



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 15-05102
)
Applicant for Security Clearance)

Appearances

For Government: Nichole A. Smith, Esq., Department Counsel
For Applicant: *Pro Se*

05/23/2018

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 and documents to mitigate financial considerations security concerns.

Statement of the Case

On June 8, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for a position with a defense contractor. He was interviewed by a security investigator from the Office of Personnel Management (OPM) on November 27, 2012 (PSI). After reviewing the background investigation, the Department of Defense (DOD) could not make the affirmative findings required to grant a security clearance. DOD issued to Applicant a Statement of Reasons (SOR), dated January 25, 2016, 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 February 24, 2016. He admitted seven (SOR 1.a, 1.b, 1.c, 1.e, 1.f, 1.g, and 1.h) and denied two (SOR 1.d and 1.i) of the allegations of delinquent debt. Department Counsel was prepared to proceed on January 12, 2018, and I was assigned the case of January 17, 2018. DOD issued a notice of hearing on January 30, 2018, for a hearing on February 21, 2018. I convened the hearing as scheduled. The Government's four exhibits (GX 1-4) were admitted into the record without objection. Applicant testified, and introduced three exhibits (AX A-C) that were admitted into the record without objection. I left the record open for Applicant to submit additional documents. Applicant did not submit any additional documents. I received the transcript of the hearing (Tr.) on March 1, 2018.

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 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 were effective on or after June 8, 2017. Accordingly, I have evaluated Applicant's security clearance eligibility under the new AGs.¹

Procedural Issues

Applicant was advised at the hearing that the summary of the PSI (AX 2) was not authenticated and could not be considered over his objection. He was further advised that he could make any corrections, additions, or deletions to the summary to make it clear and accurate, and he could object to the admission of the summary as not authenticated by a Government witness. He was additionally advised that if no objection was raised to the summary, the Administrative Judge could determine that he waived any objection to the admissibility of the summary. Applicant did not raise any objection to consideration of the information in the PSI. I will consider information in the PSI in my decision. (Tr. 13-14)

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact. Applicant is 46 years old. He has never married and has no children. He received his high school diploma in June 1989, a bachelor's degree in business management in July 1994, and a Master's Degree in information technology in May 2016. Applicant was employed as a systems administrator by a private business from June 1999 until February 2009 when he was laid off. He was unemployed until October 2009 when he found employment in the information technology (IT) field for the United States Court system. He was terminated from his position in the court system in July 2010 and was unemployed until October 2010 but he did work for various

¹ 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.

government contractors on different IT contracts until he went to work in business support for a defense-contractor shipyard in February 2012. From October 2009 to February 2012, he experienced small periods of unemployment when the contracts he worked on were completed. He was also terminated from one Government agency because he was not granted a security clearance for that agency.

He earned his Master's degree in May 2016 while working for the shipyard defense contractor. Applicant presented his latest performance reviews that show he consistently provides good service to his client, and that he is professional, responsible, and a team player. (Tr. 10-20; GX 1, e-QIP, dated June 8, 2012; GX 2, PSI, dated November 27, 2012, at 2-4; AX A, Master's Degree transcript, dated May 17, 2016; AX C, Performance Evaluations)

The SOR lists, and credit reports (GX 3, dated December 28, 2015; GX 4, dated February 21, 2018) confirm the following delinquent debts for Applicant: a state income tax debt for \$5,900 (SOR 1.a); judgments for the same homeowner's association for \$9,651 (SOR 1.b), and \$730 (SOR 1.c), and \$730 (SOR 1.i); an account more than 120 days past due for \$11,761 (SOR 1.d); an account charged off for \$10,632 (SOR 1.e); an account placed for collection for \$1,084 (SOR 1.f); an account placed for collection for \$699 (SOR 1.g) and a television service contract placed for collection for \$214 (SOR 1.h). The total amount of the credit card debt is approximately \$41,000. Applicant also admitted to owing other debts, including federal income tax and student loans, not listed in the SOR. (GX 2, PSI, at 5-7)

Applicant stated that his financial problems started in 2009 when he was laid off from a job he had for ten years. He then went from job to job before finding steady employment at his present position. He incurred debt from 2009 until 2012 through unemployment and underemployment, leaving him with little if any income during this time. He was mainly supported by his parents. He does not make as much income in his present job as he did in 2009. In 2009, his yearly pay was \$87,411. When he started working to the shipyard in 2012, his yearly pay was \$68,000. His pay has increased, and his yearly pay is now \$76,725. (Tr. 18-20)

The debt at SOR 1.a is for state income taxes owed for tax year 2008. At the time the taxes were due, he simply did not have sufficient funds to pay the taxes. He made small payments on taxes from 2009 until 2012. In early 2016, he contacted the state tax authorities and made payment arrangements. He did not make the payments. In October 2017, he need vehicle transportation, so he had to reregister his car and obtain car insurance. He took advantage of an amnesty program offered by the state. He paid \$1,000 for taxes owed, registered his vehicle, had the car inspected, and obtained insurance. Supposedly, the state then forgave the remaining amount that was owed to them by Applicant. He has not made any other payments to the state. Applicant did not provide any documentation or receipts to verify his claim of payments and receiving amnesty for the taxes owed. (Tr. 21-30)

The debts at SOR 1.b, 1.c, and 1.i are for homeowner association fees. The debts at SOR 1.c and 1.i are duplicate debts, and they are incorporated into the judgment entered in 2014 as referenced at SOR 1.b. Applicant did not have the funds to pay the homeowner's fee starting in 2009 because of lack of income. The homeowner's association garnished his pay, Applicant made some payments directly to the homeowner's association and the debts have been satisfied. (Tr. 20-31; AX B, Judgment Satisfaction Notice, dated October 24, 2017)

