



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



In the matter of:)
)
) ISCR Case No. 15-03540
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne Driskill, Esq. Department Counsel
For Applicant: *Pro se*

07/27/2017

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. Applicant has mitigated the financial considerations security concerns. Clearance is granted.

History of the Case

On December 3, 2015, acting under the relevant Executive Order and DoD Directive,¹ the DoD issued a Statement of Reasons (SOR) detailing financial considerations security concerns. DoD adjudicators could not find that it is clearly consistent with the national interest to grant or continue Applicant's security clearance. On December 28, 2015, Applicant answered the SOR and requested a hearing. On July

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, and as amended on June 8, 2017.

28, 2016, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for a hearing to be convened on August 26, 2016.

At the hearing, Government's Exhibits (Ex.) 1 through 4 were admitted without objection. Applicant testified and submitted Exs. A through Z, which were admitted without objection. The record was kept open to allow Applicant to present additional documents. Additional documents were received and admitted as Exs. AA through NN. On September 6, 2016, DOHA received the hearing transcript (Tr.).

While this case was pending a decision, the Director of National Intelligence issued Security Executive Agent Directive 4, establishing *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), which he made applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The new AGs supersede the Sept. 1, 2006 AGs and are effective "for all covered individuals" on or after June 8, 2017. Accordingly, I have evaluated Applicant's security clearance eligibility under the new AGs.²

Findings of Fact

In Applicant's Answer to the SOR (SOR Answer), he denied the collection debt³ listed in SOR 1.i (\$1,130). He stated he never had a lease with this company. He admitted the remaining debts. Applicant's admissions are incorporated as factual finding. After a thorough review of the pleadings, exhibits, and testimony, I make the following additional findings of fact.

Applicant is a 33-year-old combined technical solutions clerk who has been employed part time for a defense contractor with a test command since August 2014. (Ex. 3, Tr. 19) He is seeking to obtain a security clearance. In 2005 and 2013, he divorced and has five children between the ages of 20 months and age 13. (Ex. 1, Tr. 14) Although he divorced his wife in 2013, they live together. (Ex. 1, Tr. 45) His ex-wife's and current cohabitant is a certified nursing assistant (CNA) and she plans to go to school to become a licensed vocational nurse (LVN). (Tr. 50)

Since the age of 10, Applicant has suffered from diabetes. (Tr. 20) His Type 1 Diabetes prevented him from joining the military. (SOR Answer) He has suffered with diabetes for 23 years and had no health insurance⁴ for the last decade. He has used emergency rooms to receive the care he needed for his chronic condition. The SOR lists 37 delinquent debts, of which 23 are medical debts. In the last couple of years, he has

² Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case. The new AGs are available at http://ogc.osd.mil/doha/5220-6_R20170608.pdf.

³ Applicant's ex-wife and current cohabitant testified that this was her legal obligation. (Tr. 46) The creditor removed it from his credit report. (Tr. 24)

⁴ Under the Affordable Care Act, Applicant's monthly premiums would have been \$400 or \$500, which he could not afford. (Tr. 30)

been working with a medical clinic to resolve his hospital and medical debts and to obtain medical treatment at a reasonable cost. (Tr. 20) He no longer has to use the emergency rooms for treatment. (Tr. 44) No new or recent delinquent medical debts are revealed in his current credit reports. (Tr. 20) He has sought the services of a company to assist in paying his debts and restoring his credit. (Ex. 3, SOR Answer) He owes one company \$3,700 for medical services and has arranged to pay the creditor \$50 per month. (Tr. 43) He has been making monthly payments on his medical debts from October 2016 through June 2017, except from December 2016 through February 2017 when he was unemployed. (Ex. AA and Exs. CC through NN)

In Applicant's August 2014 Electronic Questionnaires for Investigations Processing (e-QIP) he listed 22 delinquent obligations: SOR 1.a – 1.g, 1.j – 1.q, and 1.s – 1.y. (Ex 1) The SOR lists 36 delinquent accounts totaling more than \$30,000 and a 2003 arrest for issuing a worthless check or draft without sufficient funds or credit. (Ex. 2) He wrote an \$80 check that was not honored⁵, which cost him \$432 in restitution and court costs. (Tr. 26) He no longer uses checks. (Tr. 27)

