodeling loan and made timely payments on the loan. He paid \$800 monthly for six months before including the debt with a debt consolidation company. In January 2016, the creditor offered to settle the debt for \$4,052, which Applicant accepted and paid.

There were only two delinquent debts totaling less than \$17,000 and the creditor of one of the debts could not locate the delinquent obligation in question. The mitigating factors in AG ¶ 20(a) apply. Applicant’s behavior was isolate. He now takes a more active role in the household’s finances, so the behavior is unlikely to recur; the debt, which the creditor could locate was paid; and the behavior does not cast doubt on Applicant’s current reliability, trustworthiness, or good judgment.

The debt having been paid, there is clear indication that the problem has been resolve. Additionally, paying the debt is a good-faith effort to repay the creditor. AG ¶ 20(c) and AG ¶ 20(d) apply.

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. (AG ¶ 15)

The Government has shown Applicant failed to list two delinquent accounts on his September 2014 e-QIP. But this does not prove the Applicant deliberately failed to disclose information about his finances and arrest. The Applicant has denied intentional falsification. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance is a security concern. But every inaccurate statement is not a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully. An omission concerning delinquent obligations is not deliberate if the person did not know of their existence.

Applicant’s wife handled the household’s finances, a practice started during Applicant’s military service. He was unaware of any delinquent accounts when he completed the e-QIP. He answered “no” concerning delinquent debts, but that is what he believed to be true at the time. Applicant’s vehicle loan was declined by the dealership, but that does not show he knew of the delinquent account. He assumed it

was due to too many credit cards accounts and too high a debt-to-income ratio. He thought no more of the declined loan after the credit union provided the vehicle loan.

There was no lie or intentional falsification about Applicant's debts. After observing Applicant's demeanor and evaluating all the evidence of record, I found his testimony credible on the falsification issue. The allegation that he intentionally falsified his e-QIP with intent to deceive is unsubstantiated.

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 served 20 years of honorable military service a portion of which was served in an area designated imminent danger pay area. He has an 80 percent disability from the VA related to his military service. Applicant's annual income is sufficient to prevent future financial problems. He has paid off his credit card accounts; the SOR collection debt the creditor could locate, and is current on his home payments, vehicle payments, and utility accounts.

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). He answered his e-QIP based on the information he had about his finances. There was no intentional falsification of his e-QIP. Overall, the record evidence leaves me without questions and doubts about Applicant's eligibility and suitability for a security clearance.

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, Financial Considerations: FOR APPLICANT

Subparagraphs 1.a and 1.b: For Applicant

Paragraph 2, Guideline E, Personal Conduct: FOR APPLICANT

Subparagraphs 2.a and 2.b: 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