



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 15-01475
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: Alan V. Edmunds Esq.

12/13/2017

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 failed to present sufficient information to mitigate financial considerations security concerns.

Statement of the Case

On May 14, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to retain a security clearance required for a position with a defense contractor. The Department of Defense (DOD) could not make the affirmative findings required to continue a security clearance. DOD issued to Applicant a Statement of Reasons (SOR), dated September 1, 2015, detailing security concerns for financial considerations under Guideline F. The action was taken under Executive Order (E.O.) 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 September 30, 2015. He admitted the 18 allegations of delinquent debt.¹ At the time, Applicant requested that his case be decided on the written record. (Case File, Item 2, dated September 30, 2015) Applicant was sent a File of Relative Material (FORM) outlining the government's case.

In September 2016, Applicant requested that his case be decided after a hearing. Department Counsel was prepared to proceed on October 17, 2016, and the case was assigned to me on February 5, 2017. DOD issued a notice of hearing on July 25, 2017, for a hearing on August 10, 2017. I convened the hearing as scheduled. The Government's four exhibits (GX 1-4), and Applicant's 27 exhibits (AX A through CC) were admitted into the record without objection. I left the record open for Applicant to submit additional documents. Applicant timely submitted five documents, AX DD to AX HH, which were admitted into the record without objection. (GX 5, e-mail, dated September 18, 2017) I received the transcript of the hearing (Tr.) on August 17, 2017. The record closed on September 18, 2017, upon my receipt of the additional documents.

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 September 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

After a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact. Applicant is 35 years old. He graduated from high school in June 2000, and received his bachelor's degree in May 2005. He married in April 2013, and his wife is expecting their second child. He is a program analyst for a defense contractor. He has been eligible for access to classified information since January 2009. There are no reports of any security violations. (Tr. 15-16, AX N, College Transcript, AX O and AX CC, Bachelor's Degree Certificate, dated May 2005; AX P. Resume).

Applicant's recent performance evaluation shows that he was on-target to meet all performance objectives. (AX Q) He is highly regarded by his senior manager who does not regard him as a security concern. (AX BB, Letter, dated August 3, 2017) A Coast Guard officer that Applicant worked with in 2011 to 2013, wrote that Applicant's

¹ Applicant, at the hearing, amended his response to the SOR to indicate that he disputed the debt at SOR 1.k. (Tr. 17-18)

² I considered Applicant's case under both the September 1, 2006 AGs, and the June 8, 2017 AGs. My decision would be the same under both AGs.

performance was professional with attention to detail. He was loyal and honest. (AX S, Letter of Recommendation, dated July 26, 2017)

Applicant was married on May 11, 2013. Some of his debts were due to the wedding. Applicant was unemployed for six months from October 2013 until May 2014. He lost his job for performance reasons. He admitted that he used credit cards to make purchases he could not afford. (Tr. 29-30) He and his wife sought credit counseling in June 2017, and Applicant completed a course that is part of his financial counseling. (AX K, Letter, dated June 6, 2017; AX M, Certificate, dated July 30, 2017) Applicant and his wife also hired a financial manager to get better discipline in their spending. Applicant testified that he and his wife now have more discipline in their spending and have a budget. (Tr. 30-33) His latest Personal Financial Statement (PFS) shows he has a net monthly salary of \$3,830, his wife has a net monthly salary of \$5,800, for a combined monthly salary of \$9,630. The PFS shows that they have \$9,368 in monthly expense leaving a monthly remainder of \$262. (AX M, dated July 25, 2017) At the hearing, Applicant stated that his present yearly salary is approximately \$89,000, and his wife's present annual salary is \$110,000. (Tr.15-16, 21-22)

The SOR alleges, and credit reports (GX 2, dated August 6, 2015; GX 3, dated January 16, 2015; GX 4, dated August 16, 2016) confirm the following delinquent debts for Applicant: a charged off student loan for \$3,368 (SOR 1.a); four charged off credit card accounts for different stores to the same bank for \$906 (SOR 1.b), \$670 (SOR 1.c), \$521 (SOR 1.d), and \$522 (SOR 1.e); two store credit card accounts in collection for the same collection agency for \$976 (SOR 1.f) and \$1,055 (SOR 1.g); two store credit card accounts for the same bank for \$663 (SOR 1.h) and \$712 (SOR 1.i); an electronics store credit card account in collection for \$851 (SOR 1.j); a telephone service debt charged off for \$100 (SOR 1.k); a department store account charged off for \$1,257 (SOR 1.l); a store credit card account charged off for \$1,072 (SOR 1.m); a department store credit account 150 days past due for \$325, on a balance of \$444 (SOR 1.n); another credit card account charged off for a different department store for \$886 (SOR 1.o); a credit account charged off for \$1,078 (SOR 1.p); a department store account charged off for \$1,855 (SOR 1.q); and an account charged off for \$615 (SOR 1.r). The total amount of the delinquent debt is approximately \$17,500.

