



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 15-07726
)
Applicant for Security Clearance)

Appearances

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

11/14/2017

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

Statement of the Case

On July 7, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to retain a security clearance required for a position with a defense contractor. On June 29, 2015, Applicant was interviewed by a security agent from the Office of Personnel Management. (Government Exhibit (GX) 2, Personal Subject Interview, dated June 29, 2015) After reviewing the background information, 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 April 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 May 12, 2016. He admitted 14 of the 15 financial concerns. Department Counsel was prepared to proceed on August 25, 2016, and sent a letter to Applicant explaining the procedures to be followed on August 25, 2016. (Hearing Exhibit I) The case was assigned to me on February 15, 2017, and DOD issued a notice of hearing on July 21, 2017, for a hearing on August 3, 2017. I convened the hearing as scheduled. The Government's four exhibits (GX 1-4), and Applicant's exhibits (AX), were admitted into the record without objection (AX A - D). Applicant testified. I received the transcript of the hearing (Tr.) on August 8, 2017.

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.¹

Findings of Fact

After a thorough review of the record, I make the following findings of fact. Applicant is a 52-year-old 1988 college graduate in computer management systems. He has been married for 23 years and has two children who live with him and his wife. He had another child that pass away. He has been employed as a senior programmer analyst by the DOD contractor for over 20 years. He has been eligible for access to classified information for his whole period of employment with the contractor (T. 20-23, 28-30; GX 1, e-QIP, dated July 7, 2014; GX 2, PSI, dated June 29, 2015)

Applicant's present yearly salary is approximately \$120,000, and he is eligible for and has received some overtime pay in the last few years. Applicant's wife has been employed as a facilities manager for three years, and her present annual salary is approximately \$60,000. The family's gross income is approximately \$190,000 per year. Applicant has deductions to the Chapter 13 trustee, mortgage, and a loan taken directly from his pay. After these deductions, Applicant and his wife have a net monthly income of approximately \$7,800. Their monthly expenses are approximately \$5,200, leaving \$2,600 a month in discretionary funds. His pay has been fairly steady over the years, but he recently received minor increases in pay.

Applicant and his wife split the household bills from their respective incomes. Applicant pays for their house related expenses including the mortgage, and his wife pays for the family living needs such as clothing and food. He does not have or use

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.

credit cards. (Tr. 24-28, 58-61; GX 2, PSI, dated June 29, 2015, at 4; AX B, Earnings Statement, dated July 7, 2017)

The SOR alleges the following financial issues of security concern; a Chapter 13 bankruptcy filed in January 2014, dismissed in May 2014 (SOR 1.a); a Chapter 13 bankruptcy filed in May 2015 that is still pending (SOR 1.b); two debt in collection for \$181 (SOR 1.c) and \$109 (SOR 1.d); a mortgage past due for \$6,649 (SOR 1.e); traffic tickets in collection for the same jurisdiction for \$65 (SOR 1.f), \$200 (SOR 1.g), \$100 (SOR 1.h), \$55 (SOR 1.i), \$55 (SOR 1.j), \$250 (SOR 1.k), \$105 (SOR 1.m), \$105 (SOR 1.n), and \$200 (SOR 1.o); and a traffic ticket for another jurisdiction for \$105 (SOR 1.l). The amount of the delinquent debt is approximately \$10,000

He admits that he is not the best money manager. He attributed the start of his financial problems to his wife's unemployment and his own inability to adequately manage the family money. Applicant was making his mortgage payments directly from his pay through his employer. In 2014, Applicant was not pay the full amount of the required mortgage payment. He was paying other debts and not concentrating on important bills such as the mortgage. The mortgage holder stopped taking the payments Applicant sent because he was not paying the full amount of the mortgage payments each month. When the mortgage holder stopped accepting the mortgage payments Applicant sent them, Applicant did not put aside the amount that he had been paying the mortgage holder knowing that some time he would have to make the mortgage payments. He was hoping the mortgage holder would eventually modify the mortgage. Applicant accrued arrears in his mortgage payments when the mortgage holder would not accept the payments Applicant sent. The mortgage holder started a foreclosures action for Applicant's house. In early 2014, Applicant filed a Chapter 13 bankruptcy to protect his house from foreclosure. The debt at SOR 1.e is for his home mortgage. Applicant now has the mortgage payments taken directly from his pay because of the bankruptcy. Applicant presented sufficient testimony to establish that this mortgage is now current since the payments are taken from his pay. (Tr. 28-32; AX D, Mortgage Statement, dated July 26, 2017)

