



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 17-01833
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: *Pro se*

10/19/2018

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense's (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. Applicant had two unpaid judgments, eight collection accounts, and five charged-off accounts, which totaled in excess of \$28,000 in delinquent financial obligations. He has mitigated the financial considerations security concerns. Applicant's eligibility for access to classified information is granted.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on June 6, 2017, the DoD issued a Statement of Reasons (SOR) detailing financial considerations security

¹ Executive Order 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 (Sept. 1, 2006 AG) effective within the DoD on September 1, 2006.

concerns. On July 19, 2017, Applicant answered the SOR and requested a hearing before an administrative judge. On February 7, 2018, DOHA issued a Notice of Hearing scheduling a hearing that was conducted on February 27, 2018.

At the hearing, Department Counsel offered Government Exhibits (Ex.) 1 through 4. The exhibits were admitted into evidence without objection. Applicant offered Ex. A through Ex. T, which were also admitted without objection. In May 2018, he submitted three additional documents, which were admitted as Ex. U through Ex. W. Applicant testified at the hearing as did seven witnesses on his behalf. DOHA received the hearing transcript (Tr.) on March 7, 2018.

While this case was pending a decision, the Director of National Intelligence issued Security Executive Agent Directive 4, establishing the *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 Sept. 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

Applicant admitted, with explanation, the allegations in SOR paragraphs 1.a through 1.o. He admitted owing five charged-off accounts, eight collection accounts, and two judgments, which totaled \$28,608. After a thorough review of the pleadings and exhibits, I make the following findings of fact:

Applicant is a 36-year-old-team lead instructor working for a defense contractor since March 2016. (Tr. 55) He worked for other federal contractors since 2012. (Tr. 95) He seeks to retain a security clearance. From February 2006 through February 2012, he served in the U.S. Navy, and was promoted to the grade of E-6. (Tr. 57) The U.S. Department of Veterans Affairs (VA) rates Applicant’s disability at 80 per cent due to post traumatic stress disorder (PTSD). (Tr. 60) His disability pay is approximately \$1,700 monthly.

In August 2015, Applicant was legally separated from his wife. (Ex. 2, Tr. 61) A final divorce cannot be granted until his wife completes a state required co-parenting class. He has offered to pay for his wife’s enrollment fee, but she has yet to take the course. (Tr. 61) He pays \$550 a month for child support for his nine-year-old son. (Tr. 62)

From an early age, Applicant always wanted to be in the military, and at age 17, his parents signed a waiver allowing him to join the Navy. (Tr. 58) In 2003, Applicant served on a ship in the North Arabian Gulf. (Tr. 59) In 2004, he volunteered for a squadron

² Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case. The new AGs are available at http://ogc.osd.mil/doha/5220-6_R20170608.pdf.

that boarded vessels in the North Arabian Gulf and the southern parts of Iraq looking for contraband. (Tr. 59) In 2007 and 2008, he was deployed with ground forces in Iraq calling in air strikes south of Baghdad. (Tr. 59) Applicant was unemployed from February to August 2012, after he left the military. (Tr. 63) He was also unemployed from July to September 2016. In 2016, after separating from his wife, he went to Afghanistan for a brief time, as a contractor, to earn income to pay off his delinquent accounts. (Tr. 59) After three or four months in Afghanistan, he was let go due to a lack of computer proficiency. (Tr. 64)

Applicant's financial problems started a year before he left the service and after his wife had left active duty. For the last three years he was in the service, he was on instructor duty, which required periods of him being in the field. (Tr. 65) While gone, his wife was supposed to pay the bills. When his wife left active duty, she said she would get a job or go back to school. She refused to do either. (Tr. 65) In 2008, when he returned from Iraq, he noticed his wife had started drinking in the mornings. (Tr. 65) When he left the service, his wife's drinking increased.

