



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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ISCR Case No. 18-00595

Applicant for Security Clearance

Appearances

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

08/14/2018

Decision

MASON, Paul J., Administrative Judge:

Applicant's favorable evidence in mitigation is insufficient to outweigh the disqualifying evidence under the financial considerations guideline. Eligibility for security clearance access is denied.

Statement of the Case

On January 30, 2017, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) (Item 3) to retain a security clearance required for a position with a defense contractor. He provided summary interviews (PSIs) (Item 4) to an investigator from the Office of Personnel Management (OPM) on August 15, 2017, October 24, 2017, and November 1, 2017. On March 14, 2018, DOD issued a Statement of Reasons (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 April 9, 2018. 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 April 24, 2018. Applicant received the FORM on May 1, 2018. 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 mailed his eight-page response to the FORM on May 22, 2018. The Defense Office of Hearings and Appeals (DOHA) received the response on May 25, 2018. On May 29, 2018, Department Counsel forwarded Applicant's response (without objection) to the DOHA administrative staff for assignment to an administrative judge. On July 26, 2018, I was assigned this case. Applicant's eight-page response is admitted into evidence.

Rulings on Procedure

In a footnote on the first and second page of the FORM, Department Counsel advised Applicant that the PSIs (Item 4) would be excluded from evidence if he objected to them. 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 PSIs are admitted into evidence. See E3.1.20. of DOD Directive 5220.6, page 52.

Findings of Fact

The SOR alleges one judgment (SOR 1.a) and six delinquent accounts totaling \$56,360 (SOR 1.b-1.g). The judgment is \$44,786. The four commercial charge accounts, credit card accounts, and a secured loan account total \$11,574. Applicant admitted all accounts with explanations.

Applicant is 61 years old. He has been married since April 1980, and has a 32-year-old daughter. He received a bachelor's degree in May 1984. From January 2017 to the present, he has been employed as an engineer with a defense contractor. Since 2007, he has held a part-time job on a board of directors. From 1979 to October 2016, he owned and managed a small farm implement and equipment company. This is his first security clearance application. His interim security clearance was withdrawn after he received the SOR in March 2018. (Item 3 at 9-17, 26)

Applicant indicated that his financial problems were caused by a severe drought in 2016 that forced him to close his small farm implement and equipment business in October 2016. When he was interviewed by the OPM investigator in August 2017, he

believed he was on the verge of selling the business property which would improve his financial predicament. When the sale did not occur, his bank converted the two business-property mortgages into monthly payments (instead of quarterly interest payments), and he had to sign personal-liability guarantees on two business debts until the business property was sold. As a result of his bank's actions, his total monthly payments, including his monthly personal home mortgage of \$1,105, was \$3,396, an amount that precluded him from addressing other debts with a monthly take-home pay (sometime in 2017) of \$3,424. He contended that he sold his personal property to pay the bills. No documentation was submitted to indicate when Applicant's bank made the business-property debt decisions. No documentation was submitted to support his monthly payment claims. (Item 3 at 10-13; answer to SOR at 2)

Applicant explained that he was unemployed for 11 months after his business closed in October 2016. That would mean that he did not start working with his current employer until about September 2017. Though he claims that after his hire with his current employer, he had to wait six months for his interim security clearance, his e-QIP indicates that he began working as an engineer with his current employer in January 2017. After receiving the last payment on the sale of his business property on April 7, 2018, he indicated that he paid two mortgages and freed up over \$1,500 of his income to pay off listed and unlisted debts. Applicant claimed he paid off all other personal debts and made arrangements to resolve all delinquent debts. No documentation was provided to substantiate his claim of paying off the two mortgages or **paying off all other personal debts**. (emphasis added). He received a pay raise before he was laid off following issuance of the SOR (circa March 2018). The delinquent accounts will be addressed in the order they appear in the SOR. (April 2018 answer to SOR)

At the start of the security investigation process, Applicant signed and certified an e-QIP on January 30, 2017. Section 26 of the application requires information about judgments and other types of delinquent financial accounts with the federal government or commercial creditors. In answering "No" to all the financial questions, Applicant did not disclose the SOR 1.a judgment or the SOR 1.d delinquent account. He has never had credit counseling or related counseling service to address his financial difficulties. (Item 3 at 26-27)

