



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
) ISCR Case No. 14-03599
)
Applicant for Security Clearance)

Appearances

For Government: Gregg A. Cervi, Esq., Department Counsel
For Applicant: *Pro se*

01/12/2016

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. He is delinquent on eight collection accounts, which total more than \$61,000. There is no showing of payments having been made on the debts. Applicant has failed to mitigate the financial considerations security concerns. Clearance is denied.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on February 27, 2015, the DoD issued a Statement of Reasons (SOR) detailing financial considerations security concerns. On April 2, 2015, Applicant answered the SOR and elected to have the matter decided without a hearing. Defense Office of Hearings and Appeals (DOHA)

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

Department Counsel (DC) submitted the Government's case in a File of Relevant Material (FORM), dated September 29, 2015. The FORM contained seven attachments (Items). On August 31, 2015, Applicant received a copy of the FORM, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. As of November 12, 2015, no response or documents had been received. On December 4, 2015, I was assigned the case.

Findings of Fact

In Applicant's Answer to the SOR, he admitted owing the eight delinquent debts. I incorporate Applicant's admissions as facts. After a thorough review of the pleadings, exhibits, and submissions, I make the following additional findings of fact.

Applicant is a 48-year-old network system administrator who has worked for a defense contractor since March 2010 and seeks to retain a security clearance. (Item 3) He is single, never married. He provided no information about his duty performance and provided no character reference letters.

On Applicant's May 2012 Electronic Questionnaires for Investigations Processing (e-QIP), he listed six delinquent obligations, including his \$225,000 mortgage. (Item 3) The residence went to foreclosure and is not listed as a debt of concern on the SOR. (Item 4) He indicated his roommate/girlfriend became ill and was unable to work. In January 2008, his roommate died. (Item 4) Applicant asserted that due to the medical bills and loss of income, he was unable to keep up with his debts. (Item 3)

Applicant obtained an adjustable rate mortgage and made interest only payments on the debt. He had assumed he would sell the unit within a few years. His tenant paid \$1,350 monthly covering the majority of his \$1,500 mortgage payment and \$250 monthly association fee. (Item 4) Until 2007, his mortgage payments and other debt payments were timely. During the last year of his girlfriend's life they stopped making payments on the mortgage and to her debts to deal with her illness. (Item 4) Following foreclosure on the property, he has not been contacted by the mortgage company. (Item 4)

In Applicant's July 2012 Personal Subject Interview (PSI), his delinquent accounts were discussed. He had a \$10,000 bank loan (SOR 1.e, \$16,496), which had obtained to help him "stay afloat financially. (Item 4) He made payments on the loan for a year before stopping. (Item 4) He had three credit card accounts with one creditor (SOR 1.a, \$1,772; 1.c, \$1,653; and SOR 1d, \$7,526). The accounts were opened 2005 and 2007, and went to collection in 2009. (Item 4) Again, he made payments on the accounts until his girlfriend became sick. (Item 4)

At the time Applicant completed his PSI, he stated it had taken him a while to realize the state of his financial situation because he had his head in the sand. He asserted in his PSI, the first time he saw the big financial picture was when he completed his e-QIP. He asserted he had decided to take action and resolve all of his

financial delinquencies. He planned to meet with a debt attorney to resolve the debts. (Item 4)

During the 2012 interview, Applicant admitted he had a \$268 (SOR 1.g) telephone service collection debt and a \$242 (SOR 1.f) cable bill in collection. He was questioned about, but did not recognize, the credit card collection debt (SOR 1.h, \$33,374) (Item 4) He asserted his monthly net remainder (monthly income less monthly expenses) was \$1,500 to \$2,000 and he had approximately \$30,000 in savings that he intended to use to pay off his delinquent accounts. (Item 4) At that time, he asserted he anticipated being debt free in six months to a year and a half. (Item 4)

In May 2014, Applicant completed written financial interrogatories, which asked him about each of the SOR delinquent obligations. (Item 4) At that time, he indicated he had made no payments on the obligations, but was working with a debt lawyer to address his outstanding debts. (Item 4) He indicated that as of May 2014, his net monthly remainder was \$1,660 and he had approximately \$60,000 in savings. (Item 4)

The delinquent SOR obligations are set forth in Applicant's May 2012, March 2014, and July 2014 credit reports. (Items 5, 6, 7) Additionally, Applicant acknowledged owing the debts. (Item 2)

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 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 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 (EO) 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to 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 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 an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal 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 or her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent substantial evidence of 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. An applicant is not required to be debt free, but is required to manage their finances to meet their financial obligations.