Applicant incurred a \$5,541 charged-off account (SOR 1.a) resulting from a vehicle accident in which the vehicle was a total loss. The charged-off amount resulted from a gap in his insurance coverage. (Tr. 66) The creditor has since stated there was a mistake as to the gap insurance, and the debt would be removed from his credit report. (Ex. A, Tr. 66) This charged-off account was never a valid debt. In July 2017, he paid the \$83 medical debt (SOR 1.b). (Ex. B, Tr. 67) When he sent a check to the collection agency attempting to collect a \$70 Wi-Fi account (SOR 1.c), the check was returned to him with instructions to make payment to the original creditor. (Ex. C, Tr. 68) He then sent a check paying the full amount to the original creditor. (Ex. D) He does not remember receiving a bill from the original creditor for this service before it was turned over to the collection agency. (Tr. 69)

Applicant had three medical collection accounts: SOR 1.d (\$34), SOR 1.e (\$143), and SOR 1.f (\$722), which were the result of treatment when Applicant fractured his ankle. (Tr. 70) He had medical insurance at the time of the injury, which should have paid for his treatment. (Tr. 71) He sent money orders to cover the \$143 and \$722 debts. (Exs. E, F, and G). The collection agency was unable to process the \$143 money order because the collection agency had closed the account. (Ex. E) As of July 19, 2017, the collection agency collecting the \$722 debt indicated their records indicated the account was paid. (Ex. G and Ex. H)

Since early 2016, Applicant has been in contact with the credit union attempting to resolve the \$10,516 (SOR 1.g) charged-off debt. (Tr. 71) The debt resulted from a vehicle accident when another driver ran a red light and struck Applicant's vehicle. This was a separate accident from the one listed above. He thought he had gap insurance to pay for the damage. (Tr. 72) In November 2017, the credit union offered to settle the debt, then \$7,437, for \$2,231. (Ex. I) He agreed to make six monthly payments of \$371 each. (Ex. I and Ex. R) At the time of the hearing, he had made three of the six required payments. (Tr. 73) In March 2018, he made an additional \$371 payment. (Ex. V)

The \$369 debt (SOR 1.h) resulted from an old checking account. (Tr. 74) In July 2017, Applicant paid the debt. (Ex. J) The \$7,796 charged-off credit union account (SOR 1. I) related to his wife's vehicle. (Tr. 75) When purchased, his wife agreed to make the monthly payments on the car, and he did not learn she had failed to make the required payments until it was too late. (Ex. 2) It was repossessed during a period of time when he was unemployed. Since 2016, he has attempted to reach a settlement with the credit union. He incurred a \$1,270 telephone collection account (SOR 1.j). In July 2017, the creditor offered to settle the matter for \$423. (Ex. L, Tr. 77) He paid the amount the creditor sought, and the creditor removed the debt from his credit report. (Ex. K, Tr. 76)

A credit union charged off a \$984 debt (SOR 1.k). The creditor offered to settle the matter for \$606, and Applicant accepted and paid the debt in July 2017. (Ex. M, Tr. 78) A homeowners' association (HOA) obtained two judgments against him in the amounts of \$331 (SOR 1.l) and \$320 (SOR 1.m) for HOA dues. (Ex. 2) When the delinquent obligations were incurred, he was unemployed, and his VA disability payments had not commenced. (Tr. 80) His VA disability payments did not start until three years after he left the military. (Tr. 82, 91) He initially believed the two judgments were the same obligation and not two separate obligations. In July 2017, he paid the \$320 judgment, and in January 2018, he paid the \$331 judgement. (Ex. R, Ex. S, Ex. U, Tr. 79) In January 2018, he accepted and paid the settlement offer by the collection agency relating to the \$417 (SOR 1.n) medical debt. (Ex. N, Tr. 79) In July 2017, he also paid the \$12 medical debt (SOR 1.o). (Ex. O, Tr. 79)

Applicant knew he had some debts when he moved to a new state, but did not know the amounts owed until 2016, when he filled out his security questionnaire. (Tr. 81-82) On his April 2016 Electronic Questionnaires for Investigations Processing (e-QIP), he listed he had more than \$18,000 in delinquent obligations. (Ex. 1)

Applicant knew that once he obtained the legal separation, his finances would improve. (Tr. 82) He has no continuing joint obligations with his wife. (Tr. 83) He is current on his rent, which he shares with a roommate, on his car payments on his 2005 and 2013 vehicles, on his utilities, and his child support payments. (Tr. 84) His monthly take-home pay between his job and his VA disability payments is approximately \$5,000. (Tr. 86) On April 24, 2016, he received a certificate of counseling for credit counseling from a group that complied with the provisions of 11 U.S.C §§ 109(h) and 111. (SOR Answer, Tr. 87) He has approximately \$25,000 in his 401(k) retirement plan. (Tr. 88) Since his separation, he has been able to pay off his debts, put money in savings, and live comfortably. (Tr. 89) His current credit is "fair" with a credit score of 645. (Ex. W) In July 2017, his credit score was 594 indicating it "Needs Work." (SOR Answer)

