



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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ISCR Case No. 17-03372

Applicant for Security Clearance

Appearances

For Government: Ross Hyams, Esq., Department Counsel

For Applicant: *Pro se*

07/27/2018

Decision

MASON, Paul J., Administrative Judge:

The Statement of Reasons (SOR) lists six delinquent debts that total more than \$39,000. Despite Applicant's listed resources available to address the delinquent debts and his knowledge of the listed debts, he did not begin to resolve them until three months after he received the SOR. His evidence in mitigation is insufficient to offset the adverse security concerns raised by the guideline for financial considerations. Eligibility for security clearance access is denied.

Statement of the Case

On October 9, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) (Item 4) as a part of his application for a security clearance required for a position with a defense contractor. He was interviewed (Item 5. PSI) an investigator from the Office of Personnel Management (OPM) on May 31, 2017. Unable to make a preliminary affirmative finding that Applicant was eligible for security clearance access, on October 13, 2017, DOD issued an SOR to Applicant detailing security reasons under the financial considerations guideline (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 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 AGs became applicable on June 8, 2017, to all individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position.

Applicant provided his notarized answer to the SOR on November 1, 2017. He elected to have his case decided on a written record instead of a hearing. The Government sent Applicant a copy of the File of Relevant Material (FORM), the Government's evidence in support of the allegations in the SOR, on January 4, 2018. Applicant received the FORM on January 17, 2018. The Government advised Applicant that he could file a response to the FORM submitting objections, furnishing explanations, submitting additional material, or taking advantage of all three options within 30 days of receiving the FORM. The Government forwarded Applicant's six-page FORM response to me on February 16, 2018, without objection; his response was admitted into evidence. DOHA assigned the case file to me on April 13, 2018.

Rulings on Procedure

In a footnote on the second page of the FORM, Department Counsel advised Applicant that the May 2017 PSI (Item 5) 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 the exhibit's clarity or accuracy. Applicant did not object, and the PSI is admitted into evidence. See, E3.1.20. of DOD Directive 5220.6, page 52.

Findings of Fact

The SOR alleges that Applicant has six delinquent debts totaling \$39,256. The debts became delinquent between August 2012 and February 2014. He admitted the debts in SOR 1.a and 1.e and explained they were caused by a failed heating and air conditioning business he owned and operated. He denied the SOR 1.b debt and explained the debt surfaced when his identity was stolen. He denied SOR 1.c because someone swiped his credit card from his mail box and placed unauthorized charges on the card. The SOR 1.d judgment is not his responsibility and his debt repair firm is disputing the debt to remove it from his credit report. The SOR 1.f debt represents unlawful charges that Applicant claimed he received as a settlement award in a class action lawsuit that the creditor lost. Applicant then listed over \$500,000 in financial assets in his answer to show that he has no financial problems and that his is not financially strapped.

Applicant is 63 years old and has been married to his second wife since April 2001. He has a 43-year-old son, and three adult-aged stepchildren, 38, 34, and 26 years old. In September 1982, he received a certificate of training in heating and air-conditioning. Since October 2015, Applicant has been employed as a heating and air-conditioning mechanic; he also works as a part-time instructor in the same vocation. He has been continuously employed since January 2001. (Item 4 at 10-15; Item 5 at 6)

As noted earlier in the factual findings, Applicant considered a business bankruptcy failure in approximately 2011 and identity theft as the two reasons for his financial problems. He owned and operated a heat and air conditioning business from 2001 to 2011. In his May 2015 e-QIP and his May 2017 PSI, he stated that the company went out of business because it was unable to pay off debt. In his May 2015 e-QIP, May 2017 PSI, and November 2017 answer to the SOR, Applicant attributed identity theft as the reason for his SOR 1.b delinquent debt. However, there is no identity theft claim posted in the two Government credit reports. (November 2017 answer to SOR; Item 4 at 15; Item 5 at 4, 10; Item 6; Item 7)