Applicant listed a number of delinquent store accounts, credit card accounts, and student loans on his e-QIP. He indicated that he would work with the creditors to pay the accounts prior to December 31, 2014. (GX 2, e-QIP, dated May 14, 2014) In his response to the SOR, Applicant admitted the debts and stated he was refocusing his finances and was in the process of making payment arrangements with the creditors. He noted that the amount of debt was less than 10% of his and his wife's combined incomes. (SOR Response, dated September 29, 2015).

Applicant also acknowledged that he purchased a 2012 used vehicle in February 2016 for \$29,000. He owes in excess of \$24,000 on the vehicle and has a monthly payment of \$508. Nine months later in November 2016, he purchased a 2015 vehicle for \$22,000. He was able to make a down payment of \$2,000 on the 2015 car, leaving a

\$495 monthly payment. Applicant also acknowledged that he has five credit cards issued by the same credit union with a balance of approximately \$26,593. He used the cards for general everyday expenses and house supplies like gas and groceries. His minimum monthly payments on these cards is approximately \$550. These cards are at the credit limit but are not delinquent. Applicant lists \$2,300 in miscellaneous monthly expenses which includes his wife's student loan payments of \$200 monthly, and \$1,600 monthly tithing to their church. Applicant and his wife pay \$1,600 monthly in day care expenses. This amount will rise when his wife gives birth to their second child. Applicant's student loan payments are deferred until he completes his master's degree started in August 2014. He anticipates receiving his degree in May 2019. Applicant also anticipates that the family has \$300 to \$400 a month in normal household expenses. (Tr. 39-45; AX M. PFS, dated , July 25, 2017)

Applicant presented information on payments made on his debts. The creditor for the student loan debt at SOR 1.a cancelled the debt and issued Applicant an Internal Revenue Service (IRS) Form 1099-C. (AX HH, 1099-C, dated June 12, 2015)

Applicant and his wife used the store credit cards at SOR 1.b to 1.e to purchase clothing for both of them. Applicant has a payment plan for the store credit card debt at SOR 1.b opened on April 1, 2013. He made a payment of \$166 on July 28, 2017. His next payment of \$167 was due on August 11, 2017. His account balance is \$721.21. (Tr. 19; AX A)

Applicant has a payment plan for the store credit card debt at SOR 1.c which he opened on April 7, 2013. He made a payment of \$166 on July 28, 2017. His account balance is \$490.62. His next payment of \$167 was due on August 11, 2017. (Tr. 18-19; AX B)

Applicant has a payment plan for the store credit card debt at SOR 1.d which he opened on April 12, 2013. He made a payment of \$166 on July 28, 2017. His account balance is \$344.15, and his next payment of \$108.31 was due on August 11, 2017. (Tr. 19-20; AX C)

Applicant has a payment plan for the store credit card debt at SOR 1.e which he opened on April 13, 2013. He made a payment of \$166 on April 28, 2017. His account balance is \$345.69, and his next payment of \$108.89 was due on August 11, 2017 (Tr. 20-21; AX D)

Applicant has a payment plan for the store credit card debt at SOR 1.f. which he opened on August 12, 2003. He made a payment of \$166 on July 28, 2017. His account balance is \$810.28, and his next payment of \$258.70 was due on August 11, 2017. (Tr. 22, AX E)

Applicant presented information to show that the debt at SOR 1.g is paid in full. (Tr. 22; AX F) The debt at SOR 1.h is for \$663.32. Applicant has a monthly payment plan of \$24.56. He made one payment in July 2017 and his next payment was due in

August 2017. (Tr. 23; AX G) The debt at SOR 1.i is for \$712. Applicant has a monthly payment plan of \$23.75. He made his first payment in July 2017, and his next payment was due in August 2017. (Tr. 23, AX H)

The debt at SOR 1.j has a \$25 monthly payment plan. The first payment was due on August 15, 2017. (Tr. 23-25; AX T) The debt at SOR 1.k was disputed, and has been removed from Applicant's credit report. (Tr. 24; AX V) The debt at SOR 1.l is a department store credit card used by both Applicant and his wife. Applicant has a payment plan for this debt and the first payment under the plan of \$25 was made by check on August 7, 2017. (Tr. 26; AX W) The debt at SOR 1.m to the same department store was paid in full in November 2015. (Tr. 27; AX U) The debt at SOR 1.n to the same department store was used to buy clothing and has a balance of \$444. Applicant has a payment plan for this debt and the first payment of \$25 was made by check on August 7, 2017. (Tr. 27-28; AX X)

