



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



In the matter of:)
)
) ISCR Case No. 14-05791
)
Applicant for Security Clearance)

Appearances

For Government: Benjamin Dorsey, Esq., Department Counsel
For Applicant: *Pro se*

01/21/2016

Decision

CURRY, Marc E., Administrative Judge:

Applicant mitigated the financial considerations security concerns, but failed to mitigate the personal conduct security concerns. Clearance is denied.

Statement of the Case

On January 5, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. 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. On April 10, 2015, Applicant answered the SOR, admitting all of the allegations except subparagraphs 1.d and 2.a. He requested a hearing, whereupon the case was assigned to me on July 18, 2015. DOHA issued a notice of hearing on August 3, 2015, scheduling the hearing for September 3, 2015. After a continuance, the case was rescheduled for September 28,

2015. The hearing was held as rescheduled. At the hearing, I received five Government exhibits (GE 1 - GE 5), and five Applicant exhibits (AE A - AE C). DOHA received the transcript (Tr.) on September 28, 2015.

Findings of Fact

Applicant is a 48-year-old married man with three adult children. He quit school in the 12th grade. (Tr. 17) Since 2012, he has worked for a defense contractor as a custodian and maintenance man. (Tr. 18) The executive director of Applicant's company characterizes him as "a valuable team member with an untiring work ethic and a can-do attitude." (AE A)

Between 2007 and 2012, Applicant incurred approximately \$40,000 of delinquent debt. Five of these debts, totalling approximately \$18,000, ultimately resulted in judgments for non-payment entered against him (SOR subparagraphs 1.a through 1.e). Applicant's inability to pay his debts corresponded with his wife's medical problems. Specifically, in the mid-2000s, she began suffering from degenerative arthritis. (Tr. 47) It got progressively worse, rendering her unable to work by 2007. Although she had disability insurance, it was insufficient to help allay her medical costs. Applicant was a construction worker at or about the time his wife's health deteriorated. As the economy worsened after 2008, his work became more sporadic. (Tr. 19) Consequently, Applicant and his wife began struggling to make ends meet.

Unable to make the minimum monthly payments on the debts, Applicant's wife, who handled their finances, paid "what she could." (Tr. 34) In the fall of 2014, Applicant and his wife met with a credit counselor to consider consolidating their debts. (Tr. 50) After evaluating their credit report, the counselor concluded that their best option was to file a petition for Chapter 7 bankruptcy. (Tr. 35; 51)

Subsequently, in November 2014, Applicant and his wife filed for federal bankruptcy protection. They reported \$63,054 in unsecured debts and \$276,213 of secured debt including his home and one of his automobiles. (GE 4 at 69) All of the SOR delinquencies were included in the bankruptcy petition. On February 10, 2015, the bankruptcy court discharged Applicant's debts. (GE 5)

Applicant has not incurred any new delinquencies since beginning his current job in 2012. His income is no longer variable, as it was when he worked in the construction business. He keeps a budget. He has approximately \$1,100 of monthly discretionary income, \$1,800 in savings, and \$3,000 invested in a 401(k) retirement account. (Tr. 31-32)

In May 2014, Applicant completed a security clearance application. The question set forth in Section 26 asked whether any judgment had been entered against him, whether any loan had been in default, and whether any bill had been turned over to a collection agent. Section 26 also required applicants to disclose whether any credit account had been suspended, charged off or cancelled within the past seven years, or

whether any debt was currently 120 days delinquent. Applicant answered “no” to all of these questions. Applicant contends that he was unaware of the extent of his delinquencies when he completed the security clearance application because his wife handled their finances. Also, he contends that because he and his wife had been steadily making less-than-minimum payments, he thought his bills were behind, but not in default. (Tr. 34)

Policies

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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.”

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 for obtaining a favorable security decision.

Analysis

Guideline F, Financial Considerations

Under this guideline, “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) Between 2007 and 2012 Applicant incurred \$40,000 of delinquent debt. AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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; and

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

Applicant's financial problems began when his wife in 2007 developed chronic arthritis that ultimately prevented her from working. His financial problems worsened when an ensuing economic downturn led to increasingly erratic hours at his construction job. Since beginning his current job in 2012, Applicant's work hours and pay have stabilized. After consulting a credit counselor in November 2014 to inquire about a debt consolidation program, he was advised to file for a Chapter 7 discharge of his debts. Following the counselor's advice, Applicant filed the bankruptcy petition, whereupon his debts were discharged in February 2015. (GE 5)

Applicant has not incurred any additional delinquencies since the bankruptcy discharge. Currently, he keeps a budget, has approximately \$1,100 of after-expense income, \$1,800 in savings, and \$3,000 invested in a retirement account. I conclude that all of the mitigating conditions apply, as set forth above.

Personal Conduct

Under this guideline, "conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information." Moreover, "of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process." (AG ¶ 15)

Applicant's failure to disclose his delinquent debts on his 2014 security clearance application raises the issue of whether AG ¶ 16(a), "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities," applies. Five of Applicant's debts led to lawsuits and eventual judgments against him. Given the notice requirements necessary to proceed with lawsuits, it is difficult to believe that Applicant could have no idea that he had any outstanding judgments against him when he completed his security clearance application. His incredulous explanation for failing to disclose the judgments undercuts his explanation for not disclosing his other delinquent debts. Under these circumstances, AG ¶ 16(a) applies without mitigation.

Whole-Person Concept

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They are as follows:

(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.

Circumstances beyond Applicant's control contributed to his financial problems. I was particularly cognizant of his vulnerability, as someone who did not finish high school, to economic downturns. Notwithstanding these factors, Applicant had a duty to provide truthful, frank, and candid responses when he completed his security clearance application. He failed to do this. Consequently, his application for a security clearance must be 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:	FOR APPLICANT
Subparagraphs 1.a-1.m:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.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.

MARC E. CURRY
Administrative Judge

