



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 15-01184
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne M. Strzelczyk, Esq., Department Counsel
For Applicant: Linda Lane Drummond, Personal Representative

10/16/2015

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 failed to present sufficient information to mitigate financial security concerns.

Statement of the Case

On October 8, 2012, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) to obtain a security clearance required for a position with a defense contractor. Applicant was interviewed by a security agent from the Office of Personnel Management (OPM) on November 16, 2012. After reviewing the results of the OPM investigation, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), dated March 5, 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) effective in the DOD on September 1, 2006.

Applicant answered the SOR on March 20, 2015, admitting the financial considerations allegation. Department Counsel was prepared to proceed on May 27, 2015, and the case was assigned to me on June 8, 2015. DOD issued a notice of hearing on July 2, 2015, scheduling a hearing for July 29, 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 (GX) 1 through 5. Applicant and one witness testified. Applicant submitted nine documents that I marked and admitted into the record without objection as Applicant Exhibits (AX) A through I. I left the record open for Applicant to submit additional documents. Applicant timely submitted one additional exhibit that I marked and admitted into the record without objection as AX J. (GX 6, e-mail, dated August 6, 2015). I received the transcript of the hearing (Tr.) on August 6, 2015, and the record closed that day.

Findings of Fact

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

Applicant is 43 years old and has been employed by a defense contractor as a shipyard planner for three years. He received an associate's degree in 2012 and a bachelor's degree in 2014. He is now studying for a master's degree. Applicant or his employer paid for his education, and he did not incur any student loan debt for his education. He served in the Army National Guard from 1989 until 1996, and in the Army Inactive Reserve from 1996 until 1998. He was discharged with an honorable discharge in 1998 as a specialist (E-4). Applicant was unemployed from December 2010 until November 2011.

Applicant first married in May 1995, and divorced in 2002. He had one child from this marriage. He did not have any financial issues during his first marriage. He married again in January 2004. His second wife had three children, so Applicant now has a biological son and three stepchildren at home. One stepdaughter will soon enter active duty in the Air Force, and one stepson is a college senior. He will enter the Air Force after graduation. The two children at home have some medical and developmental issues. The family's net monthly income is \$4,100, with monthly expenses of \$3,689, leaving \$410 in monthly discretionary income. As will be noted below, the payments required by a Chapter 13 bankruptcy are taken directly from Applicant's pay before determining his monthly net pay. (Tr. 42-50; GX 1, e-QIP, dated October 5, 2012; GX2, Personal Subject Interview, dated November 16, 2012; AX B, Budget, dated July 2015;; AX D, Payroll Statement, dated July 12, 2015)

The SOR alleges that Applicant filed a Chapter 13 Bankruptcy on August 1, 2014, with liabilities of \$538,814.41, and assets of \$199,779.20. (GX 3, Bankruptcy Documents, filed August 27, 2014) Applicant admitted the allegation in his response to the SOR. The security issue raised by the bankruptcy is not just the bankruptcy filing but the amount of delinquent debt listed in the bankruptcy petition. Applicant and his wife have been making the approximately \$1,090 monthly payments to the bankruptcy

trustee since Applicant and his wife received financial counseling as part of their bankruptcy petition action. They did not present any information on any other payments they made on any of the debts. The only action taken on their debts is to file the Chapter 13 bankruptcy. Applicant and his wife received financial counseling as part of their bankruptcy petition action. (AX C, Counseling Certificate, dated August 25, 2014)

Applicant's family started to experience financial problems in 2009. Applicant claims that the delinquent debts were incurred not from frivolous or unnecessary spending, but because of difficult issues that happened to the family. Applicant's wife had two major surgeries in 2009, two in 2011, and another in 2012. She still held a realtor's license but was unable to work and therefore did not receive any commissions. Their four children had various serious medical issues requiring constant doctor visits, hospitalizations, and medications. For most of the time, Applicant's family was covered by health insurance that assisted with payment of medical bills. In approximately 2006, Applicant's employer switched the health coverage to a health savings account and their out-of-pocket expenditure dramatically increased. Applicant noted that many of the medical debts listed in the bankruptcy stemmed from the time the family was covered by a health savings account system. The family did not have health insurance when Applicant was unemployed from December 2010 until being employed with his present employer in November 2011. Since November 2011, he has had a much better health insurance program and did not incur any delinquent medical debts. From 2006 until 2010, Applicant did not look for a different health insurance plan because the family could not afford a plan outside of Applicant's employment. The medical bills became delinquent because Applicant and his wife prioritized their debts and focused on providing for their children and paying to maintain their house. Their priorities were the mortgage, utilities, insurance, vehicles, and groceries. (Tr. 41-50, 54-56, 63-69).

