



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



In the matter of:)
)
) ISCR Case No. 14-04491
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

02/11/2016

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. He had two vehicles repossessed and nine delinquent accounts totaling more than \$32,000. He paid one delinquent obligation of approximately \$500. When he completed his security clearance questionnaire, he failed to list the repossessions or his other financial problems. The personal conduct concerns are mitigated, but he failed to mitigate the financial considerations security concerns. Clearance is denied.

History of the Case

On March 26, 2015, acting under the relevant Executive Order and DoD Directive,¹ the DoD issued a Statement of Reason (SOR) detailing personal conduct

¹ 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.

and financial considerations security concerns. DoD adjudicators could not find that it is clearly consistent with the national interest to grant or continue Applicant's security clearance. On April 8, 2015, Applicant answered the SOR and requested a hearing. On May 27, 2015, I was assigned the case. On June 16, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for a hearing to be convened on July 7, 2015.

At the hearing, Government's Exhibits (Ex.) 1 through 5 and Applicant's Exhibit A were admitted without objection. The record was kept open to allow Applicant to present additional documents. Documents were received and admitted without objection as Ex. B-E.² Applicant testified at the hearing. On July 15, 2015, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, he admitted filing for Chapter 7 bankruptcy protection in 2005 and admitted the nine charged-off and collection accounts. Applicant asserted that eight of the delinquent obligations were due to actions of his ex-wife. His admissions are incorporated as facts. After a thorough review of the pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 48-year-old part-time aircraft servicer who has worked for a defense contractor since November 2010, and he seeks to obtain a security clearance. Since January 2002, he has worked 20 to 28 hours a week as an aircraft servicer fueling aircraft. (Ex. 3, Tr. 21, 39) Since 1996, Applicant has worked a full-time civil service position, WG 9 – Step 5, as an aircraft inspector. (Ex. 3, Tr. 38) He works from 7:00 a.m. until 4:00 p.m. on one job and then works 4:00 p.m. until 9:00 p.m. daily on his second job. (Tr. 34) His take-home pay is \$1,100 every two weeks from his full-time job and \$800 from his part-time job. (Tr. 22)

From April 1987 through June 1991, Applicant honorably served in the U.S. Marine Corps, separating as a corporal (E-4). (Ex. 1, Tr. 27) The U.S. Department of Veteran's Affairs (VA) rates Appellant's disability at 40 per cent. (Tr. 22) His disability pay is \$587 monthly. (Tr. 22) In September 2010, he divorced. (Ex. 1) At various times prior to the divorce, Applicant and his wife were separated, living in different cities. (Tr. 48) His ex-wife has two children, which are not his children, who live or have lived with her. (Tr. 40) He is not required to pay child support. (Tr. 40) Applicant stated his wife did not work during the marriage, but also said she was a secretary working in the medical field at the time of the divorce. (Tr. 26, 24)

Applicant was in a debt consolidation program for a year without much success in lowering his outstanding debt. (Tr. 27) In May 2005, Applicant filed for Chapter 7 bankruptcy protection. In September 2005, his debts were discharged.

² On January 15, 2016, Applicant's post-hearing submissions were forwarded by Department Counsel.

In September 2005, Applicant purchased a \$10,138 vehicle with a loan requiring \$262 monthly payments. The last payment he made on the vehicle was in 2008. (Ex. 5, Tr. 40) When payments stopped, the vehicle was repossessed resulting in a \$12,968 debt (SOR 1.b). (Ex. 2) He stated he stopped making payments because his wife was overspending. (Tr. 41) In September 2006, prior to their divorce, he and his wife purchased a new van for \$12,482. (Tr. 25) The loan required \$347 monthly payments for three years. The vehicle was repossessed when his then ex-wife failed to make the monthly payments resulting in a \$7,662 debt (SOR 1.c). (Ex. 2)

Applicant's May 2013 credit report lists a credit card collection account (SOR 1.f, \$2,256), two telephone service collection accounts (SOR 1.g, \$1,965 and SOR 1.i, \$1,008), and two electric service collection accounts (SOR 1.h, \$1,261 and SOR 1.j, \$516). In his response to the SOR, Applicant asserted these delinquent debts were incurred by and were the responsibility of his ex-wife. The credit card account was opened three years before the divorce. In May 2013, when questioned about his finances, he had no knowledge about these debts, which he asserted were his ex-wife's responsibility. (Tr. 30) At the hearing, he had no information when questioned about these delinquent accounts. (Tr. 30-31) He is receiving no calls or letters from creditors demanding payment. (Tr. 33) It was two years ago, that he was last contacted about a delinquent debt. (Tr. 33)