SOR 1.a – This civil judgment, which was filed in September 2016, relates to three acres of land and a commercial building that Applicant used for his farming implement and equipment business until it closed in October 2016. As Applicant explained in his April 2018 answer to the SOR, this was a business debt that according to the original agreement with the plaintiff, he had been paying \$300 weekly for many months until the bank converted his business mortgages into monthly payments. In his August 2018 PSI, he claimed he had been making \$300 payments every two weeks to the plaintiff on the business debt. (No record of payments was furnished.) After the business property sold, Applicant could not reach the plaintiff to arrange a new agreement. He intended to keep trying to resolve the judgment. In his May 2018 response to the SOR, Applicant indicated that he located the plaintiff, but his phone

calls went unanswered. He averred that he would keep trying to establish contact. No additional information was provided. (Item 3 at 10-15; Item 4 at 5; Item 7 at 1-4; April 2018 answer to SOR at 4; May 2018 response to FORM)

SOR 1.b – This is a delinquent credit-card account that was opened in 2006 and became delinquent in July 2017. In Applicant's August 2017 PSI, he claimed he was making payments on the account. In April 2018, he indicated that he had agreed to a reduced payment schedule and would mail a copy of the schedule if required. In his May 2018 response to the FORM, Applicant submitted an acknowledgement of payment dated May 10, 2018, confirming the creditor had received a payment, but there is no indication of the payment amount. No payment plan was submitted to bolster Applicant's April 2018 claim of a payment schedule. (Item 4 at 3; Item 6 at 2; April 2018 answer to SOR at 4; May 2018 response to the SOR)

SOR 1.c – This is a charge account that was opened in 2009 and became delinquent in October 2016. The documentation supplied by Applicant refers to an unlisted charge-card account that was opened in 1991 and became delinquent in March 2017. The account numbers of the listed charge account and unlisted charge card are different. Applicant's documented payments of \$760 on April 9, 2018, and \$100 on May 4, 2018, are payments that apply to the delinquent charge-card debt. (Item 4 at 3; Item 5 at 9; Item 6 at 2; April 2018 answer to SOR at 4-5; May 2018 response to the SOR)

SOR 1.d – This is a charge account that was opened in 2013 and became delinquent in September 2016. In his August 2017 PSI, Applicant claimed that he was making payments on the account. However, in his April 2018 answer to the SOR, he indicated that he was trying to find the creditor to settle the debt. In May 2018, he indicated that he had agreed to a payment plan with the collection agency, but had not received the plan. He provided documentation of making a \$100 payment on May 22, 2018. No payment plan was furnished. (Item 4 at 3; Item 6 at 2; April 2018 answer to SOR at 5; May 2018 response to the SOR)

SOR 1.e – This is a charge account that was opened in 2002 and became delinquent in June 2017. In his April 2018, Applicant indicated that he brought the account to a current status with a credit-card payment of \$794. He supplied additional documentation showing that he made a \$138 payment on April 14, 2018, and a \$133 payment on May 4, 2018. (Item 6 at 3; April 2018 answer to SOR at 5; May 2018 response to the SOR)

SOR 1.f – This is a secured loan that was opened in May 2017 and became delinquent in September 2017. Documentation shows that Applicant repaid the loan on April 9, 2018. (April 2018 answer to SOR)

SOR 1.g – This is a mail-order account that was opened in 2006 and became delinquent in April 2017. In August 2017, Applicant claimed he was making payments on the account. In April 2018, he stated that he was trying to contact with the entity

handling this account. In May 2018, Applicant indicated that he had located and negotiated an agreement with the collection agency calling for \$50 monthly payments from May 2018 through April 2019. He provided documentation of a payment plan, but no documented payments were furnished under the plan. (Item 4 at 5; Item 5 at 5; Item 6 at 3; April 2018 answer to SOR at 5; May 2018 response to the SOR)

Applicant provided documentation confirming that on April 2, 2018, he paid \$747 on an unlisted credit card. On the same day, he paid another unlisted credit card company \$701. Applicant made documented payments of \$760 on April 9, 2018, and \$100 on May 4, 2018, on a delinquent charge-card account. He recommended that his references be contacted to obtain information about his financial problems and his good character. (Item 5 at 10; Item 6 at 2-4; April 2018 response to SOR)

Character Evidence

Applicant indicated that he received a pay raise in March 2018. He provided no independent character evidence.