Character Statements

Applicant has been in constant contact with his chain of command, his supervisors, and the facility security officer (FSO) about his delinquent obligations. (Tr. 12) The FSO, has known Applicant for almost three years, states before Applicant's delinquent debt was an issue, Applicant came to him and told him that he was going through a divorce

and would likely be experiencing financial problems. (Tr. 19) The FSO says Applicant is a "topnotch trusted employee." (Tr. 20) The FSO had 28 ½ years of military service in the Army and Marine Corps, retiring as a sergeant first class, E-7. (Tr. 22) The project lead, who has known Applicant for four years and been his direct supervisor for two years, states Applicant is professional, polite, and respectful instructor of students. He has never received a negative comment about Applicant. (Tr. 23) The project lead served 21 years in the Air Force, retiring as a master sergeant (E-7). (Tr. 26)

When deployed to Iraq in 2004, Applicant worked with an intelligence officer, who was also the FSO. He is now a retired chief, (E-7) who has known Applicant for 15 years. (Tr. 28) He and Applicant worked on a boarding team in the Arabian Gulf boarding ships looking for contraband. (Tr. 29) He has a great deal of trust in Applicant. A doctor and former roommate states that trust was extremely important to him in selecting a roommate. (Tr. 36) They were roommates for 3 ½ years. The doctor trusted Applicant to watch his son. If Applicant said something, he would do it, and he stated that Applicant was a person who could always be counted on. (Tr. 36)

In 2007, Applicant and another individual worked as contractors south of Baghdad. (Tr. 39) The individual is a flight lead and observer/instructor, who works with Applicant. He believes Applicant is a person of integrity and he has no questions or qualms about Applicant having a security clearance. (Tr. 41) The individual had been a member of the Air Force assigned to the Army working close air support. (Tr. 43) A co-worker, who was on active duty for ten years with two deployments to Iraq and three deployments to Afghanistan and is still a member of the Guard in air traffic control, trusts Applicant. (Tr. 47)

A woman whose son is good friends with Applicant's son and who has known Applicant 2 ½ years, states she was initially more acquainted with Applicant's wife. (Tr. 51) She says Applicant's wife drank heavily, had excessive spending habits, and had problems remembering things due to impaired judgment. (Tr. 51) Alcohol had impaired his wife's ability to remember things such as picking up their son from school. (Tr. 51) She believes Applicant to be an excellent father. (Tr. 51)

Applicant worked extra hours, extra shifts, and extra training operations to generate more income to cover basic day-to-day expenses such as rent because his wife would "spend money with reckless abandon." (Tr. 52) The woman said Applicant's wife would spend excessively, refusing to keep ATM withdrawal receipts, or receipts for items she purchased. (Tr. 52, 53) His wife could not recall how she spent the money or which bills had been paid. (Tr. 52) When Applicant was away from home, training soldiers in the field, it was his wife's job to pay the rent, pay the utility bills, make her monthly car payment, and pick up their son from school. (Tr. 53) This she failed to do resulting in the school calling the woman. (Tr. 53) The woman stated Applicant's wife's main focus was making sure she had liquor.

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(a), the adjudication process is an examination of a sufficient period and a careful weight of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is known as the whole-person concept.

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 to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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 of 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

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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 overextended is at greater risk of having to engage in illegal acts or other questionable acts to generate funds.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding 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 repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. Applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

AG ¶ 19 includes two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts;" and "(c) a history of not meeting financial obligations."

Security concerns are established under AG ¶¶ 19(a) and 19(c) because Applicant had a two unpaid judgments, eight collection accounts, and five charged-off delinquent accounts, which totaled in excess of \$28,000. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15)

Four of the seven Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

(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 person has received or is receiving 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, and

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

In 2012, Applicant left the service. However, it was three years before the VA determined he was 80 percent disabled, and he began receiving VA disability payments.. He was unemployed in 2012 and in 2016. He is legally separated from his wife. Prior to the separation, his wife was supposed to pay accounts while Applicant was away from home as part of his job. Not only did she not pay the bills as they came due, but her memory was impaired to the point she did not remember what bills had been paid, what items had been purchased, or how much had been withdrawn from their bank accounts.

