



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 15-04542
)
Applicant for Security Clearance)

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: *Pro se*

02/14/2017

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied. Applicant did not present sufficient information to mitigate financial considerations security concerns. He did present sufficient information to mitigate personal conduct security concerns.

Statement of the Case

On October 22, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for a position with a defense contractor. After an investigation conducted by the Office of Personnel Management (OPM), the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. The DOD issued to Applicant a Statement of Reasons (SOR), dated December 10, 2015, detailing security concerns for financial considerations under Guideline F and personal conduct under Guideline E. The action was taken under 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 in the DOD on September 1, 2006.

Applicant answered the SOR on January 6, 2016. He admitted the three financial allegations of delinquent debt, as well as an allegation of bankruptcy in 2001. He denied the one allegation under personal conduct for a falsification of his security clearance application. Department Counsel was prepared to proceed on March 30, 2016, and the case was assigned to me on September 7, 2016. The DOD issued a notice of hearing on October 7, 2016, scheduling a hearing for October 25, 2016. I convened the hearing as scheduled. The Government offered six exhibits that I marked and admitted into the record without objection as Government Exhibits (GX) 1 through 6. Applicant testified and submitted three exhibits that I marked and admitted into the record without objection as Applicant Exhibits (AX) A, B, and C. I kept the record open for Applicant to submit additional documents. Applicant did not submit additional documents. I received the transcript of the hearing (Tr.) on November 1, 2016.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact. Applicant is 40 years old. He first married in 1996 and divorced in 2002. He married again in September 2005 and divorced in June 2008. He married his present wife in October 2011. He has a one-year-old child by his third wife.

Applicant has held various positions for defense contractors at different military installations since 2004. Applicant mainly stayed in the same type of lower level job, but the contractors he worked for repeatedly changed. He was granted eligibility for access to classified information in 2010 when one of his positions required he have a security clearance. Applicant's income fluctuated whenever the Government changed the contractor that employed Applicant. Applicant's income was either changed to a lower pay rate or he was placed in a lower salaried position. Applicant's wife is the director of a childcare facility. Applicant's yearly income is now approximately \$26,000 and his wife's yearly income is approximately \$55,000 for a combined income of approximately \$81,000. Their combined net monthly income is approximately \$5,000. The family has monthly expenses of approximately \$4,300, leaving a net monthly remainder of approximately \$700. (Tr. 12-14, 23-35, 58-69, 84-87; GX 1, e-QIP dated October 22, 2014)

The SOR alleges, and credit reports (GX 3, dated March 21, 2008; GX 4, dated March 21, 2010; GX 5; dated November 18, 2014; and GX 6, dated November 7, 2015) confirm the following delinquent debts for Applicant: a charged-off automobile loan for \$7,836 (SOR 1.a); a medical debt for \$200 (SOR 1.b); and another medical debt for \$4,354 (SOR 1.c). The amount of the alleged delinquent debt is approximately \$12,000. Also listed is a Chapter 7 bankruptcy filed in June 2001 with the debts discharged in October 2001.

Applicant's first spouse was an active duty military member when they married in 1996. Her salary was more than 75% of the family income. Applicant's wife decided to

leave the military to increase her income. Shortly after she left the military, her income dropped considerably. She went from earning approximately \$40,000 a year to earning approximately \$25,000 a year. Applicant and his wife did not have sufficient income to pay their debts because of the drop in income. Applicant believed, but is not sure, that his ex-wife attempted to contact some creditors to make payment agreements. He does not know the outcome of those discussions. Applicant worked a part time job to have additional income to pay bills. He even tried to join the Army Reserves but he did not qualify medically. Applicant's wife decided to declare bankruptcy in June 2001. Since she was in the military and the major income producer in the family, Applicant agreed to be a party to the bankruptcy. (Tr. 35-41, 78-82)