Applicant has a monthly payment plan for the department store account at SOR 1.o. He pays \$25 monthly on the \$886 debt. His first payment was made on August 7, 2017. (Tr. 27-28; AX Y) The credit card debt of \$1,078 at SOR 1.p was for wedding expenses. Applicant has a monthly payment plan of \$25. The first payment was made on August 10, 2017. (Tr. 28-29; AX Z) The debt at SOR 1.q is a department store debt that has been cancelled, and Applicant received an IRS form 1099-C. (Tr. 29; AX AA) The debt at SOR 1.r was opened on April 25, 2013. Applicant has a payment plan. He made a payment of \$166 on July 28, 2017, leaving a balance of \$449.65. His next payment of \$142 was due on August 11, 2017. (Tr. 29; AX J)

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 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 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 or sensitive 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.

A person’s relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to meet his financial obligations. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is required to manage his or her finances in such a way as to meet financial obligations.

Credit reports and Applicant’s admissions reveal that he has extensive delinquent credit card debt. The record shows that Applicant used credit cards to purchase items and live beyond his means. Applicant opened four store credit card accounts within 13 days in April 2013. He purchased two cars in 2015 and has car loan

payments of over \$1,000 monthly. He has other monthly expenses in excess of \$3,200, and his credit card balance totals over \$25,000. He did not make payments on his credit debt until just prior to the hearing in August 2017. The evidence is sufficient to raise security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19:

- (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 payment or non-payments, or other negative financial indicators.

The information raises issues about Applicant's self-control, judgment, and willingness and ability to meet his financial obligations. Once the Government has established an adverse financial issue, the Applicant has the responsibility to refute or mitigate the issue.

I considered the following Financial Consideration 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, or good judgment;
- (b) the conditions that resulted in the financial problems were largely beyond the person's control (e.g. loss of employment, a business downturn, unexpected medical emergency, or 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 sources, such as a non-profit credit counselling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual has initiated and is adhering to a good-faith effort to repay the overdue creditors or otherwise resolve debts; and
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount and is in compliance with those arrangements.

The mitigating conditions do not apply. Applicant's debts are numerous, recent, and were not incurred under circumstances making recurrence unlikely. The debts are normal consumer, student loan, and credit card debts. The items Applicant purchased were not necessities but items that he wanted. Applicant could easily use credit cards again to purchase unnecessary items. Applicant had a six-month period of unemployment caused by his own poor performance. Applicant did not provide sufficient information to explain how his unemployment led to the delinquent debts. He provided information concerning financial counseling.

Applicant resolved some of the debts, and recently made payments on other debts. The fact that he received debt cancellations and IRS forms 1099-C does not indicate that he paid the debts. There are indications that Applicant paid two of the debts in full.

Applicant knew when he submitted his e-QIP in May 2014 that he had debts that were of security concern. He indicated then that he would work to resolve the debts. He stated again in September 2015, when he responded to the SOR, that he would work to resolve the delinquent debts. In September 2016, he was reminded of the debts when he received the FORM. However, Applicant did not start to make small token payments on his debts until June 2017, just before the hearing was being scheduled on July 25, 2017. This indicates that Applicant was making payments on the debts in anticipation of gaining favorable evidence for the hearing.

Applicant and his wife are gainfully employed with significant salaries. They share household expenses. But Applicant's payments on his debts are too little too late. Accordingly, he has not established a good-faith effort to pay his debts. There is no clear evidence that his debt problems have been resolved, and his finances are under control. Overall, he has not provided evidence or proof that he acted with reason and responsibility towards his finances. His living beyond his means, and his late and limited efforts to resolve his financial problems are a strong indication that he may not protect and safeguard classified information. In sum, Applicant did not present sufficient information to mitigate financial security concerns.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. An 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(c), the ultimate determination of whether to grant 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 considered Applicant's approximately ten years of service to DOD contractor, and his almost ten years of eligibility for access to classified information without a security incident.

Applicant did not present sufficient information to establish that he acted reasonably and responsibly towards his finances under the circumstances. Applicant did not establish a record of paying his debts and acting in a financially responsible manner. He did not establish that he acted with reasonableness, prudence, honesty, and an adherence to duty and obligation towards his financial obligations. Applicant has not met his burden to establish his good-faith efforts to resolve his remaining debts.

Applicant's lack of reasonable and responsible actions towards his finances is an indication that he will not protect and safeguard classified information. Overall, the record evidence leaves me with questions and doubts as to Applicant's judgment, reliability, trustworthiness, and eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant has not mitigated security concerns arising under the financial considerations guideline. Eligibility for access to classified information is denied.

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
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Subparagraphs 1.a - 1.r	Against Applicant
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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