



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



In the matter of:)	
)	
)	ISCR Case No. 14-03754
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

01/08/2015

Decision

MASON, Paul J., Administrative Judge:

Between July 2007 and April 2012, Applicant accumulated over \$40,000 in delinquent debt to nine creditors. His satisfaction of one out of nine delinquent accounts is insufficient to meet his ultimate burden of persuasion under the guideline for financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On September 5, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant furnished an undated answer and attachments, eight pages in length. He requested that his case be decided on the administrative record in lieu of a hearing. A copy of the Government's File of Relevant Material (FORM), the Government's evidence in support of the allegations of the SOR, was sent to Applicant on October 17, 2014. In an attachment to the FORM, Applicant was advised he could object to the information in the FORM or submit additional information in explanation, mitigation, or extenuation. He received the FORM on October 31, 2014, and provided a response the same day. On November 6, 2014, the Government indicated it had no objection to Applicant's response to the FORM. The case was assigned to me on November 21, 2014.

Findings of Fact

The SOR identifies nine delinquent accounts under the financial considerations guideline. The accounts represent loans, one auto installment loan, and four municipal accounts transferred for collection. Applicant admitted SOR ¶ 1.b and denied the remaining eight allegations. He stated by letter, dated September 17, 2014, that "the accounts that you provided [eight delinquent accounts], are no longer a part of my credit profile." Applicant submitted a credit report dated September 11, 2014, to support his claim.

Applicant is 31 years old and single. He has been employed as an aircraft worker with a defense contractor since February 2013. From 2002 to February 2013, he was employed as a ramp agent and a ramp manager with a commercial airline. The record reflects uninterrupted employment since February 2002. He has no military background. Applicant is applying for his first security clearance.

The nine delinquent accounts listed in the SOR, which are posted in the government March 23, 2013 and May 21, 2014 credit reports, total \$40,183. The credit reports show the same social security number that Applicant provided in his February 2013 e-QIP. The credit reports identify the same former employers that Applicant provided in his February 2013 e-QIP. Both credit reports and Applicant's e-QIP display the same current and past residential addresses. The reports show that Applicant is individually responsible for each of the nine listed accounts. The two credit reports disclose the following information about the nine accounts:

SOR 1.a (\$470) represents a line of credit. The last action taken on the account was in March 2008. The account was transferred for collection in February 2013. Unresolved.

SOR 1.b (\$9,213) represents a loan. The last action on the delinquent account was in April 2008. On April 25, 2013, the collection agency for the original creditor thanked Applicant by letter for his last payment of \$1,300. The agency considered the account as paid-in-full with a zero balance. Resolved.

SOR 1.c (\$383) represents an unknown finance loan. The last activity on the delinquent account was September 2007. Unresolved.

SOR 1.d (\$16,829) represents a loan that was transferred to a collection agency. The last activity on the delinquent account was November 2007. Unresolved.

SOR 1.e (\$200), 1.f (\$300), 1.g (\$205), 1.h (\$100) represent four unknown accounts totaling \$805, that were transferred to the same collection agency between July 2010 and April 2012. Unresolved.

SOR 1.i (\$12,483) represents an installment auto loan that was opened in December 2004. The last activity on the account was July 2007. The car was repossessed by the credit union. Unresolved.

In his response to the FORM, dated October 31, 2014, Applicant referenced a credit consultant firm he hired to help him correct inaccuracies in his credit report. He indicated that the firm aided in resolving the account at SOR 1.b. He averred that the nine listed items have been removed from his credit report and “are no longer in issue.” Applicant concluded the one-page statement by stressing the importance of financial responsibility. His future plans include a house purchase, marriage, and starting a family.

Attached to his response to the FORM, Applicant attached a letter from the credit consulting firm, dated September 27, 2012. The firm indicated that it began addressing Applicant’s financial issues on August 13, 2012. In very general terms, the firm explained that it was actively removing inaccurate and unverifiable information in Applicant’s credit report. The firm provided no specific documentation showing exactly what actions they took or why the actions were taken. The firm explained their objectives were accurate credit reports and knowledgeable consumers. Applicant’s October 31, 2014 credit report, an attachment to his response to the FORM, reflects no derogatory public records, negative accounts, or accounts transferred for collection.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. Each guideline lists potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

The disqualifying and mitigating conditions should also be evaluated in the context of nine general factors of the whole-person concept so that all available information, past and present, favorable and unfavorable, is a part of the decision for or against an applicant’s security clearance application. Such decisions entail a certain degree of legally permissible extrapolation as to the potential, rather than actual, risk of compromise of classified information.