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.

The judgment and delinquent debts totaling \$56,360, which became delinquent between September 2016 and September 2017, support the 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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Between September 2016 and September 2017, Applicant incurred four delinquent credit-card and charge accounts, a secured loan account, and a judgment. To Applicant's credit, he brought the SOR 1.e account to a current status, and has satisfied the SOR 1.f account. Applicant has presented insufficient evidence under the other five delinquent debts to confidently conclude that his financial difficulties will not persist in the future. AG ¶ 20(a) does not apply.

The drought of 2016 caused Applicant's business to close in October 2016. A civil judgment was filed against him in September 2016 for a business debt he was

unable to pay. He incurred six delinquent accounts between September 2016 and September 2017. Though he denied having any delinquent accounts or a judgment in his January 2017 e-QIP, he admitted in his August 2017 PSI that he was responsible for the listed debts and the judgment, but he provided no supporting documentation of his claims that he was making payments on the debts and the judgment. Applicant receives mitigation under the first prong of AG ¶ 20(b), but mitigation under the second prong of the condition is limited to his responsible action in resolving the delinquent accounts identified at SOR 1.e and 1.f.¹

Applicant has never had financial counseling, specifically in the period after his business closed in October 2016. While he provided satisfactory evidence to show two accounts are no longer delinquent, there is insufficient evidence to conclude that his financial delinquencies are under control, primarily because of Applicant's lack of documented action to deal with the September 2016 judgment (SOR 1.a). AG ¶ 20(c) does not apply. AG ¶ 20(d) applies affirmatively to Applicant's successful efforts to satisfy SOR 1.e, and to restore SOR 1.f to a current status.

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.

Applicant, 61 years old, has been married since 1980, and has an adult-aged daughter. He earned a bachelor's degree in 1984. He owned his own business for about 37 years. He began working for his current employer in about September 2017, and in March 2018, he received a pay raise before his interim clearance was suspended because of his indebtedness. The record shows that he resolved two listed accounts and paid on three unlisted charge card accounts in April 2018.

¹ AG ¶ 20(b) does not apply to Applicant's loss of employment due to the suspension of his interim security clearance.

The disqualifying evidence under the whole-person concept is more substantial than the above mitigating evidence. Applicant furnished documents or explanations for all the SOR allegations. However, except for SOR 1.e and 1.f, the documentation is insufficient to establish his ultimate burden of persuasion under SOR 1.a-1.d, and 1g. Regarding 1.a, Applicant quoted several business and personal accounts that were difficult to pay when his bank converted his business property to personal accounts. He quoted \$300 payments every two weeks or every month that he had been making to the plaintiff in SOR 1.a for many months. But, he presented no track record of payments, i.e., receipts, bank statements, that support any of his payment claims. In addition, he submitted no proof of his efforts to contact the plaintiff in SOR 1.a.

Concerning SOR 1.b, there is a record of a payment, but there is no indication of the amount or documentation verifying a payment agreement. Applicant presented no evidence under SOR 1.c. Proof of a \$100 payment without a payment plan does not restore SOR 1.d to a current status. Regarding SOR 1.g, proof of a payment plan is not persuasive unless supported by substantiated evidence of payments.

Judging by the totality of the evidence, Applicant has not presented a meaningful track record of debt reduction through payment of debts. While an applicant is not required to show that he has addressed each listed debt in the SOR, he is obligated to show a plan and significant evidence that consummates the plan. Applicant's documentation fails to include a plan to resolve SOR 1.a-1.d, and 1.g, and a meaningful track record of documented payments under the plan. On balance, the security concerns raised by the guideline for financial considerations remain unmitigated.

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.d, 1.g:	Against Applicant
Subparagraphs 1.e, 1.f:	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 security interests of the United States to grant Applicant eligibility for access to classified information. Eligibility or access to classified information is denied.

Paul J. Mason
Administrative Judge