



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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ISCR Case No. 17-01823

Applicant for Security Clearance

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

03/29/2018

Decision

MASON, Paul J., Administrative Judge:

Applicant's financial problems began after he divorced his first wife in July 2008. The subsequent spousal and child support caused several other bills to become delinquent. He was unable to pay his federal and state taxes in 2009. By June 2017, he had incurred more than \$40,000 in delinquent debt to nine creditors. Since March 2010, Applicant has paid his child and spousal support obligations through garnishment. Applicant's unsupported claims of paying the other listed debts or promises to pay the other debts do not mitigate the security concerns generated by the guideline for financial considerations. Eligibility for security clearance access is denied.

Statement of the Case

On March 29, 2016, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to retain a security clearance required for a position with a defense contractor. He provided an interview (PSI, Item 4) to an investigator from the Office of Personnel Management (OPM) on September 21, 2016. He provided two additional interviews to the investigator on September 26 and October 4, 2016. The

Department of Defense (DOD) could not make the affirmative findings to continue Applicant's security clearance. DOD issued a Statement of Reasons (SOR) to Applicant detailing security reasons under the financial considerations guideline (Guideline F). On June 7, 2017, DOD issued to Applicant a Statement of Reasons (SOR) detailing security concerns raised by financial considerations (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.

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

Applicant provided his notarized answer to the SOR on August 14, 2017. He elected to have his case decided on a written record instead of a hearing. The Government sent a copy of the File of Relevant Material (FORM), the government's evidence in support of the allegation in the SOR, to Applicant' on September 8, 2017. Applicant received the FORM on September 14, 2017. The Government advised Applicant that he could either file objections, furnish explanations, submit additional material, or take advantage of all three options within 30 days of receiving the FORM. Applicant's response was due on October 14, 2017. The Defense Office of Hearings and Appeals (DOHA) received no response. DOHA assigned the case file to me on January 1, 2018.

Rulings on Procedure

In a footnote on the first page of the FORM, Department Counsel advised Applicant that the September 2016 PSI would be excluded from evidence if he objected to the exhibit. Alternatively, Department counsel advised him that he could correct, update, or modify the exhibit to improve its clarity or accuracy. Applicant did not object, and the exhibit is admitted into evidence. See, E31.20. of DOD Directive 5220.6, page 52.

¹ My decision in this case would be the same under the 2006 or 2017 guidelines.

Findings of Fact

The SOR lists nine delinquent accounts totaling \$40,502. Applicant's past-due spousal and child support account (\$24,600) represents more than half of the delinquent debt amount. He admitted all the delinquencies and explained that losing his clearance would mean more financial problems. He has possessed a security clearance for 30 years. He is a loyal citizen.

Applicant is 58 years old. He married his second wife in April 2012. He has a 24-year-old stepdaughter from this marriage. He has a daughter 18 years old and a son 15 years old from his first marriage that ended in July 2008. Applicant served in the U.S. Navy from 1981 to his honorable discharge in December 2005. He has been a site lead for an aircraft maintenance business since August 2014. His professional career has been in aircraft maintenance. He was unemployed from September to December 2011, but supported himself through retirement pay and unemployment benefits. He seeks to retain his security clearance. (Item 3 at 11-41; Item 4)

Applicant explained that his divorce from his first wife in July 2008 caused his financial problems. (SOR 1.a) The decree required him to pay a large sum of money for spousal support that he could not pay. He paid the child support in a timely manner for a period, but became delinquent on the spousal support. In March 2010, the support payments increased under a payment plan between the state support agency and Applicant that garnished his paychecks. Under the payment plan, the support payments were to be resolved by September 2018. Applicant provided no additional documentation to show the status of the state agency sponsored support plan. The credit reports show that the support arrearage decreased by approximately \$2,400 between 2016 and 2017. (Items 5, 6)

Applicant explained that SOR 1.b is a deficiency balance on a car that is unresolved. He purchased the car in 2010. The car accumulated many mechanical problems that the dealer would not fix. The dealer resold the car after Applicant voluntarily surrendered the car to them. After the dealer resold the car, Applicant determined that he owed about a \$6,000 deficiency balance. He claimed that he was disputing the deficiency balance for a car that had mechanical problems the dealer would not fix. Applicant provided no documentation of the person or entity on the other side of the dispute. The account became delinquent in January 2012. The debt is unpaid. (Items 4, 5)

Applicant could not recall the debt identified at SOR 1.c. Based on the name of the business that includes the words "speedy cash," I find that the creditor is a payday loan operation that executes loans at high rates of interest. The debt became delinquent in December 2013. The debt is unpaid. (Items 4, 5)

The credit card account in (SOR 1.d) became delinquent in January 2017. Though Applicant claimed he was making payments on the account, he provided no evidence to support his claim. (Item 6; answer to SOR) The debt is unpaid.

From June 2010 to July 2012, Applicant attended part-time online college courses at two satellite campuses. The education account became delinquent in January 2012. (SOR 1.e) Applicant indicated that he paid the balance in September 2016, but he provided no supporting evidence to bolster his claim. (Items 4, 5) The account is unpaid.

