



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



In the matter of:)
)
) ISCR Case No. 14-06409
)
)
Applicant for Security Clearance)

Appearances

For Government: Caroline Heintzelman, Department Counsel
For Applicant: *Pro Se*

03/31/2016

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. In 1996, he filed for bankruptcy protection. The Statement of Reasons (SOR) lists 11 delinquent obligations totaling more than \$17,000. The majority¹ of the debts have been paid. The financial consideration security concerns have been mitigated. Clearance is granted.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,² on May 29, 2015, the DoD issued a SOR detailing financial considerations security concerns. DoD adjudicators could not find that it is clearly consistent with the national interest to grant

¹ Three obligations totaling less than \$900 have yet to be addressed.

² 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.

or continue Applicant's security clearance. On June 22, 2015, Applicant answered the SOR and requested a hearing. On August 13, 2015, I was assigned the case. On September 26, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for the hearing convened on October 5, 2015.

At the hearing, Government's Exhibits (Ex) 1 through 6 and Applicant's Exhibits A and B were admitted without objection. Applicant testified at the hearing. The record was held open to allow Applicant to submit additional information. Additional documents were received. There was no objection to three additional submissions, which were marked and admitted as Ex. C - E. On October 14, 2015, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, he admitted, with explanation, the delinquent financial obligations. I incorporate Applicant's admissions as facts. He indicated his income was significantly reduced when he was no longer traveling overseas for his work. After a thorough review of the pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 45-year-old warehouse manager who has worked for a defense contractor since August 2002. (Ex. 1, Tr. 9) He seeks to retain a security clearance. (Ex. 1) Coworkers and supervisors state he is loyal and trustworthy. His integrity, work skills, and "exceptional work ethic" make him an asset to his company. (Ex. B) His company offered him a \$15,000 five-year loan to address his financial problems. (Ex. A)

From 2004 through 2007, Applicant worked overseas for a construction company making approximately \$90,000 to \$110,000 annually. (Ex. 2, Tr. 23) While overseas, he contracted Dengue fever and thought he could possibly die. (Tr. 22) He made the decision to discontinue working overseas. His annual income dropped by \$50,000 when he was reassigned to a \$12-per-hour warehouse manager position stateside. (Ex. 2, Tr. 20, 22) In 2012, he received a promotion and raise. As of September 27, 2015, his year-to-date income was \$30,248. (Ex. E) As of that time, he had two 401(k) loans with a loan balance of \$1,348. (Ex. E) He has approximately \$12,000 in his 401(k) retirement plan. (Tr. 26) His medical insurance cost \$450 every pay period. His wife is a nurse with an annual salary of approximately \$40,000. (Tr. 23) He has a 23-year-old daughter who lives with him and his wife. (Tr. 24)

Applicant first overseas job, which was in Germany, lasted a year. (Tr. 22) In 2004, he worked for two months in Syria. In 2005, he was in Afghanistan for two months. He was in Iraq for five weeks and in Afghanistan for a month in 2006. In 2007, he spent one month in Afghanistan and also worked in India. (Ex. 2, C) In 2008, he was in Sri Lanka for three months and spent time in Afghanistan. (Ex. 2) In 2009, he was working in Pakistan. In 2010, he was in Ethiopia and again in Pakistan. (Ex. 2) He also worked in Madagascar and Bahrain. (Tr. 21) His time in Iraq and Afghanistan occurred during war time. (Tr. 24) He returned from working overseas after contracting Dengue fever.

In September 1996, Applicant, then age 26, filed for Chapter 13, Wage Earner's Plan, bankruptcy protection. (Ex. 6) He stated he was young and got "over his head" in debt. The plan required monthly payments of \$271 for five years. He made payments for five years and his debts were discharged. (Ex. 6, Tr. 25) The Chapter 13 allowed him to stay in his home. At one time, the mortgage, on his current home was past due (SOR 1.a, \$2,172), but at the beginning of 2015, he brought it current. (Ex. 2, 3, 5, Tr. 26, 38) He has approximately \$40,000 equity in the house, which has a fair-market value of \$140,000 and a mortgage of \$99,000. (Tr. 26)

In Applicant's January 2014 Electronic Questionnaires for Investigations Processing (e-QIP), he listed a \$2,471 judgment (SOR 1.i), a charged-off bank account (SOR 1.g, \$3,019), and a \$227 credit card debt not listed in the SOR. (Ex. 1) In February and March 2014, he was interviewed and questioned about his delinquent accounts including each of the SOR delinquent accounts. (Ex. 2) In March 2014, he made an unsworn declaration acknowledging the majority of his delinquent debts, not recognizing some, and stating he would be contacting the creditors and if he was responsible for the debts, would arrange repayment plans with the creditors. (Ex. 2) Applicant's July 2015 credit report indicates that two medical collection accounts (SOR 1.e, \$136 and SOR 1.f, \$96) had a zero balance. (Ex. 3)

The SOR listed 11 delinquent accounts, which totaled approximately \$28,000. The largest delinquent account was a credit card collection account (SOR 1.b, \$11,101). (Ex. 2, 3, 4, 5) The next largest delinquent account is a charged-off bank account (SOR 1.g, \$3,019) for furniture purchased in 2009. (Ex. 2, 3, 5) He asserts this was his wife's account about which he had no knowledge.