The debt at SOR 1.d is for Applicant's home mortgage. Applicant was unable to make his full mortgage payments from 2009 until 2012 because of underemployment and unemployment. Applicant entered a mortgage modification agreement in 2015 with the new mortgage provider, changing the monthly payment to \$1,057. The new payments are past-due approximately \$4,317, because he prioritized the payment of other debts. Applicant claims that the mortgage service company did not modify his mortgage but they will accept whatever payments he can make, and will add the amount not paid to the end of the mortgage. He claims he made a mortgage payment just before the hearing. He did not present any documents to verify any arrangements with the mortgage company, or any receipts for payments he made. (Tr. 32-36)

The debt at SOR 1.e is for a credit card Applicant opened in 2005. He made payments on the credit card debt until 2008 when he did not have income because of underemployment and unemployment. Applicant told the security investigator at the PSI that he would make arrangements to pay the debt. He claims to have spoken to the creditor but no agreement was reached. He has not made any payments on the debt because he had other debts to pay. (Tr. 36-38; AX 2, PSI at 5)

The debt at SOR 1.f is in collection for a credit card debt. Applicant opened the credit card in 2008, and fell behind in payments in 2009. He has not made any payments on the debt because he has not had the funds. He told the security investigator at the PSI that he plans to establish a payment plan with the creditor or use a debt consolidation plan to pay the debt. Applicant did not present any documents to verify any actions he has taken on the debt. (Tr. 38; AX 2, PSI at 5-6)

The debt at SOR 1.g is for a security system Applicant purchased along with his house in 2006. He was unable to make payments on the debt starting in 2009 when he became unemployed. He has not been able to pay off the debt. He told the security investigator the he would set up a payment plan or use a debt consolidation to pay off the debt. Applicant did not provide any document to verify his plan. (Tr. 38; AX 2, PSI at 6)

The debt at SOR 1.h is for television service. Applicant claims that he paid the debt. He did not provide any documents or receipts to verify his claim that the debt has been paid. (Tr. 38-39)

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 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 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 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 irresponsible, may also be irresponsible, unconcerned, or careless in his 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. An individual who is financially overextended is at risk of having to engage in illegal or otherwise questionable acts to generate funds. (AG ¶ 18).

A person's relationship with his or her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to meet 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.

Adverse information in credit reports can normally meet the substantial evidence standard to establish financial delinquency. Credit reports confirm the delinquent debts listed in the SOR. This information 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; and
- (c) a history of not meeting financial obligations.

Once the Government has established the adverse financial issue, the Applicant has the responsibility to refute or mitigate the issue. Based on the information provided by Applicant, 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; and

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

The only mitigating condition that applies is the mitigating condition at ¶ AG 20(c). Applicant's debts were caused by his underemployment and unemployment which are conditions beyond his control. However, he did not take reasonable and adequate action to resolve his debts when he had sufficient income, so the remaining mitigating conditions do not apply. Applicant's debts are numerous and not resolved, so they are recent. Applicant did not provide information concerning financial counseling or participation in debt consolidation programs. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. Applicant is not required to be debt-free nor must his plan require paying off all debts immediately or simultaneously. All that is required is that Applicant act responsibly given his circumstances. Applicant must establish that he has a reasonable plan to resolve financial problems, and that he has taken significant action to implement that plan. Applicant's plan must show a systematic method of handling debts, and Applicant must establish a meaningful track record of debt payment. 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 did not provide information to establish that he resolved the debts alleged in the SOR except for the debt to the homeowner's association listed at SOR 1.b, 1.c, and 1.i. While this debt has been paid, it was not paid by Applicant's voluntary payments but through a payroll garnishment. Applicant did not present any information to establish that he has a plan indicating how he will pay or resolve the remaining debts. Applicant has been gainfully employed since at least February 2012. While his income is not as significant as his income prior to being laid off in 2012, the income is significant. He has not presented any evidence of a budget and the state of his finances. He seems to have sufficient income to make progress in resolving his delinquent debts.

Applicant did not establish that he acted reasonably under the circumstances. Except for the payment by garnishment of the homeowner's association debt, Applicant presented no evidence of debt payments or resolution of other debts. He did not develop or present plans to pay his remaining delinquent debts. He did not provide documentation to show proof of payments, correspondence to or from the creditors to establish maintenance of contact, copies of debt disputes, evidence of attempts to negotiate payment plans, or other evidence of progress or resolution. There is no clear evidence that his debt problems have been resolved, so his finances are not under control. There is insufficient evidence to establish why Applicant was unable to make greater progress resolving his debts.

Applicant's ability to resolve his financial problems are within his means and control. Since he did not present a plan to resolve his financial problems or make an effort to pay or resolve his delinquent debts, he has not established a good-faith effort to

pay his debts. His lack of reasonable and responsible actions towards his finances is a strong indication that he will not protect and safeguard classified or sensitive information. Applicant did not present sufficient information to mitigate financial security concerns.

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 the 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 did not present sufficient and adequate evidence to establish that he took reasonable and responsible action to resolve his financial obligations. Applicant did not demonstrate appropriate management of his finances and did not show a record of action to resolve financial issues. Overall, the record evidence leaves me with questions and doubts concerning Applicant's judgment, reliability, and trustworthiness. He has not established his suitability for access to classified information. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from his financial situation. 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
Subparagraph 1.a:	Against Applicant

Subparagraphs 1.b -1.c:	For Applicant
Subparagraphs 1.d – 1.h:	Against Applicant
Subparagraph 1.i:	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.

THOMAS M. CREAN
Administrative Judge