Applicant employed a legal advocate group to help him to address his delinquent obligations. He terminated the relationship when the group's actions were increasing his debts and not lowering them. (Tr. 21)

Applicant owes an \$857 college education collection debt (SOR 1.g). He states he does not know why this college debt exists. He has had numerous contacts with the college in attempts to address this debts. (Ex. 3, Tr. 32) When he contacted the business office and the financial aid office, each office told him they had no record of him owing a debt and he should contact the other office. When he attempted to make a \$100 payment on the obligation, he was told the entire amount had to be paid in one lump-sum payment. (Ex. 3)

From April 2010 through April 2011, Applicant had a lease paying between \$650 and \$750 per month. In April 2011, he gave notice that he would be vacating the property in May 2011. He was told he owed rent through July 2011, which is the SOR 1.a debt (\$1,314). Applicant was sued and the court decided the landlord's claim for \$2,000 was unfounded, but did decide Applicant owed \$1,314 for the May 2011 rent and filing fees. (Ex. 3) He asserts he paid the debt in full in February 2012. (Ex. 3) He was told to make payment directly to the plaintiff's bank and the plaintiff would inform the court when payment was made. (Tr. 31) He paid the judgment, but does not know if the plaintiff so informed the court. (Tr. 31)

In October 2016, Applicant paid the electric bill (SOR 1.aa, \$202) (Ex. BB) He owed \$606 (SOR 1.jj) on a past-due student loan. He has arranged to make monthly payments of \$50 each. (Tr. 25) He asserted he paid the \$285 debt listed in SOR 1.w. (Tr. 34) He has been arguing with the gas company (SOR 1.bb, \$284) about a gas leak, which the gas company acknowledged did occur. (Tr. 36)

⁵ State law is very strict concerning the issuing of checks that are not honored. Normally, such a check will be sent to the county or district attorney's office and an arrest warrant will be issued.

Applicant has brought current his past-due television cable bill (SOR 1.dd, \$1,099) and currently has service with the company. (Ex. Q, Tr. 24) His ex-wife and current cohabitant has a delinquent account (SOR 1.j, \$228) related to cell service. Applicant never had service from this company. (Tr. 32) He asserts this bill is not his debt. (Tr. 32) His ex-wife had a car bill (SOR 1.r, \$3,257), which was not his debt. (Tr. 33) His ex-wife and current cohabitant testified that this was her vehicle debt. (Tr. 46)

Applicant had a rental agreement (SOR 1.ee, \$2,600). (Tr. 36) He moved out and then back in with his then wife. He sent them a 30-day letter prior to leaving. (Tr. 36) He left and a year later he received a \$2,600 bill. He has contacted the company repeatedly attempting to determine the nature of the debt. (Tr. 36) He has arranged to make \$50 monthly payments plus a \$5 process fee on this debt. (Exs. CC-NN)

Applicant's financial plan is to first address the medical debt and the student loan debt. Next he plans on addressing the gas bill (SOE 1.bb, \$284), and another cable bill (SOR 1.cc, \$497). (Tr. 37) He plans on paying the debts with lowest amounts first and go onto the debts with a higher balances. (Tr. 37) He also had hopes of returning to college. (Tr. 38) He also hopes to become a permanent employee with health care coverage. (Tr. 40)

Applicant's ex-wife and current cohabitant is attempting to work with the creditors to resolve the financial problems. (Tr. 49) He is current on his two monthly vehicle payments, which total \$380. (Tr. 42) He is also current on his rent and utility bills and is not getting any calls or letters from collection firms.

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(a), 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 national security eligibility will be resolved in favor of the 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 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 or sensitive information An individual who is financially overextended is at greater risk of having to engage in illegal acts or other questionable 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.