A credit counseling service at Applicant's church suggested he seek the services of a debt solution company, which he did on October 2, 2015. (Ex. C, Tr. 34) The debt solution company offered credit counseling and there was an agreement whereby he would make \$564 monthly payments to address four debts: an \$11,101 delinquent debt (SOR 1.b) and a \$4,813 debt with the same collection agency, a \$2,032 delinquent credit card account (SOR 1.c), and a \$1,900 bank charged-off account (SOR 1.d). (Ex. C) However, a week later, on October 9, 2015, he paid approximately \$12,620 to pay five SOR delinquent obligations, including the debts listed in the debt solution company arrangement. He paid the debts with a loan from his company.

Applicant paid the \$1,900 debt (SOR 1.d), \$2,032 charged-off account (SOR 1.c), and the \$2,471 judgment (SOR 1.i) obtained in November 2011. (Ex. 2, 3, 5) He settled the \$3,019 charged-off account (SOR 1.g) for \$2,887, which he paid on October 9, 2015. (Ex. D) A collection account of \$11,101 (SOR 1.b) had been reduced to \$4,761. (Ex. 4) On October 9, 2015, he accepted the creditors offer and paid \$3,330, which addressed the collection account. (Ex. D, Tr. 28)

Applicant drives a 1996 pick-up truck and his wife drives a 2005 car. (Tr. 27, 30) He has no delinquent non-SOR obligations. His July 2015 credit report indicates two medical debts, one for \$136 (SOR 1.e) and the other for \$96 (SOR 1.f), which have both

been paid. He contacted the creditor of the \$51 debt (SOR 1.h) and learned the creditor no longer had the delinquent obligation. Applicant and his daughter incurred a \$541 magnetic resonance imaging (MRI) medical bill (SOR 1.j) following an automobile accident. (Tr. 32) He contacted his medical insurance provider and was told they would not cover the expense. (Tr. 32) That debt and the \$242 debt (SOR 1.k) remain unpaid. (Tr. 33)

Policies

When evaluating an Applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 over-arching adjudicative goal is a fair, impartial and common sense 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 the 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 as to obtaining 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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 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

Revised Adjudicative (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 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. An applicant is not required to be debt free, but is required to manage his finances so as to meet his financial obligations.

The record evidence supports a conclusion Applicant has a history of financial problems. In 1996, Applicant sought bankruptcy protection and his debts were discharged. He had a judgment and ten charged-off or collection accounts totaling more than \$17,000. 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(a) – (e) 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.

While working overseas, Applicant contracted Dengue fever and believed he could possibly die. That ended his working overseas where he had been making \$90,000 to \$110,000 annually. He stayed with the company, but as a stateside warehouse manager making \$12 per hour. His company, for which he has worked more than 13 years, agreed to loan him \$15,000. Seven of the SOR debts have now been paid and his mortgage was brought current a year ago. Three debts totaling \$835 have not been paid.

In 1996, Applicant entered into a Chapter 13, Wage Earner's Plan. In 2001, after making monthly payments for five years, his debts were discharged. Someone who can make his required payments over a lengthy period of time is responsible enough to address the \$900 related to the three remaining delinquencies. Additionally, the bankruptcy occurred 20 years ago.

Under AG ¶ 20(a), Applicant's financial problems were contributed to by him contracting a serious disease while working overseas. The disease ended his overseas work and greatly reduced his income. His annual income was cut in half. The cause of his reduction in income is unlikely to recur and does not cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶ 20(a) applies. Under AG ¶ 20(b), Applicant's illness was an unexpected medical emergency and he has acted responsibly under the circumstances. AG ¶ 20(b) applies.

Under AG ¶ 20(c) and ¶ 20(d), Applicant employer thought so highly of him that they loaned him sufficient money to pay the delinquent SOR obligations. In October 2015, he received credit counseling through a service at his church. He attended financial classes, is living within his means, and is paying his debts. He drives a twenty-year old pick-up truck and his wife drives a ten-year old car. (Tr. 27, 30) He has no delinquent non-SOR obligations. His July 2015 credit report indicates he is paying his debts as agreed. AG ¶ 20(c) and ¶ 20(d) apply.

Neither the \$541 MRI medical bill (SOR 1.j) that his medical insurance provider failed to pay or the other debt of \$242 (SOR 1.k) are sufficiently large as to raise security concerns about his current reliability, trustworthiness, or good judgment. Nor is the \$51 debt the creditor can no longer locate. These debts cannot be a source of improper pressure or duress.

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 the 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 was working overseas making \$95,000 to \$110,000 annually. When he contracted Dengue fever, and thought he might die, he made the decision to discontinue working overseas. His annual income was cut in half, dropping by \$50,000. He has paid the majority of the SOR delinquent obligations. His bankruptcy occurred 20 years ago and is not indicative of his current financial situation. He is not living beyond his means and is paying his bills. He is highly thought of by his company, sufficiently so that the company loaned him funds to address the SOR debts.

The issue is not simply whether all his debts are paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(a)(1).) Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his financial considerations.

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: FOR APPLICANT

Subparagraphs 1.a – 1.l: For Applicant

Conclusion

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

CLAUDE R. HEINY II
Administrative Judge