Applicant has paid the majority of the SOR debt, is making payment on one debt, and is attempting to reach a settlement agreement on the remaining debt, *i.e.*, the debt from his wife's repossessed car. He provided evidence of having paid four of the six payments necessary to honor the \$2,231 settlement agreement for the debt listed in SOR 1.g. Having paid his other delinquent obligations and made four of six payments on the debt, I believe he will make the last two payments. AG ¶ 20(d) applies to the debts paid or settled and paid.

Applicant's financial problems were contributed to by his periods of unemployment and his wife's spending habits. He is now employed and legally separated. Since his separation, he has been able to pay off his debts, put money in savings, and live comfortably. He is current on his rent, his car payments, his utilities, and his child support payments. His monthly take-home pay between his job and his VA disability payments is approximately \$5,000. He has approximately \$25,000 in his 401(k) retirement plan and his credit rating is "fair" with a credit score of 645. Now that he is legally separated, his wife is unlikely to effect his finances in the future. Applicant has acted responsibly and his conduct does not cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶ 20(a) applies.

Applicant's periods of unemployment and legal separation are conditions largely beyond his control. He has acted responsibly under the circumstances by contacting his creditors to arrange payment on his delinquent obligations. AG ¶ 20(b) applies. He took a financial counseling course and there are clear indications his financial problems are being resolved and are under control. AG ¶ 20(c) applies because the financial counseling was through a legitimate and credible source such as a non-profit credit counseling service.

An Applicant is not required to be debt-free or to develop a plan for paying off all debts immediately or simultaneously, but he is required to act responsibly given his

circumstances and develop a reasonable plan to address his delinquent obligations, accompanied by evidence of a serious intent to effectuate the plan. This he has done.

Whole-Person Analysis

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. An administrative judge must evaluate an Applicant's security eligibility by considering the totality of the Applicant's conduct and all the 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 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. I have incorporated my comments under Guideline F in the whole-person analysis. Applicant listed a number of delinquent accounts on his e-QIP. He has been in constant contact with his chain of command, his supervisors, and the facility security officer about his delinquent obligations. He went to his FSO to inform him that he was going through a divorce and would likely be experiencing financial problems.

From an early age, Applicant always wanted to be in the military, and at age 17, his parents signed a waiver allowing him to join the military. I have considered his military service including his 2003-shipboard service on a ship in the North Arabian Gulf. In 2004, he volunteered for a squadron that boarded vessels in the North Arabian Gulf and the southern parts of Iraq looking for contraband. In 2007 and 2008, he was deployed with ground forces in Iraq calling in air strikes south of Baghdad. (Tr. 59) His service in Iraq, a qualified hazardous duty area, entitled him to receive hostile fire pay or imminent danger pay. In 2016, after separating from his wife, he went to Afghanistan as a contractor in direct support of military operations in a combat zone or qualified hazardous duty area, to earn income to pay off his delinquent accounts. His service to the country resulted in an 80% VA disability rating. I have great respect for anyone going in harm's way in support of the United States.

A number of FSOs, supervisors, co-workers, and friends came forth at the personal appearance to express the high esteem in which they held Applicant. They state Applicant has continuously demonstrated reliability and trustworthiness. Supervisors have many tasks, but evaluating those individuals assigned to them is one of those important duties. Their character evaluations and assessments are often more accurate because they have observed Applicants over longer periods of time and under a variety of events and stresses. His supervisors laud Applicant's performance, trustworthiness, reliability, and dedication. Their positive assessment support approval of Applicant's security clearance.

The issue is not simply whether all Applicant's debts are paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. See AG ¶¶ 2(a) and 2(b). After weighing the disqualifying and mitigating conditions and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the financial considerations security concerns. Accordingly, I conclude that it is clearly consistent with the interests of national security to grant or continue his eligibility for access to classified information.

Formal Findings

Financial Considerations Security Concern: FOR APPLICANT

Subparagraphs 1.a through 1.o: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. National security eligibility is granted.

CLAUDE R. HEINY II
Administrative Judge