The debt at SOR 1.a is for a loan for a van Applicant co-signed for his second ex-wife. After their marriage in 2005, Applicant learned that his wife was not a United States citizen in 2007. He concluded that she married him to ease the process for her to gain U.S. citizenship. Applicant decided to terminate the marriage, and his wife moved to another state. When the marriage ended, his wife kept the van and agreed to pay the loan. She did not make any payments. The car loan creditor informed Applicant that as the co-signer of the loan, he was responsible for the loan payments. Applicant contacted his wife who told him that she had not been making the loan payments and no longer wanted the van. Applicant retrieved the car and returned it to the creditor in 2008. He received a call from the creditor in 2010 that he owed approximately \$7,836 on the vehicle loan. He called his wife, and she said she would take care of the debt. He never checked with her to ensure she was paying the debt, and he never made any payment on the debt. The creditor never contacted him after that about the debt. He did not receive a notice of payment due or any payment offers from the creditor. The debt no longer appeared on his credit report. The next time he knew that the debt was still pending was when he looked at a credit report in 2013. By this time, he had contracted with an agency to assist him learning about his debts. He did not know what the debt pertained to so he had the company research it for him. He learned the debt was for his ex-wife's van returned to the creditor. He has not presented any evidence of any attempts to resolve the debt since 2013. (Tr. 41-49, 69-74)

The debts at SOR 1.b and SOR 1.c are medical debts. Applicant admits that he incurred the debts for treatment he received in a hospital. He claims to have paid the debt of over \$5,000 to the hospital. He is unsure if the two SOR debts were included and paid when he paid the debt to the hospital. Applicant agreed at the hearing to provide information from the hospital on the details for the bill he paid. He has not provided any information that the debts are paid. (Tr. 49-51, 74-84)

Applicant claims to have hired a credit education services company in 2014 to assist him with resolution of his credit issues. Applicant hired the firm because he wanted to purchase a house and needed to repair his credit rating. After looking at his credit report, he knew he needed assistance to repair his credit rating. Applicant presented three letters (AX A, AX B, and AX C) the credit service company prepared for him. The letters refer to a judgment, but there is no judgment alleged in the SOR. The account numbers listed in the letters do not match the account numbers for the debts

listed in the SOR. Applicant did not present sufficient information that establish that the letters pertained to the SOR debts. (Tr. 51-55; AX A, AX B, AX C, Letters, undated)

When Applicant completed his e-QIP, he did not think he needed to list the financial issues that had been resolved in his 2001 bankruptcy petition and discharge. He indicated that there is adverse financial information by reporting on the e-QIP that the credit service company was assisting him in disputing some financial issues. He indicated on the e-QIP that the disputed items would be removed from his credit reports. (Tr. 55-58)

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 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 in seeking 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 that the applicant may deliberately or inadvertently fail to 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.

Analysis

Financial Considerations

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 a person's reliability, trustworthiness, and ability to protect classified information. (AG ¶ 18) The financial security concern is broader than the possibility that an individual might knowingly compromise classified information to raise money. It encompasses concerns about an individual's responsibility, trustworthiness, and good judgment. Security clearance adjudications are based on an evaluation of an individual's reliability and trustworthiness. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect 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.

Applicant and his first wife filed for bankruptcy in 2001, and their debts were discharged. Applicant married again, and he co-signed a vehicle loan for his second wife. His second wife did not pay the loan so Applicant returned the vehicle to the dealer. Applicant or his ex-wife did not pay the remainder of the loan. Applicant acknowledges two medical debts that have not been paid or otherwise resolved. Applicant's delinquent debts are sufficient to raise security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts) and AG ¶ 19(c) (a history of not meeting financial obligations). The evidence indicates both an inability and an unwillingness to satisfy debt.

I considered the following Financial Considerations Mitigating Conditions under AG ¶ 20:

- (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, and 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; and

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

None of the mitigating conditions apply. Applicant's unpaid debts are a continuous course of conduct and thus current. Bankruptcy is a legal and permissible means of resolving debt. Based on the circumstances of the debts incurred by June 2001, Applicant acted reasonably and responsibly in filing the bankruptcy. The medical debts and the car loan were incurred under normal everyday circumstances of signing for a car loan and receiving medical care. Applicant knew as a co-signer of the car loan that he would be responsible for the loan if his wife defaulted. Applicant's voluntary co-signing of the car loan was not unusual and was within his ability to control. He could not control his wife's failure to make loan payments, but he had assumed the risk of being responsible when he co-signed the loan.

Applicant did not present any information that he has or is receiving financial counseling. If he received financial counseling that is required to submit a bankruptcy petition, it was over ten years before he incurred the car loan and medical debts. Such counseling is not relevant to his present debt situation.

