



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-06241

Appearances

For Government: Pamela C. Benson, Esquire, Department Counsel

For Applicant: *Pro se*

06/22/2017

Decision

HOWE, Philip S., Administrative Judge:

On September 24, 2014, Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP). On March 11, 2016, the Department of Defense Consolidated Adjudications Facility (DODCAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F.¹ 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, effective September 1, 2006.

Applicant acknowledged receipt of the SOR on April 4, 2016. He answered the SOR in writing on April 18, 2016, and requested a hearing before an administrative judge. Defense Office of Hearings and Appeals (DOHA) received the request on May 3, 2016. Department Counsel was prepared to proceed on February 13, 2017, and I received the case assignment on February 15, 2017. DOHA issued a Notice of Hearing

¹ I considered the previous Adjudicative Guidelines, effective September 1, 2006, as well as the new Adjudicative Guidelines, effective June 8, 2017. My decision would be the same if the case was considered under the previous Adjudicative Guidelines, effective September 1, 2006.

on February 27, 2017, and I convened the hearing as scheduled on March 16, 2017. The Government offered Exhibits 1 through 9, which were received without objection. Applicant testified and submitted Exhibits A through D, without objection. DOHA received the transcript of the hearing (Tr.) on April 4, 2017. I granted Applicant's request to keep the record open until April 15, 2017, to submit additional matters. On April 6, 2017, he submitted Exhibits E to I, without objection. The record closed on April 6, 2017. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR Applicant admitted the factual allegations in Paragraph 1 of the SOR, with explanations. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 38 years old and married with two children. He served in the U.S. Army for four years, from 2003 to 2007. He received an honorable discharge and was awarded a disability designation. He receives about \$500 monthly for that disability at the present time. Applicant works for a defense contractor in the computer servicing business. He started the job in 2007. He earns \$25 per hour and testified he takes home about \$2,400 monthly. With his disability pay he earns about \$35,000 annually. His wife earns about \$45,000 annually. They just purchased a home for \$216,000. He made a down payment of \$5,100 and intends to refinance in about a year. Their payments are \$1,400 monthly. Applicant testified they used his wife's credit to purchase the home. (Tr. 26-34, 81; Exhibits 1, 6, 7)

Applicant attributes his financial problems to his first marriage. He stated his present wife is conscientious about their personal finances. They have \$5,000 in a savings account after putting down \$5,100 on their house purchase. He testified at the beginning of the hearing that he paid all his debts. (Tr. 24-35, 92; Exhibits 1, 6)

Applicant filed Chapter 13 bankruptcy in 2001 and it was dismissed in 2002. He does not recall how much debt was included in that bankruptcy. Before he joined the U.S. Army in 2003 he completed a security clearance questionnaire and denied ever filing a bankruptcy in the previous seven years. He claimed at the hearing his father filed that bankruptcy. The bankruptcy records from then show it was Applicant who filed the bankruptcy in 2001 and it was dismissed in 2002 (Subparagraph 1.u). He also filed a Chapter 7 bankruptcy in 2012 and dismissed it in 2013 (Subparagraph 1.a). That bankruptcy listed \$81,710 in debts. Applicant asserted he dismissed it because he was paying \$1,300 monthly to the trustee and would have repaid the debts in two years and still had to pay the same amount for another two years into the trustee fund. He claims an attorney advised him to dismiss the bankruptcy and pay the debts directly. However, \$1,300 monthly for 24 months would have paid \$31,200 of the \$81,710 debt. His explanation for dismissing the bankruptcy is not credible. (Tr. 37-47; Exhibits 1, 4-6)

Applicant received on February 26, 2003 from the U.S. Army personnel security clearance facility a letter of intent to deny his security clearance (LOI) because of two criminal incidents in 1998 and 18 delinquent accounts in addition to the 2001 Chapter 13 bankruptcy filing. The delinquent accounts included two civil court judgments, credit card debts, a furniture debt, a telephone debt, and a U.S. Department of Education student loan. He filed a Response to the LOI and the U.S. Army requested proof of debt payments. On February 4, 2004 the Army granted Applicant a security clearance with a warning that any "subsequent unfavorable information or failure to resolve your financial debts will lead to a possible suspension of your security clearance." (Exhibits 8, 9)

Applicant has 19 delinquent debts listed in the SOR, totaling \$19,325. The debts consist of two car loans and repossessions, credit cards, medical accounts, and 11 student loans. (Tr. 45-80; Exhibits 2, 3, 6, 7, A to I)

Applicant owed a car loan company \$9,099 on an automobile purchase from 2005 (Subparagraph 1.b). This debt was listed in his 2012 Chapter 13 bankruptcy that was dismissed. It appears as a delinquent account on the October 7, 2014 credit report, but not on the February 2, 2017 credit report marked as an exhibit by the Department or the April 2017 credit report submitted by Applicant. Applicant claims he paid the debt in 2006 but could not submit any proof of payment at any time nor how much he paid to resolve the debt. Applicant admitted he does not have a receipt for paying that debt. He asserted that because the debt is not on his current credit report he must have paid it. In the government interview in December 2014 Applicant told the investigator that he "has no knowledge of this account and does not know where it is from. Subject intends to research this account, and if he finds he owes any money towards this account he will pay it off in full by 12/31/2015." There is no proof Applicant accomplished this task. This debt is not resolved. (Tr. 45-53; Exhibits 2, 3, 4, 6, 7, H)