Applicant is more than \$61,000 past due on eight collection accounts. Disqualifying Conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

Five 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated 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.

None of the mitigating factors for financial considerations extenuate the security concerns. Applicant's financial difficulties are both recent and multiple. He has been employed with his current employer for more than five years. In July 2012, he was made aware of the Government's concerns about his delinquent debt when questioned about his delinquent obligations during his PSI. He acknowledged seven of the eight delinquent obligations and indicated he was going to hire an attorney to help him address his delinquent debts. At that time, he indicated he had \$30,000 in savings to address his delinquent obligations.

In May 2014, when responding to written financial interrogatories, Applicant asserted he was working with any attorney to pay off his debts and asserted he had \$60,000 in savings. He provided no information he has paid any of the obligations or any documentation concerning legal services or advice he received. There is no documentation that even the two small obligations of approximately \$250 each have been paid.

Applicant provided no evidence he has received credit or financial counseling. He has not demonstrated that his financial problems are under control or that he has a plan to bring them under control. He has not made a good-faith effort to satisfy his debts.

AG ¶ 20(a) does not apply because the delinquent debts remain unpaid, and because they remain unpaid, they are considered recent. There is nothing in the record supporting that conditions under which all of the debts were incurred were unusual. Some of the delinquent obligations may relate to his girlfriend's illness, but he did not document such. In July 2012, he first learned of the Government's concern over his delinquent obligations. Given sufficient opportunity to address his financial delinquencies, Applicant has failed to act timely or responsibly under the circumstances. Failing to pay the debts casts doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) partially applies, but not enough to mitigate the security concern. In January 2008, Applicant's roommate/girlfriend died. She had been ill for the previous year. However, he failed to document how those events more than seven years ago affect his current finances. He has more than \$60,000 in savings and his net monthly income is \$1,660. By failing to show any payments, he has failed to show he has acted responsibly under the circumstances.

The mitigating condition listed in AG ¶ 20(c) does not apply. There has been no evidence Applicant has received financial counseling. There is no showing his financial obligations are being addressed. The mitigating condition listed in AG ¶ 20(d) does not apply because Applicant has failed to document payment on any of the delinquent accounts. The mitigating condition listed in AG ¶ 20(e) does not apply because he had admitted the obligations and is not disputing them.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance 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(a):

- (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. Applicant has failed to document any payment on his delinquent accounts. He has been aware of the Government's concern about his delinquent debts by his July 2012 PSI, the May 2014 financial interrogatories, the February 2015 SOR, and the September 2015 FORM. He has the means to pay his delinquent obligations, but even the two small debts have yet to be paid. No delinquent debts have been paid and there is no documentation Applicant has recently contacted his creditors.

In requesting an administrative determination, Applicant chose to rely on the written record. In so doing, however, he failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding his circumstances and facts that would mitigate the financial considerations security concerns. He failed to offer evidence of financial counseling or provide documentation regarding his past efforts to address his delinquent debt. He failed to provide such information, and by relying solely on the scant explanation in response to the SOR, he failed to mitigate the financial considerations security concerns.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a security clearance. The awarding of a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under Applicant's current circumstances, a clearance is not recommended. In the future, if Applicant has paid his delinquent obligations, established compliance with a repayment plan, or otherwise substantially addressed his past-due obligations, he may well demonstrate persuasive evidence of his security worthiness. However, a clearance at this time is not warranted.

Overall, the record evidence leaves me with substantial doubt as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the financial considerations security concerns.

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, Financial Considerations: **AGAINST APPLICANT**

Subparagraphs 1.a – 1.h: **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 a security clearance. Eligibility for access to classified information is denied.

CLAUDE R. HEINY II
Administrative Judge