Applicant's wife became a real estate agent receiving sales commissions starting in 2005. Taxes were not taken from her commissions and she was responsible for setting aside funds to pay the state and federal taxes. Applicant and his wife filed their tax returns as married filing separately. Applicant's wife did not file federal or state tax returns from 2005 until 2009. After auditing the tax returns, the federal and state tax authorities placed tax liens on the family's property for the back taxes. The tax liens in the bankruptcy pertain to the federal and state taxes for those years. The tax debt is included in the bankruptcy. Applicant's wife states that only she is responsible for those tax liens since it was her commission that generated the tax liability. (Tr. 33-35)

Applicant's wife is presently in school which she will complete shortly. She used student loans to pay for her education. Her student loans are presently deferred. The student loans listed in the bankruptcy are for their children's education. They are primarily responsible for their own student loans. Applicant was the co-signer on the loans as their parent. Applicant does not expect to have to pay the loans since their children were raised to be responsible and pay their debts. Their daughter is an Air Force officer and is expected to meet her financial obligations. (Tr. 75-76)

Applicant and his wife provided the bankruptcy attorney credit reports so that all of their debts could be included in the bankruptcy filing. They did not see the bankruptcy document prepared by the attorney, GX 2, until the documents were sent to them before the hearing by Department Counsel. At the hearing, they objected to the amount of debt listed on the bankruptcy schedules. Applicant's wife pointed out that some of the debts listed in the documents should not be considered bankruptcy debts and some were duplicate debts. They believed the correct amount of debt should be \$218,827.84. Applicant's wife is 100% sure that her calculations are absolutely correct.

Applicant presented a document indicating that he is only responsible for a limited part of the family's delinquent debts. The document indicates Applicant's belief that he is responsible for a loan, five small medical debts, a car loan, and student loans for his children that are in deferment. The bankruptcy documents show these debts as \$50,098, while Applicant believes he should only be responsible for \$23,559 in delinquent debt, the overwhelming part of this debt is attributed to a car loan. There are also joint accounts with his wife that include two mortgage accounts in arrears, medical accounts, a city tax lien, and another vehicle repossession debt, for a total of \$31,564.61. The bankruptcy documents list the amount of the debts as \$36,423.61 (Tr. 56-58; AX A, List of Debts, undated)

Applicant presented a list of debts from the bankruptcy that he states should not be attributed to him but only to his wife. The total amount of the debt shown on the bankruptcy list is \$281,540.34, but Applicant and his wife argue that the total should only be \$163,704.23. The delinquent debts include a repossessed car loan, credit card and loan debt, utility bills, medical debt, potential student loan debts, and significant federal and state tax liens. Applicant stated that the credit cards were used to pay for necessities and not for frivolous entertainment.

Applicant and his wife stated that they would meet with their bankruptcy attorney the day after the hearing. I informed Applicant that they should advise the attorney of their issues on the amount of the debt, and have him determine the correct amount to include in the bankruptcy filing. After the hearing, Applicant presented a letter from the attorney. The attorney noted that the bankruptcy judge confirmed the bankruptcy payment plan on March 27, 2015. Applicant and his wife will pay \$1,090 per month for 60 months (total of \$65,400). The plan will pay all secured debts and mortgage arrears. The \$2,544.51 secure part of the \$88,839.92 tax lien will be the only part of the debt paid by the bankruptcy. The remainder will be treated as unsecured debt. However, as noted below, this only affects the tax lien and not the underlying tax debt. The tax debt will not be discharged by the bankruptcy and Applicant and his wife are still responsible to pay the remainder of the tax debt.

Applicant's bankruptcy attorney stated that the second mortgage is also treated as an unsecured debt. The unsecured creditors, which are the bulk of the creditors, will receive 1% of the debt they are owed. The remaining debt will be discharged at the end of the bankruptcy as long as Applicant and his wife successfully complete the bankruptcy. At the end of the bankruptcy, Applicant and his wife will only owe the

normal monthly regular mortgage payment, their student loans (if any), and any debts incurred after the bankruptcy filing date. The bankruptcy attorney did not indicate that the amount of debt in the original bankruptcy documents was changed. The amount of debt noted in the SOR is still valid at \$538,814.41. (Tr. 19-27, 30-33, 70-73; AX J, letter, dated August 4, 2015)