SOR 1.a – This is a corporate credit card account that became delinquent In August 2012. Applicant opened this account in December 2002. He did not disclose this debt in his May 2015 e-QIP because this was a business account. Applicant stated in his May 2017 PSI that his intention was to do nothing about the account since it was charged off and the business was dissolved. On February 12, 2018, Applicant's debt repair firm indicated by letter that the creditor agreed to settle the account for 12 monthly payments of \$473 a month, with a settlement letter to be sent within 48 hours of the settlement request. There is no settlement letter, but there is confirmation of one payment of \$473 on February 8, 2018. (Item 5 at 9; February 16, 2018 response to SOR)

SOR 1.b – This is a credit card account that became delinquent in October 2013. This account was Applicant's responsibility. In his May 2017 PSI, he claimed that \$2,000 in fraudulent charges appeared on the account. The original creditor told him that they would pay the charges and that he should close the account which he did. The collection agency informed him in June 2015 that he still owed a balance on the account and filed a legal action against him. He indicated the case was dismissed in September 2015, when the collection agency was unable to establish proof of purchase. Applicant indicated his credit firm was going to have the account removed from his credit report, however, the delinquent debt still appears in the Government's 2017 credit report. On February 12, 2018, the credit repair firm indicated by letter that on February 2, 2018, the creditor accepted a settlement check for \$1,586. No documentation, i.e., canceled check or other proof of payment, was provided. (Answer to SOR; item 5 at 7-8; Item 7 at 2; February 2018 response to FORM)

SOR 1.c – This is a credit card that became delinquent in December 2012. In his May 2017 PSI and his November 2017 answer to the SOR, he claimed that a thief stole the card from his mailbox and made unauthorized charges. On February 2, 2018, the

collection agency notified Applicant by letter describing Applicant's agreement to settle the debt with a payment of \$1,283, to be paid by February 2, 2018. On February 14, 2018, the collection agency informed Applicant by letter that the balance on the debt was zero. (Item 5 at 9; November 2017 answer to SOR; February 2018 response to FORM)

SOR 1.d – This is a judgment that was filed against Applicant in January 2014. Applicant explained that while his former business was still operating, he ordered some items in January 2011, but the items he received were not what he ordered. The creditor filed the judgment against Applicant and his company. His attorney advised him to accept the judgment if it was in the company's name and Applicant's name was removed. The court accepted the judgment in only the company's name. Applicant has not paid the judgment because it is a debt of his former business. He provided no evidence from his debt repair firm, i.e., a current credit report or documentation from the creditor or collection agency, verifying that he was removed from the account. (Item 5 at 7)

SOR 1.e – This is an unpaid business credit card that became delinquent in November 2013. Applicant opened the business account in February 2000. He claimed that the account was still in his name, but he did not owe anything personally. His company went out of business and was sold because it could not pay off the debt. Applicant did not intend to address the account since it was charged off and the responsibility of his failed business. In his answer to the SOR, he claimed that the debt was no longer posted in his credit report. The debt still appears in the Government's 2017 and 2015 credit reports. (Item 5 at 8; Item 6 at 8; November 2017 answer to SOR)

SOR 1.f – This is an unknown account that was transferred for collection in February 2014. Applicant claimed "these unlawful charges were part [of] a class action lawsuit that they [bank] lost and sent me a settlement check." He indicated that the charges were being disputed by his credit repair firm so that they could be removed from his credit report. No additional information or documentation from his debt repair firm was provided. (Item 5 at 9; Item 6 at 15; November 2017 answer to SOR)

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.

Applicant incurred six debts between August 2012 and February 2014. When the SOR was issued in October 2017, he owed \$39,256. The delinquent debts support application of the following disqualifying conditions under AG ¶ 19:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

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;

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

(e) the individual has a reasonable basis to dispute the legitimacy 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.