Approximately two months after the hearing, Applicant sent one of the electric companies and two collection companies a letter requesting validation of the debt³ (SOR 1.d, \$1,261 and SOR 1.h, \$1,261). (Ex. C) In August 2015, he paid \$515.65 on the second electric company collection account (SOR 1.j, \$516), which satisfied the debt. (Ex. E)

Applicant asserted the apartment collection account (SOR 1.c, \$3,182) was for a lease he signed in 2007 for his ex-wife and her children. (Tr. 28) The debt was in default and went to collection in 2008, which was two years before the divorce. (Tr. 44) They left the apartment due to rats. (Tr. 29) A check with the Better Business Bureau stated the leasing business was believed to no longer be in business. (Ex. B)

In May 2013, Applicant completed a personal subject interview (PSI) during which his delinquent accounts were discussed. (Ex. 3) He acknowledged two delinquent accounts. His ex-wife was awarded the home and van in the divorce and was supposed to make payments on these items, but never made any payments. (Ex. 4, Tr. 25, 29) He never received any correspondence following the van's repossession. (Tr. 30) The home went to foreclosure. (Tr. 24) His June 2015 credit report indicates the credit granter on the house had reclaimed the collateral to settle the defaulted mortgage. (Ex. A) The balance on the account was zero. (Ex. A) His credit scores ranged from 575 to 594. (Ex. A) He stated he did not list his other delinquent accounts because he had no knowledge of them and had never received any collection letters concerning them. (Ex.2)

³ It appears two different collection agencies are attempting to collect the same \$1,261 electrical bill based on the account numbers provided in the credit reports. (Ex. 2, 5)

In June 2014, Applicant was sent written financial interrogatories asking about the status of his other delinquent accounts. (Ex. 3) The same month, he obtained financial counseling and decided to make repayment arrangements on his delinquent debts. At that time, he had approximately \$600 to \$700 in monthly disposable income (gross income less deductions and expenses). (Ex. 2, Tr. 37) He has paid a little more than \$500 on one SOR delinquent account. (Ex. 4) In June 2014, Applicant made a payment of an undisclosed amount that satisfied five non-SOR medical collection accounts, which totaled \$440. (Ex. 2, 3, Tr. 36) In August 2015, he paid an undisclosed amount on another non-SOR debt regarding a bank and trust account resulting in a zero balance owed on that obligation. (Ex. D)

In Applicant's May 2013 Electronic Questionnaires for Investigations Processing (e-QIP), he answered "no" when asked about delinquency involving routine accounts in Section 26. The question asked about repossessions, of which he had two; collection accounts, of which there were eight; charged-off accounts of which there was one; and asked if he was currently or had been more than 120 days delinquent on any account. (Ex. 1) He stated he was unfamiliar with working with computers and was pressed to return the form. He was assisted by a coworker in completing the form. (Tr. 35) He stated he did not have account numbers or balances on the debts at the time he was completing the form. (Tr. 35) In his SOR response, he indicated he completed the e-QIP at work and did not have any pertinent account information with him. He also asserted he was not given time to research the information. Later in the same month, when questioned about his delinquent accounts, he stated he was unfamiliar with the majority of the debts on his credit report.

Applicant's mother is suffering with cancer and he spends time living with her and pays some, not otherwise delineated, of her medical bills. (Tr. 50, 61) He pays some of the utility bills. (Tr. 52) He has one credit card.

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 to obtain 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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 of 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

Adjudicative Guideline (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 to meet his financial obligations.

Applicant owes more than \$32,000 following two vehicle repossessions and on nine charged-off or collection accounts. 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 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.

Applicant has been full-time employed since 1996, has had a part-time job since 2010, and also receives approximately \$600 monthly in VA disability compensation. He has had two vehicles repossessed. One repossession occurred in 2008, two years before his divorce, and the other occurred after his divorce. The delinquent debt resulting from these repossessions, which total more than \$20,000, represent two-thirds of the delinquent debt of concern to the Government. In May 2014, he said he had

approximately \$600 per month in disposable income and he would start addressing his delinquent accounts including the SOR accounts. Since that time, he documented having paid less than \$1,000 on his delinquent accounts. In June 2014, he paid an undisclosed amount settling five non-SOR medical bills. (Ex. 4)

None of the mitigating factors for financial considerations fully extenuate or mitigate the security concerns. The unpaid vehicle debts and the majority of the SOR delinquent accounts remain delinquent. By failing to pay more of his delinquent debts he has failed to act responsibly under the circumstances.