For security purposes, I find that Applicant is responsible for the majority of the delinquent debts listed in the bankruptcy documents. The real estate commissions were earned by Applicant's wife during the marriage. While she filed her tax return separately and did not file tax returns for four years incurring tax liens, Applicant was in the household benefiting from the additional funds represented by the taxes his wife did not pay. While the credit cards, loans, and utilities were in his wife's name, again Applicant was in the household and benefitted from the purchases. The medical debts were incurred for members of Applicant's family and resulted from gaps in Applicant's health insurance coverage. The only debts that may not accrue to Applicant are the student loans for his children. The loans are deferred for now but the children will have to start making student loan payments soon. The children appear to be responsible and will make the loan payments since they will be Air Force officers and held responsible for their own debts. However, if for some reason the children default on payment of the student loans, Applicant, as the co-signer of the loans, will be responsible for payment.

Applicant presented an e-mail from his supervisor noting that he is her best planner. She noted that he has great potential. She is asking to promote him so she does not lose him to another division in the shipyard. In a memorandum to her supervisor, Applicant's supervisor noted his exceptional duty performance and his ability to train other members of the team. She notes that Applicant has an excellent rapport and relationship with other leaders in the organization. She recommends him for promotion. (AX E, E-mail, dated April 8, 2015; AX F, Memorandum, undated)

Applicant also presented his performance appraisals for 2012, 2013, and 2014. The appraisals show that Applicant started in 2012 by meeting all his expected goals, and by 2013 exceeding his goals. His supervisor noted that he goes above and beyond to help his team members meet deadlines and helps them improve. (AX G, H, and I, Performance Appraisals)

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.

Adverse information in credit reports and other documents can normally meet the substantial evidence standard to establish financial delinquency. Applicant and his family incurred delinquent debt from tax liens, credit card, loans, and medical debts when his wife could not work because of illness and his income was not sufficient to meet their financial requirements. Applicant's history of delinquent debts is documented in his bankruptcy documents, credit report, his OPM interview, and his testimony at the hearing. Applicant's delinquent debts are a security concern. The evidence is sufficient to raise security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts); and AG ¶ 19(c) (a history of not meeting financial obligations). The evidence indicates 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.

Mitigating conditions AG ¶¶ 20(a) and (b) do not apply. Applicant incurred significant delinquent debt over a period of time from various sources that have not been resolved. The delinquent debt is frequent and current. While some of the debt is due to unfortunate circumstances such as his wife's illness, the medical and credit card debts were within Applicant's ability to control and not become delinquent. It is noted that his wife did not file or pay federal and state taxes during the time the delinquent debts were being incurred. Applicant did not present any information on actions taken to

address the delinquent debt except to file a Chapter 13 bankruptcy in 2014. While bankruptcy is a legal and permissible means of resolving debt, Applicant has not established that he acted reasonably and responsibly in regard to his finances under the circumstances of his case. AG ¶ 20(c) applies. Applicant and his wife received financial counseling as a requirement for filing the Chapter 13 bankruptcy.

Applicant did not establish a good-faith initiative to pay his debts. 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 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 established a meaningful track record of debt payment. Applicant has not paid any of the delinquent debts. Applicant knew since November 2012, when he was interviewed by the security investigator, that his delinquent debts were a security concern. The first action he took on the delinquent debt was to file a Chapter 13 in August 2014, just before the SOR was issued in October 2014. He has been making payments on the wage earner's plan for a year, but still has four years of payments ahead of him. While most of his delinquent debts will be discharged by the bankruptcy, he and his wife will still have a substantial tax debt to pay. The limited payment he has made under the bankruptcy plan is not sufficient to establish a meaningful track record of debt payments. Applicant has not established that he acted with reasonableness, prudence, honesty, and an adherence to duty and obligation towards his finances. Applicant has not shown that he is managing his personal financial obligations reasonably and responsibly. His financial problems are ahead of him and not behind him. There is ample evidence of irresponsible behavior, poor judgment, and lack of financial reliability. Based on all of the financial information, I conclude that Applicant has not mitigated security concerns based on 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. I considered the views of Applicant's supervisor and Applicant's excellent job performance. I considered Applicant service in the Army National Guard and his honorable discharge. Applicant did not develop a plan to pay his delinquent debts when he was aware they were a security concern. Two years after learning of the financial security concern, he filed a Chapter 13 bankruptcy. While he has been paying that bankruptcy plan for a year, he still has four more years to go. This information shows that Applicant has not responsibly managed his finances, and he has not acted reasonably and responsibly towards his finances. Overall, the record evidence leaves me with questions or 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

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