AG ¶ 19 included three disqualifying conditions that could raise a security concern any may be disqualifying in this case: “(a) inability to satisfy debts;” “(b) unwillingness to satisfy debts regardless of the ability to do so;” and “(c) a history of not meeting financial obligations.”

The Government’s substantial evidence and Applicant’s own admissions raise security concerns under AG ¶¶ 19(a), 19(b) and 19(c). Applicant had owed approximately \$30,000 on 37 delinquent obligations. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. September 22, 2005))

Five of the seven 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, a death, divorce or separation, clear victimization by predatory lending practices or identity theft), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to 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 paid the \$1,314 (SOR 1.a) judgement and the electrical bill (SOR 1.aa, \$202). In 2003, 14 years ago, he was arrested for writing a check that was not honored.

That \$80 check cost him \$432. He has brought current his past-due television cable bill (SOR 1.dd, \$1,099) and has service with the company. (Ex. Q)

Applicant arranged \$50 monthly payments on his \$600 student loan debt. He has arranged to pay \$50 on the \$2,600 rental debt (SOR 1.ee). Sixty-two percent of the delinquent-SOR accounts, 23 of 37, are medical debts. He has arranged to pay \$50 monthly on \$3,700 of the medical debts, other medical debts have been forgiven, and he is making monthly payments on additional medical debts. Except from December 2016 through February 2017, when he was unemployed, he made payments on his medical debts, student loan debt, and rental debt.

Applicant's ex-wife and current cohabitant testified that three of the SOR debts (SOR 1.i, \$1,113; SOR 1.j, \$228; and SOR 1.r, \$3,257) are her debts. These three debts represent approximately \$4,600 of the \$30,000 delinquent SOR debt.

The delinquent obligations are numerous and some have yet to be fully addressed. The majority of his delinquent debt was medical debt. He has now arranged to have medical treatment without having to resort to using emergency rooms. He is unlikely to have such debts recur. There is nothing in the nature of the debts that showed poor judgment or untrustworthiness. AG ¶ 20(a) applies.

In 2013, Applicant and his wife divorced. His divorce was a circumstance beyond his control that impacted his ability to maintain financial stability. However, the impact of his divorce is somewhat mitigated by his ex-wife now being his cohabitant. He has had numerous periods of unemployment and when employed it was on a part-time basis. Being employed only part-time, he did not have medical insurance provided by his employer. AG ¶ 20(b) applies.

Applicant has contacted his creditors and has been able to establish repayment agreements with some of his creditors. He paid the judgement, his electric bill, paid for the dishonored check written in 2003, and brought his television service debt current. He is making monthly payments on his medical bills and student loan. AG ¶ 20(d) applies to these debts.

Applicant has five non-medical delinquent debts, which total approximately \$2,200. He has not been able to address these debts because he is addressing his medical debts and other bills. However, an applicant is not required to be debt-free or to develop a plan for paying off all debts immediately or simultaneously. An applicant is required to act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by "concomitant conduct," that is, actions that evidence a serious intent to effectuate the plan. See ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008).

What constitutes the responsible behavior depends on the facts of a given case. Applicant's poor financial condition originated from periods of unemployment, part-time employment, and his medical problems, all of which were outside his control. He has acted responsibly given his limited resources in that he has addressed his financial

problems by (1) resolving some of the debts, (2) developing a repayment plan for his medical debts and student loan, and (3) taking reasonable actions to effectuate the plan.

Applicant must establish a plan to resolve financial problems and take significant action to implement the plan, which he has done. The amount of the five delinquent accounts yet to be addressed, approximately \$2,200, is not so substantial as to be disqualifying under the financial considerations security concern.

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(d):

(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(a), 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 including under the whole-person concept. Applicant is addressing the majority of his delinquent obligations with the funds he has available. The amount he has yet to address is not large. Based on the repayment plans he is currently honoring, I believe he will address the remaining debts when he is able.

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) and 2(b). Overall, the record evidence leaves me without questions or 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 amended 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.kk: 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