Applicant has had sufficient opportunity to address his financial delinquencies. Failing to pay his debts casts doubt on his current reliability, trustworthiness, and good judgment. He has not acted responsibly in addressing his debts. In June 2014, he received credit or financial counseling and agreed to start making payments on his debts. He made an undisclosed amount of payment before stopping. He has not demonstrated that he has a plan to address the vehicle repossession debts. The mitigating condition listed in AG ¶ 20(c) does not apply.

The mitigating conditions listed in AG ¶ 20(d) applies to one energy bill (SOR 1. J, \$516) paid after the hearing. The mitigating condition listed in AG ¶ 20(e) does not apply because Applicant did not provide documentation disputing the obligations. He has asked three creditors to verify the same delinquent obligation. Applicant failed to include any response he received to his inquiry. AG ¶ 20(e) requires not only a debt be disputed, but there must also be documentation substantiating the basis of the dispute or providing evidence of action to resolve the debt. Applicant did not provide the necessary documentation to establish a bona fide dispute of his debts under AG ¶ 20(e).

Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

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. 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.

With respect to the personal conduct concerns involving failing to list his financial problems on his e-QIP, the pertinent disqualifying condition is AG ¶ 16(a), a deliberate omission, concealment, or falsification of relevant factors from any personal security questionnaire. Applicant answered “no” when questioned about financial delinquencies when completing his e-QIP. He said he was unaware of some of the debts and did not know account balances or numbers when completing the form. It is noted that some of the debts were incurred after his 2010 divorce. He was in a rush to complete his e-QIP.

It is difficult to understand, even when rushed, how an individual can forget their vehicle had been repossessed.

The Government has an interest in examining all relevant and material adverse information about an applicant before making a clearance decision. The Government relies on applicants to truthfully disclose that adverse information in a timely fashion, not when it is perceived to be prudent or convenient. Further, an applicant's willingness to report adverse information about himself provides some indication of his willingness to report inadvertent security violations or other security concerns in the future, something the government relies on to perform damage assessments and limit the compromise of classified information.

The Government has shown Applicant's answers on his e-QIP were incorrect, but this does not prove Applicant deliberately failed to disclose information about his finances. He was unaware of the majority of the SOR delinquent obligations when he completed his e-QIP. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government, when applying for a security clearance, is a security concern. But every inaccurate statement is not a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully.

When Applicant completed his e-QIP, he was aware he had debts; however, he was unaware of the account numbers or the balance on those debts. It was not until he was questioned about his finances that he learned the extent of his delinquent accounts. Having observed Applicant's demeanor and listened to his testimony, I find his answers were not deliberate omissions, concealments, or falsifications.

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 relevant 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 honorably served in the U.S. Marine Corps. However, he documented payments of less than \$1,000 on his delinquent accounts. He has been aware of the Government's concern about his delinquent SOR debts since his May 2013 interview, the June 2014 written financial interrogatories, and the March 2015 SOR. Only one delinquent SOR debt of approximately \$500 has been paid. Although, in June 2014, he paid five non-SOR medical debts. There is no documentation establishing that Applicant has recently contacted his creditors. He did not provide sufficient information regarding his past efforts to address his delinquent debts nor has he established any repayment agreements. Without such information, he failed to mitigate the security concerns arising from his financial considerations.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to be eligible for a security clearance. The determination of an individual's eligibility and suitability for a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under Applicant's current circumstances, a clearance is not warranted. In the future, if Applicant has paid his delinquent obligations, established compliance with a repayment plan, or otherwise substantially addressed his past-due obligations, he may well demonstrate persuasive evidence of his financial considerations security worthiness.

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 with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the personal conduct security concerns, but failed to mitigate the security concerns arising from his delinquent financial obligations.

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: **AGAINST APPLICANT**

Subparagraphs 1.a and 1.b:	Against Applicant
Subparagraph 1.c ⁴ :	For Applicant
Subparagraphs 1.d – 1.i:	Against Applicant
Subparagraph 1.j:	For Applicant

Paragraph 2, Personal Conduct: **FOR APPLICANT**

⁴ The debt listed in subparagraph 1.c is the same debt listed in subparagraph 1.h.

Subparagraph 2.a:

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

CLAUDE R. HEINY II
Administrative Judge