



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 14-04818
)
Applicant for Security Clearance)

Appearances

For Government: David Hayes, Esq., Department Counsel
For Applicant: *Pro se*

07/16/2015

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied. Applicant did not present sufficient information to mitigate financial security concerns.

Statement of the Case

On December 3, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for a position with a defense contractor. The Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. DOD issued Applicant a Statement of Reasons (SOR), dated January 20, 2015, detailing security concerns for financial considerations under Guideline F. The action was taken under 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).

Applicant answered the SOR on February 11, 2015, admitting all 13 allegations of delinquent debt. Department Counsel was prepared to proceed on April 22, 2015, and the case was assigned to me on April 27, 2015. DOD issued a notice of hearing on May 18, 2015, scheduling a hearing for June 2, 2015. I convened the hearing as scheduled. The Government offered five exhibits that I marked and admitted into the record without objection as Government Exhibits (Gov. Ex.) 1 through 5. Applicant testified but did not submit any exhibits. I kept the record open for Applicant to submit documents. Applicant did not submit any documents. I received the transcript of the hearing (Tr.) on June 9, 2015. The record closed on July 6, 2015, after the time for Applicant to submit post-hearing documents expired.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is 30 years old and has been employed as an information technology specialist for a defense contractor since May 2012. He graduated from a technical school in 2004 with an associate's degree in computer science. He is single but has a daughter for whom he provides child support. Applicant reports that his net monthly income is approximately \$2,500 after deductions of \$300 each for child support and garnishment for student loans. Applicant did not provide any documents verifying his child support payments or student loan garnishment. His monthly expenses are approximately \$1,600, leaving \$900 monthly in discretionary funds. (Tr. 10-12, 19-22, 38-39, 48-49: GX 1, e-QIP, dated December 3, 2013)

The SOR alleges, and credit reports (GX 2, dated January 22, 2014; GX 3, dated March 13, 2014; GX 4, dated December 22, 2014; and GX 5, dated April 22, 2015) confirm the following debts for Applicant: a judgment on a medical debt from a hospital for \$2,387 (SOR 1.a); a second judgment from the same hospital for \$2,192 (SOR 1.b); a third judgment from a different hospital for \$805 (SOR 1.c); a fourth judgment from a different hospital for \$164 (SOR 1.d); two charged-off student loans for \$15,979 (SOR 1.e) and \$12,112 (SOR 1.f); three medical accounts placed for collection by the same creditor for \$563 (SOR 1.g), \$265 (SOR 1.h), and \$234 (SOR 1.i); a fitness center debt placed for collection for \$2,548 (SOR 1.j); another medical account placed for collection for \$1,064 (SOR 1.j)¹; a cable television debt placed for collection for \$168 (SOR 1.k); and a medical account placed for collection for \$130 (SOR 1.l). Department Counsel researched the debts and determined that the medical debt in SOR 1.b was not Applicant's debt but his father's debt. Department Counsel withdrew allegation SOR 1.b. The total amount of the delinquent debt after the withdrawal of allegation SOR 1.b is approximately \$36,000 with \$28,000 of the delinquent debt in two student loans.

Applicant used student loans to pay for his technical school education. Applicant, and not his parents, signed for the student loans. Applicant testified that his parents

¹There are two SOR allegations 1.j in the SOR. I have not renumbered the allegations in Applicant's SOR. Each debt will be discussed separately.

promised him a college education, and he thought his parents were paying the student loans. He was living at home with his parents when he discovered a student loan delinquency notice addressed to him. He confronted his parents and learned they were not paying, nor could they pay, the student loans. He tried to reach an agreement with the creditors but they wanted him to pay monthly more than he could afford. Applicant contends that his pay has been garnished for several years and his tax refunds were used to pay the student loan debts. He also notes that even with these payments the amount of the student loans seems to be larger rather than smaller. He believes the principle balance on the loans was \$3,000 to \$4,000, not the almost \$12,000 to \$35,000 now reported. He has not made any student loan payments, except garnishment, and he does not know the amount his parents may have paid. (Tr. 49-54)

Applicant was hospitalized just before moving to a new location. He did not provide a change of address so mail was not forwarded to him. He did not receive a hospital bill from any medical creditor. Since he did not pay his medical debts, the creditors entered judgments against him. He does not remember incurring any other medical debts but he does remember visiting hospitals for treatment. He has not paid any of the medical debts alleged in the SOR. (Tr. 35-37)

Applicant notes that he has not been taught about debt management. He tried working with some banks but was unable to make arrangements for loans to pay his debts. He knew his finances were a security clearance issue since he completed the e-QIP in December 2013 and talked to a security investigator in March 2014. (Tr. 17-28)

Applicant claims that his pay has been garnished for approximately three years to pay his student loans. He has also forfeited about \$1,500 in tax refunds each year for at least three years. However even with these payments, his student loans have not decreased but increased. He has steadily for many years payed his child support by automatic payroll deduction. Applicant believes he can pay \$400 monthly towards his student loans and other debts. (Tr. 29-40).