For a good-faith effort under AG ¶ 20(d), there must be an ability to repay the debts, the desire to repay, and evidence of a good-faith effort to repay. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. A systematic method of handling debts is needed. Applicant must establish a meaningful track record of debt payment. A meaningful track record of debt payment can be established by evidence of actual debt payments or reduction of debt through payment of debts. A promise to pay delinquent debts is not a substitute for a track record of paying debts in a timely manner and acting in a financially responsible manner. Applicant must establish that he has a reasonable plan to resolve financial problems and has taken significant action to implement that plan.

Applicant offered no documentary evidence of a good-faith effort to resolve his car loan and medical debts. He did not present a reasonable plan to resolve the debts or establish a meaningful track record of debt payment. He has known about his obligation for the car loan since 2010. The only action taken was to call his ex-wife in 2010 and tell her about her obligation to pay the loan. He has not communicated with her since then to inquire if she is meeting her obligation to make payments on the loan. He claims to have paid the medical debts for his hospitalization. However, he did not present documentation to support his claims of action on or payment of the debts.

Applicant has not presented a reasonable plan to resolve his financial problems or documentation to show payment of the debts. Applicant's lack of documented action is significant and disqualifying. Applicant has not established that he acted with reasonableness, prudence, honesty, and an adherence to duty and obligation towards his financial obligations. With evidence of delinquent debt and no documentation to support responsible management of his finances, it is obvious that Applicant's financial problems are not under control, and that Applicant is not managing his personal

financial obligations reasonably and responsibly. His financial problems are not behind him. Applicant's failure to act reasonably and responsibly towards his finances is an indication that he may not protect and safeguard classified information. Applicant has not presented sufficient information to mitigate security concerns for financial considerations.

Personal Conduct

Personal conduct is a security concern because conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified and sensitive information. Of special interest is any failure to provide truthful and candid answers during the process to determine eligibility for access to classified information or any other failure to cooperate with this process (AG ¶ 15). Personal conduct is always a security concern because it asks whether the person's past conduct justifies confidence the person can be trusted to properly safeguard classified or sensitive information. Authorization for a security clearance depends on the individual providing correct and accurate information. If a person conceals or provides false information, the security clearance process cannot function properly to ensure that granting access to classified or sensitive information is in the best interest of the United States Government.

Applicant provided limited derogatory financial information on the e-QIP. He only noted that he was working with a credit education service company to learn about and help resolve his debt so he could clean up his credit report. As noted in the SOR and the credit reports, Applicant has significant delinquent debts. His failure to list his delinquent debts raises a security concern under Personal Conduct Disqualifying Condition AG ¶ 16(a) (the 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 eligibility or trustworthiness, or award fiduciary responsibilities).

Applicant denied intentionally falsifying the financial part of the e-QIP. He stated he did not believe he had to list delinquent debt discharged by bankruptcy. He did not know about the medical and car loan delinquent debts until confronted with the debt when he received the SOR. While there is a security concern for a 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, not every omission, concealment, or inaccurate statement is a falsification. A falsification must be deliberate and material. It is deliberate if it is knowingly and willfully done with intent to deceive.

It is reasonable for an Applicant not schooled in security clearance procedure to believe that it was not necessary to list debts discharged by bankruptcy on the security clearance application. Since the bankruptcy was in 2001, all non-priority unsecured debts were beyond the seven year period required in the security clearance application.

While Applicant did not list specifically his car loan and medical debts on the e-QIP, he did alert the Government that he may have delinquent debt by referring to his arrangement with a credit education service company. I find that Applicant did not know of his delinquent debts when he completed his e-QIP. Applicant provided adverse financial information as he knew it and as best he could. Applicant did not deliberately fail to provide correct and accurate financial information on the security clearance application.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for access to classified information 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 access to classified information 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 did not know he had delinquent debt when he completed his e-QIP, so he did not deliberately fail to provide full and accurate information concerning his finances. However, Applicant has not provided sufficient credible documentary information to show reasonable and responsible action to address delinquent debts and resolve financial problems. Applicant has not demonstrated responsible management of his finances or a consistent record of actions to resolve financial issues. Overall, the record evidence leaves me with questions and doubts about Applicant's judgment, reliability, and trustworthiness. He has not established his suitability for access to classified information. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial situation. He has mitigated personal conduct security concerns.

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
Subparagraphs 1.a-1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	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 access to classified information. Eligibility for access to classified information is denied.

THOMAS M. CREAN
Administrative Judge