Applicant admitted that the two largest delinquent debts (SOR 1.a, 1.e) were the responsibility of his business that failed in 2011. He indicated that he will probably not engage in this activity in the future. However, the record shows that he has been steadily employed since he established his own business in 2001, and after his business dissolved in 2011. He should have been aware that delinquent debts were a security concern when he submitted his e-QIP in May 2015. He was clearly aware of the existence of the delinquent debts when he provided his PSI in May 2017. During the PSI, the OPM investigator interviewed him about each delinquent debt listed in the SOR and his intentions to resolve the debt. However, he supplied no documented evidence of paying or paying on the listed debts until February 2018, after he received SOR in October 2017. Applicant's delayed action in responding to the delinquent debts, particularly in light of his abundant resources, generates doubts about his judgment and reliability. AG ¶ 20(a) does not apply.

A business failure is an unforeseen event under AG ¶ 20(b) that can cause financial problems beyond an applicant's control. Though Applicant's business failed in January 2011, he furnished no evidence showing in detail how he was negatively impacted by the failure. There is no evidence indicating that Applicant incurred a period of unemployment subsequent to the business failure. The May 2015 e-QIP reflects that he began working at his next employment in January 2011, and has had uninterrupted employment since then. The mitigation value of the business failure in 2011 is substantially reduced by the passage of more than six years. Overall, the condition provides limited mitigation because Applicant did not supply documented action to address his debts until a year and one-half after he was apprised of the listed debts.

AG ¶¶ 20(c) and 20(d) apply to an applicant's actions in handling his delinquent debts. While there is no evidence that Applicant has had financial counseling, he provided a letter from his credit repair firm dated October 2017, indicating that the firm was actively removing errors from his credit report. However, the firm provided no documented evidence of the errors they supposedly corrected. The firm's results show that he made one payment under the settlement agreement with the SOR 1.a creditor. The firm made a representation about settling the SOR 1.b account but provided no canceled check or bank statement confirming the payment was made. Applicant provided sufficient documentation of settling SOR 1.c. On the other hand, he supplied

no documentation verifying that: the SOR 1.b debt, the 1.d judgment, the 1.e debt are not his responsibility, and that the 1.f debt is a lawsuit that the original creditor lost, with Applicant receiving a settlement check. In sum, Applicant receives limited mitigation under AG ¶¶ AG 20(c) and 20(d). AG ¶ 20(e) is inapplicable because he provided “no documented proof to establish the basis of the dispute” of SOR 1.b, 1.d, and 1.f.

Whole-Person Concept

I have examined the evidence under the financial considerations guideline 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.

The primary reason that Applicant’s security clearance application cannot be granted at this time is based on the contradictory positions he has taken about the delinquent debts during the security clearance process. For example, in his November 2017 answer, he admitted he owed the debt to SOR 1.a, but claimed he was not liable as the debt was a liability of his dissolved business. However, the February 2018 proposed settlement strongly suggests that his debt firm advised him to settle because his former company may have been created to shield him from liability or may have been responsible for other business improprieties while the company was solvent. Applicant’s proposed settlement of the SOR 1.a corporate account, and the SOR 1.e corporate account still appears in the Government credit reports, undercuts the credibility of Applicant’s representation that he does not remain personally liable for the SOR 1.e business account.

Another example of the inconsistent positions presented by Applicant during the security investigation centers on his explanations for the debt at SOR 1.c. Throughout the investigation, he repeated the “stolen mailbox” explanation. However, in February 2018, he settled the account. Though applicants do not have to show they have paid all delinquent debts, they should supply timely documentation of a plan indicating how they intend to pay their delinquent debts coupled with documented evidence confirming that the plan is underway. Having weighed and balanced all the evidence under the specific conditions in light of the record as a whole, Applicant’s documented evidence of full

satisfaction of only one of six SOR accounts and uncorroborated claims of paying on the other accounts, is insufficient to overcome the ongoing security concerns engendered by 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
Subparagraphs 1.a, 1.b, 1.d, 1.e, 1.f:	Against Applicant
Subparagraph 1.c:	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 access to classified information. Eligibility for access to classified information is denied.

Paul J. Mason
Administrative Judge