Many of Applicant's older debts, including of mortgage arrears and tax liens, are included in the bankruptcy petition. Applicant incurred tax liens because he claimed more exemptions than he was entitled. Applicant's wife had also claimed their children as exemptions. Since Applicant's original Chapter 13 bankruptcy was dismissed because he fell behind on his payments to the trustee (SOR 1.a), the bankruptcy was refiled in May 2015. (SOR 1.b) The bankruptcy payment of \$2,406 monthly is taken directly from his pay. This amount includes a payment for the mortgage arrears. Applicant provided documents to show that his pay is debited for the bankruptcy payments and that he is current with the bankruptcy payments to the trustee. (Tr. 37-40, 43-44, 63-65; AX A, Trustee periodic Report to Debtor, dated May 22, 2017; AX B, Earnings Statement, dated July 7, 2017)

Applicant admits the two debts at SOR 1.c and 1.d. Applicant claims the debt at SOR 1.c is for telephone service for \$181 for both he and his children. The debt at SOR

1.d is a medical bill for \$109. He always had health insurance which should have paid the medical bill. The debts are in collection so he did not include the debts in his bankruptcy petition. Applicant stated that he would work with the collection agencies to discount the debts and pay them. He has not contacted the creditors and has not established payment plans. Applicant provided no documents to establish that these debts are paid or resolved. (Tr. 48-51, 64-66)

The debt at SOR 1.f to 1.o are for traffic tickets issued between 2012 to 2014. All but one of the debts, SOR 1.i, were issued by the same jurisdiction and involved the same vehicle. Applicant believes that the tickets are for speeding, and he is not sure he was driving when the tickets were issued. He has not inquired about or addressed the tickets with the issuing agencies. The vehicle that is associated with the tickets is no longer operational. Applicant knows that to reregister the vehicle, he will have to pay and clear the tickets. He plans to pay the fine before he attempts to register the vehicle. He has every intention to pay the tickets, but has not done so yet. These debts have not been resolved. (Tr. 52-54, 67-71)

At the hearing, Applicant admitted that he has debts that he has not looked at, thought about, contacted creditors, or arranged to pay. He acknowledges that this shows he may not be reasonable or responsible in managing his debts. He stated he has learned his lesson and he will take care of the debts. However, Applicant has not presented any information that these debts have been paid or resolved. (Tr. 70-73)

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 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.

A credit report (GX 4, dated September 27, 201) and Applicant admission (GX 2, PSI, dated June 29, 2015) reveals that Applicant filed a bankruptcy petition, has a delinquent mortgage, consumer bills, and traffic tickets. The evidence is sufficient to raise the following 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.

The available evidence shows that Applicant has delinquent debts that he has not resolved. The evidence shows both an inability and an unwillingness to resolve the delinquent debts, raising issues about Applicant's 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; and
- (d) the individual has initiated and is adhering to a good-faith effort to repay the overdue creditors or otherwise resolve debts.

Applicant's debts are numerous, recent, and were not incurred under circumstances making recurrence unlikely. The debts are normal consumer, mortgage, and traffic ticket debts. However, Applicant timely filed a bankruptcy petition to keep his house from foreclosure. Bankruptcy is a legal and permissible means of resolving the debts. Applicant presented sufficient credible information that he is current with his bankruptcy payments to the trustees. The bankruptcy is pending, however, many of his SOR debts are not included in the bankruptcy. He presented sufficient information to establish that he is current with both his present mortgage payment and his mortgage arrears. Mitigating condition AG ¶ 20(d) applies to SOR 1.a, 1.b, and 1.e.

The mitigating conditions at AG ¶ 20(a) and 20(b) do not apply to the remaining debt listed in the SOR. Applicant attributes most of his financial issues to his inability to reasonably and responsibly manage his finances. He also cites to his wife's period of

unemployment, but he has not shown how her unemployment impacted their ability to pay their debts. The available evidence shows that Applicant has been gainfully employed by the same employer for over 20 years. For at least the last three years, Applicant and his wife have had significant income with sizable monthly discretionary funds for paying debts. Other than the bankruptcy and mortgage payments, Applicant has not shown any attempt to pay his remaining SOR debts. Applicant's lack of action resulted in his debts being numerous, ongoing, recent, and not incurred under circumstances making recurrence unlikely. Applicant presented no evidence that he received financial counseling, thus AG ¶ 20(c) does not apply to these SOR debts.

Mitigating condition at AG ¶ 20(d) also does not apply to these SOR debts. 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 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 acknowledges the consumer debts and traffic tickets. Applicant did not provide enough details about what he did to address these debts. He did not provide sufficient 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 insufficient evidence to establish why Applicant was unable to make greater progress resolving his debts. The debts are not large and he has a sizable monthly discretionary income to use to pay the debts. There is insufficient assurance that his financial problems are being resolved, are under control, and will not recur in the future. He has not shown a good-faith effort to resolve these 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. Under all these circumstances, Applicant failed to mitigate financial security concerns.

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(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 eligibility for access to classified information must be an overall common-sense 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 provide sufficient credible documentary information 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.

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.b:	For Applicant
Subparagraphs 1.c – 1.d;	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f – 1.o	Against 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