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 of establishing that it is clearly consistent with the national interest to grant him a security clearance. Because Applicant chose to have his case decided on the record, credibility determinations are limited to the documentation presented by Applicant.

Analysis

Financial Considerations

The security concern for financial considerations is set forth in AG ¶ 18:

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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

There are two pertinent disqualifying conditions under AG ¶ 19 that are potentially applicable:

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

The Government has satisfied its initial burden of demonstrating that the nine delinquent accounts are Applicant's responsibility. The nine accounts appear in his 2013 and 2014 credit reports. The DOHA Appeal Board has held that credit reports are sufficient under the substantial evidence standard to shift the burden to applicant to show that he is not responsible for the debt or that the debt or debts have been mitigated. ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010). AG ¶¶ 19(a) and 19(c) apply.

Five 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 reliability, trustworthiness, and good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control 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) 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's first account became delinquent in July 2007, and his most recent account became delinquent in April 2012. AG ¶ 20(a) does not apply because Applicant has not tried to contact the creditors to pay off or negotiate settlements of eight of the nine accounts. AG ¶ 20(b) does not apply because Applicant did not provide any evidence indicating that the conditions which led to his delinquent debts were beyond his control. He has had continuous employment since August 2002.

AG ¶¶ 20(c) provides mitigation when the record shows financial counseling aimed at bringing the delinquent debts under control or resolving them completely. Applicant receives minimal consideration under the condition. Though he claimed to understand the importance of financial responsibility, there is no specific evidence of financial counseling. The 2012 letter from Applicant's credit consulting firm provides no insight into whether it provided financial counseling to him to resolve or bring his debts under control. The record strongly suggests that it may have advised him to wait for the statute of limitations to run so that the debts would be legally unenforceable. Applicant receives limited mitigation under AG ¶ 20(c) for satisfying SOR 1.b in April 2013.

While AG ¶ 20(d) requires an applicant to initiate a "good-faith" effort to repay overdue creditors or otherwise resolve debts, the condition does not supply a definition of "good-faith." The DOHA Appeal Board has indicated that a "good-faith" effort to favorably resolve debts means acting in a way that shows "reasonableness, prudence, honesty and adherence to duty or obligation." ISCR Case No. 99-0201 at 4 (App. Bd. October 12, 1999). Reliance on a statute of limitations "is not normally a substitute for good-faith efforts to pay off debt." ISCR Case No. 07-16427 at 4 (App. Bd. Feb. 4, 2010). Similarly, relying on the non-collectibility of a debt does not represent a good-faith effort to resolve debts. ISCR Case No. 07-06841 at 4 (App. Bd. Dec. 19, 2008); ISCR Case No. 11-08274 at 2 (App. Bd. May 2, 2013). Having weighed and balanced all the evidence under this condition, I find that relying on the running of the statute of limitations to avoid paying delinquent debts is a legitimate course of action, but it does not constitute a good-faith effort of resolving one's debts under security clearance law.

On balance, the mitigation of AG ¶ 20(d) does not extend beyond his \$1,300 payoff of the account at SOR 1.b.

Applicant denied eight of the nine debts in the SOR. However, AG ¶ 20(e) does not apply because he did not provide “a reasonable basis to dispute the legitimacy of the past-due debt,” nor did he provide “documented proof to substantiate the basis of the dispute” as required by the mitigating condition.

Whole-Person Concept

I have examined the evidence under the disqualifying and mitigating conditions of the financial considerations guideline, and within the context of nine variables known as the whole-person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors listed in 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 the participation was 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.

As set forth in AG ¶ 2(c), the final decision must be an overall commonsense judgment based upon careful consideration of the specific guidelines, each of which is to be evaluated in the context of the whole person.

Applicant is 31 years old. He has been employed as an aircraft worker for a defense contractor since February 2013. Because he provided no character evidence from his current or former employment, or from the community where he lives, it is impossible to draw inferences about the quality of his work performance or his reputation in the community. The 2013 and 2014 credit reports persuasively demonstrate that the listed debts are his responsibility. The likelihood that those debts are no longer collectible does not relieve him of his obligation to employ good-faith efforts to pay them. Considering the record under the specific conditions of the guideline for financial considerations, and in the context of the general factors of the whole-person concept, Applicant has not mitigated the financial considerations security concerns. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

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.c-1.i:	Against Applicant

Subparagraph 1.b:

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 a security clearance. Eligibility for access to classified information is denied.

Paul J. Mason
Administrative Judge