Applicant's only contact with creditors was his one unsuccessful attempt to reach an agreement on the student loans. He spoke to a debt counselor only two weeks before the hearing. The debt counselor is still researching Applicant's financial issues before recommending a course of action. (Tr. 40-48)

Applicant provided no documents to verify any action or payment taken in regard to his debts. I left the record open for Applicant to have a reasonable opportunity to resolve his debts. Department Counsel and I provided Applicant, on the record, advice on how to start to resolve the financial issues since he stated he did not know how to begin and had never been taught good financial traits. He was advised to contact his creditors, pay some of the debt since he reported \$900 monthly in discretionary funds, and determine the status of the student loans. Applicant provided no information after the hearing. (Tr. 57-65)

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 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.

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.

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 that the applicant may deliberately or inadvertently fail to 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.

Analysis

Financial Considerations

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. (AG ¶ 18) An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. However, the security concern is broader than the possibility that an individual might knowingly compromise classified information to raise money. It encompasses concerns about an individual's responsibility, trustworthiness, and good judgment. Security clearance adjudications are based on an evaluation of an individual's reliability and trustworthiness. It is not a debt-collection procedure. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect 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 terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is at risk of acting inconsistently with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

It is well-settled that adverse information in credit reports can normally meet the substantial evidence standard to establish financial delinquency. Applicant's history of delinquent debts is documented in his credit reports, his SOR responses, and his testimony at the hearing. Applicant admits to delinquent debts verified by credit reports that he has not paid or attempted to resolve. The delinquent debts raise the following Financial Considerations Disqualifying Conditions under AG ¶ 19:

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

Applicant has significant delinquent debt that has not been addressed or resolved. The evidence indicates a history of both an inability and an unwillingness to satisfy debt.

I considered the following Financial Considerations Mitigating Conditions under AG ¶ 20:

- (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 problems 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; and

(d) the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts.

Applicant signed for student loans to further his education. Even though he thought his parents would pay the student loans as promised, he was primarily responsible for the loans. When he learned that the loans were not being paid, he failed to take any action to pay or resolve the loans. He incurred medical debts for his personal treatments that have not been paid or resolved. He also has other consumer debts he has not paid. He made only limited contact with the student loan creditors about his debts. He claims that his pay has been garnished and his tax refunds used to pay student loans. He failed to provide any documents to verify his claims.

Applicant's debts are current and multiple. His delinquent debt did not happen under unusual or unique circumstances that are unlikely to recur but are based on his failure to take the action required of him to manage his financial issues. All of his financial issues were within his control to resolve. Applicant has not shown that he manages his personal financial obligations reasonably and responsibly, and his irresponsible financial conduct is likely to continue. AG ¶¶ 20(a) and (b) do not apply.

Applicant did not present any information that he sought or received financial counseling. The financial problems are not being resolved or under control. AG ¶ 20(c) does not apply.

AG ¶ 20(d) does not apply. For a good-faith effort, there must be an ability to repay the debts, the desire to repay, and evidence of a good-faith effort to repay. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. A systematic method of handling debts is needed. Applicant must establish a meaningful track record of debt payment. A meaningful track record of debt payment can be established by evidence of actual debt payments or reduction of debt through payment of debts. A promise to pay delinquent debts in the future is not a substitute for a track record of paying debts in a timely manner and acting in a financially responsible manner. Applicant must establish that he has a reasonable plan to resolve financial problems and has taken significant action to implement that plan.

Applicant has not paid any of his debts or established a plan to pay his debts. Applicant stated that he needed assistance and advice to determine how to best resolve his delinquent debts. After being provided at the hearing with guidance and advice, Applicant still did not provide any information on any action he took to resolve his debts. Applicant has not established a meaningful track record of debt payment. AG ¶ 20(d) does not apply.

Applicant has not presented any information to show he acted reasonably and responsibly toward his debts. He has not presented any information to verify payments made on his debts. Applicant has not presented a systematic plan to resolve debts. He has not established a meaningful track record of debt payments. His promise to pay in the future is not sufficient to show an adherence to his financial obligations. With evidence of delinquent debt and no documentation to support responsible management of his finances, it is obvious that Applicant's financial problems are not under control or that his delinquent debts have been resolved or are being resolved. His lack of financial action does not show that he will act in good faith with adherence to his financial obligations, or that he has or will act responsibly and reasonably to resolve his financial issues. There is ample evidence of irresponsible behavior, lack of good judgment, and unreliability. Applicant's lack of documented action is significant and disqualifying. His failure to act reasonably and responsibly towards his finances is an indication that he may not act reasonably and responsibly to protect and safeguard classified information. Applicant has not presented sufficient information to mitigate security concerns for financial considerations.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. An 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 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 did not present sufficient information to establish that he acted reasonably and responsibly towards his finances. His financial track record does not establish confidence that he has or will responsibly manage his financial obligations or follow rules and regulations. This indicates that he may not be concerned or act responsibly in regard to classified information. Overall, the record evidence leaves me with questions and doubts as to Applicant's judgment, reliability, trustworthiness, and eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant has not mitigated security concerns arising

under the financial considerations guideline. Eligibility for access to classified information is denied.

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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Withdrawn
Subparagraphs 1.c – 1.l:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

THOMAS M. CREAN
Administrative Judge