The debts identified at SOR 1.f (\$94) and 1.h (\$180) are medical accounts that are unpaid. The SOR 1.h account became delinquent in January 2010 while the SOR 1.f account became delinquent in January 2014. (Items 5, 6) The accounts are unpaid.

The account identified at SOR 1.g is a collection account that became delinquent in September 2013. (Item 5) The account is unpaid.

Applicant did not file his 2009 federal tax return nor pay his federal taxes for the year (SOR 1.i) because he was having financial problems related to the July 2008 divorce. Though he claimed in his March 2016 e-QIP that the IRS was garnishing his wages to satisfy the back taxes, he admitted in his September 2016 PSI that the earlier garnishment claim did not occur. His explanation was that during the divorce proceedings, he and his first wife agreed that he would deduct one child on his tax return and his wife would deduct the other child on her return. Instead, his former wife deducted both children on her return, and Applicant lost the deduction resulting in the federal tax debt. Applicant indicated that he intended to contact a tax attorney and establish a payment plan. There is no documentation establishing that he contacted an attorney or set up a plan. (Item 4) The federal back taxes for 2009 are unpaid.

Applicant indicated that although he was focused on paying his delinquent debts, it would be awhile before he would be able to satisfy the debts with his limited income. There is no indication in the record that Applicant has ever participated in financial counseling. (Item 4)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines, which are flexible rules of law, are applied together with common sense and the general factors of 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(d) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

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.

Analysis

Financial Considerations

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.

AG ¶ 19. Conditions that could raise a security concern and may be disqualifying include:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant incurred delinquent debts between January 2010 and January 2017. When the SOR was issued in June 2017, the amount had increased to \$40,502. He still owes the same amount of delinquent debt minus the unknown spousal and child support that the state support agency garnished from Applicant's wages after the 2017 credit report was published. Since his September 2016 PSI, Applicant has provided no documented proof of steps taken to resolve his 2009 federal taxes. AG ¶¶ 19(a), 19(c), 19(f) apply.

AG ¶ 20. Conditions that could mitigate security concerns include:

(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 problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem 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;

(e) the individual has a reasonable basis to dispute the legitimacy of the of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue;

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

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant accumulated nine debts between 2010 and 2017. Other than the spousal and child support payments through garnishments, Applicant still owes the other delinquent debts. Because of the overall lack of voluntary action to address the debts, no mitigation is available under AG ¶ 20(a). It is likely that his financial problems will persist in the future. The unresolved debts raise continuing doubts about his judgment and trustworthiness.

Applicant's divorce in 2008 was the primary reason for his financial problems. He was able to pay the decreed child support in a timely manner, but had his wages garnished because he could not keep his spousal support up-to-date. Ultimately, the financial consequences of his divorce caused him to fall behind on his other debts. Allowing the state support agency to garnish his wages was the best solution for him to pay the spousal and child support. His three-month period of unemployment in 2011 is another circumstance recognized under AG ¶ 20(b). However, during the unemployment, Applicant supported himself with unemployment and retirement pay. In

addition, his e-QIP shows that he was steadily employed before and after the period of unemployment in 2011. Considering the divorce and enormous spousal support and unemployment, Applicant receives some mitigation under the first prong of AG ¶ 20(b) and some mitigation for agreeing to a long-term solution to resolve his child and spousal support.

Under AG ¶ 20(d), an applicant must show that he is making a good-faith effort to resolve his debts. Except for his child support garnishment plan, Applicant has presented no plan for overall debt reduction for his other debts. He has furnished no documentation of contacting the other creditors about his financial predicament. Though he claimed in his answer to the SOR that he was making payments to the SOR 1.d creditor, he supplied no cancelled checks, bank statements, or payment receipts in support of his claim. AG ¶ 20(d) applies only to Applicant's child support payments, but does not apply to the other delinquent accounts.

AG ¶ 20(e) does not apply because Applicant provided no evidence justifying his dispute over the deficiency balance he owes for a car (SOR 1.b) that the dealer repossessed and resold. Specifically, he provided no evidence of the car's mechanical problems or the dealer's refusal to service the car. Applicant did not produce the documented proof necessary to establish the mitigating condition. I reach the same conclusion under AG ¶ 20(g) as Applicant furnished no evidence of steps taken to resolve his federal taxes for 2009.

Whole-Person Concept

I have examined the evidence under the specific guidelines in the context of the nine general factors of the whole-person concept 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.

Applicant is 58 years and married with two teenagers and an adult-aged stepdaughter. He received an honorable discharge in December 2005, following a 24-year-career in the U.S. Navy. He has held a security clearance since at least 2006.

Having considered the entire record from an overall commonsense point of view, Applicant's ongoing financial problems are the main reason for denying his security clearance application. I have found in favor of Applicant's agreement to have his support obligations handled by garnishment with the state support agency. However, Applicant has provided no independent evidence to show he is paying on any of the other listed debts, even the smaller medical debts. Having weighed and balanced all the evidence under the specific conditions in light of the record as a whole, Applicant has not mitigated the lingering security concerns arising from the financial considerations guideline.

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:	For Applicant
Subparagraph 1.b-1.i:	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.

Paul J. Mason
Administrative Judge