Applicant owes a credit card company \$444 (Subparagraph 1.c). Applicant contends he paid it between March 2016 and December 2016. But he does not have documentary proof of payment. Applicant claims he joined a "credit company" in March 2016 and "everything on these papers (i.e., the SOR) were paid." That service was only a six months membership that provided free credit reports, credit review, and a total of 24 "services." The agreement with that service specifically excludes settlement arrangements, payment plan arrangements, and debt management with budget planning. The agreement also designates the service as a "certified credit consultant." There is no writing on the agreement submitted by Applicant that this organization is a non-profit credit counseling service. Applicant made four payments of \$150 each starting in June 2016. Applicant misunderstands that this service did not resolve his delinquent debts. He described it as "a monthly status thing." This particular debt is not resolved. (Tr. 53-55, 78-80; Exhibits 2, 3, 6, 7, H, I)

Applicant owes two delinquent debts that appear on the Department's credit report exhibits, but he claims he could not find either of them on his credit report and considers them non-existent (Subparagraph 1.d for \$10 and 1.e for \$52). He admits they are both medical debts. These debts are not resolved. (Tr. 55; Exhibits 2, 3, H)

Applicant paid the debt listed in Subparagraph 1.f for \$155, had the judgment and garnishment for the repossessed automobile in Subparagraph 1.g for \$5,305 reversed and dismissed, paid the \$158 debt to a credit union in Subparagraph 1.h and the \$64 debt in Subparagraph 1.i, and the education account debt for \$388 in Subparagraph 1.j. These debts are resolved. (Tr. 56-63; Exhibits 2, 3, A-F)

Applicant placed all his remaining student loan debts listed in Subparagraphs 1.k to 1.t with a debt collector from the U.S. Department of Education. He pays \$5 monthly and has since September 2016. He has six months remaining on that agreement to rehabilitate his student loans. The amount of the loans shown on the agreement with the collector is \$32,863.18. Applicant during the hearing claimed the loans were deferred and then that he was paying them at the \$5 monthly rate. The Department showed there was another student loan for \$,716 being paid at \$222 biweekly but Applicant does not recall it but did discuss it during his government background interview in 2014. Applicant is not certain the amount of his student loan debt and claimed there was “misunderstanding” about it. (Tr. 64-77; Exhibits 2, 3, 6, G, H)

Applicant testified he paid the credit counseling service and then spent “my extra money, whatever else I made, to pay off those bills that I knew that needed to be paid on my credit report.” He claimed he had every document to show he paid debts pursuant to the credit counseling service advice. He did not provide such documentation for each debt. He stated he was in the process of moving into his new house and his documents were in various boxes. That was why he did not have all the documentation pertaining to each SOR debt at the hearing. (Tr. 79-81)

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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(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 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “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, and has the ultimate burden of persuasion as to obtaining 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 Executive Order 10865 provides that 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 relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. Four conditions are applicable to the facts found in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (e) consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators.

Applicant accumulated \$19,325 in 19 delinquent debt from 2005 to the present time that remains unpaid. They are listed in the SOR. He also filed Chapter 13 bankruptcies in 2001 and 2012, but had both bankruptcy actions dismissed the succeeding years. Applicant has a history of delinquent debts that lead the U.S. Army in 2003 to issue an LOI and LON about his delinquent debts at that time, including delinquent student loans. The security concern by the Army included another concern not the subject of this SOR. Applicant has a history and pattern of delinquent debt he never seems to be able to organize and resolve in an orderly manner. The evidence raises all of the above security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Two conditions may be applicable:

- (c) the person has received or is receiving counseling 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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant consulted a credit counseling service. It is not stated in the agreement with that organization that it is a non-profit credit counseling agency. Applicant did not disclose what counseling he received. He stated only that he hired the service and thought all his delinquent debts were taken care of by it. However, there are four debts unresolved. It is not clear what their status is except Applicant has no proof of paying them, though he claims to have done so. His financial problems do not appear to be under control. AG ¶ 20 (c) has minimal application.

Applicant resolved one debt in court by having the judgment and garnishment vacated, and paid four other debts. The total amount of debt resolved was \$6070 out of

the \$19,325 listed in the SOR. Applicant has an agreement to pay \$5 monthly to a student loan collector that shows he owes \$32,863.18 in student loans. Applicant's debt load varies depending on the borrowings that are listed by various collectors. AG ¶ 20 (d) applies to the five debts resolved, but not to the balance of the debt carried by Applicant, which is substantial.

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 an applicant's conduct and all the 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.

AG ¶ 2(b) requires each case must be judged on its own merits. 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 has a security concern dating to 2003 from the U.S. Army about his delinquent financial obligations. He continues to carry significant debts through two marriages. He blames his first wife for his earlier financial debts. He continues to borrow student loans for education he stated he does not complete. He has had two automobiles repossessed and has credit card and medical debts. All of this financial delinquency occurred in the past 14 years on a continuous basis. Now he purchases a new home for \$216,000 using his wife's credit. There is no change by Applicant in his financial behavior. The potential for pressure, coercion, exploitation, or duress is great. The likelihood of continuation or recurrence is substantial. His history and pattern of not being able to manage his money will continue.

An important factor is that Applicant was warned by the U.S. Army security clearance adjudicators in 2003 that his financial delinquencies should be addressed and resolved. A continuation of his past conduct in not resolving debts in an orderly manner could result in a revocation of his security clearance. Applicant as a civilian continued to amass debt and allow it to become delinquent. He could not control his spending so his debts were paid properly, or he could not stop spending and allowing his debts to

become delinquent. Whichever the situation, Applicant has a significant debt management problem. He has been on notice for 14 years he needed to be careful.

Overall, the record evidence leaves me with substantial questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from his financial considerations.

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraphs 1.f to 1.u:	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.

PHILIP S. HOWE
Administrative Judge