



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



In the matter of:

ISCR Case No. 14-05226

Applicant for Security Clearance

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel

For Applicant: *Pro se*

September 15, 2015

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 56-year-old employee of a defense contractor. He was indebted on 12 delinquent accounts in the approximate amount of \$115,044. He recently began making payments on seven of his debts. While he claimed to have resolved the remaining five medical debts, he failed to present documentation to substantiate his claim. He resolved his delinquent 2011 Federal Income taxes, and filed his 2011 Federal Income tax return. However he failed show he filed his 2012 state income tax return. Eligibility for access to classified information is denied.

Statement of the Case

On December 16, 2014, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 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) effective September 1, 2006.

Applicant answered the SOR on January 12, 2015 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on June 16, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 19, 2015, scheduling the hearing for July 9, 2015. The hearing was convened as scheduled. The Government offered Hearing Exhibits (HE) I and Exhibits (GE) 1 through 5, which were admitted without objection. Applicant offered Exhibits (AE) A through D, which were admitted without objection. Applicant testified on his own behalf and called one witness. The record was left open for receipt of additional documents. On August 21, 2015, Applicant presented AE E through AE H. Department Counsel had no objections to AE E through AE H and they were admitted. The record then closed. DOHA received the transcript of the hearing (Tr.) on July 17, 2015.

Findings of Fact

Applicant is a 56-year-old employee of a defense contractor. He has worked in the defense industry since 1997. He has held a security clearance in connection with his employment since 1998. He is married and has three adult children, ages 25, 22, and 20. He immigrated to the United States at the age of six and became a U.S. citizen at the age of 13. (Tr. 28-30, 43.)

As listed in the SOR, Applicant was alleged to be delinquent on 12 debts owed to commercial creditors in the approximate amount of \$115,044. He was also alleged to be delinquent on his 2011 Federal Income taxes in the amount of \$5,511, to have failed to file his 2011 Federal Income tax return, and to have failed to file his 2012 state income tax return. Applicant admitted all of the allegations. His debts are identified in the credit reports entered into evidence. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact. (Answer; GE 2; GE 3; GE 4; GE 5.)

Applicant attributes his financial delinquencies to difficulties that began in approximately 2012. He admitted that he has “not been good with money.” He buried himself in work and long commutes. He left the family finances to his wife to manage. In 2012, Applicant and his wife began having marital difficulties and the family finances suffered. His wife shopped when she was unhappy. She extended their credit and maxed out their credit cards. Applicant is now actively involved in his family’s finances. He and his wife only use a debit card. They buy what they can afford. Applicant does not live extravagantly. He and his wife buy used cars and shop at thrift stores. (TR. 24-28, 33, 46, 49-50.)

Applicant was indebted on a primary mortgage account that was past due in the amount of \$40,626, with a total loan balance of \$558,112, as alleged in SOR ¶ 1.a. Applicant and his wife bought their residence in 1998 for \$315,000. They refinanced the home twice after its purchase and the loan increased to \$560,000. They started falling behind on the mortgage payments approximately two years ago. They were able to bring the account current, but recently became past-due again in January 2015 because they were supporting two of their sons while they attend college. One of their sons has now obtained a full time job and no longer requires support. The other son, whom they

were supporting, is now working a part-time job to assist in supporting himself. Applicant's wife withdrew funds from her retirement account in August 2015, and paid the delinquent mortgage arrearages. Applicant provided documentation that shows this account is now current. (AE A; AE E; Tr. 47-49, 52-53, 64-66.)

Applicant was indebted to a bank for a charged-off credit card account in the approximate amount of \$14,143, as alleged in SOR ¶ 1.b. Applicant presented documentation that shows the account balance on this debt is \$9,490.77. He contacted this creditor and reached an agreement to make monthly payments of \$200 on this debt. He made the first payment under this agreement on August 19, 2015. (AE G; Tr. 53-54.)

Applicant is indebted to a bank for a charged-off credit card account in the approximate amount of \$8,880, as alleged in SOR ¶ 1.c. He contacted this creditor and reached an agreement to make monthly payments of \$270 on this debt. He documented that he made the first payment under this agreement on August 19, 2015. (AE G; Tr. 54-55.)

Applicant is indebted to a bank for a charged-off credit card account in the approximate amount of \$5,658, as alleged in SOR ¶ 1.d. This debt has been delinquent since May 2011. He contacted this creditor and reached an agreement to make monthly payments of \$150 on this debt. He made the first payment under this agreement on August 20, 2015. (AE E; AE G; Tr. 57.)

Applicant is indebted to a bank for a charged-off credit card account in the approximate amount of \$5,392, as alleged in SOR ¶ 1.e. This debt has been delinquent since May 2011. Applicant contacted this creditor and made a payment of \$150 on August 20, 2015. (AE A; AE G; Tr. 57.)

Applicant is indebted to a bank for a charged-off account in the approximate amount of \$3,738, as alleged in SOR ¶ 1.f. He contacted this creditor and made a payment of \$150 on August 20, 2015. (AE G; Tr. 58.)

Applicant was indebted on a medical account in the approximate amount of \$133, as alleged in SOR ¶ 1.g. Applicant claimed this debt was paid in full "sometime prior to June 2014." His September 2014 credit report reflected that this debt became delinquent in 2012. This debt remains unresolved. (GE 3; GE 4; GE 5; AE B; Tr. 59-60.)

Applicant was indebted on a medical account in the approximate amount of \$102, as alleged in SOR ¶ 1.h. Applicant claimed this debt was paid in full on January 30, 2014, but provided no documentation to support this claim. His December 2013 credit report reflected that this debt became delinquent in March 2013. This debt remains unresolved. (GE 2; AE B; Tr. 59-60.)

Applicant was indebted on a medical account in the approximate amount of \$61, as alleged in SOR ¶ 1.i. Applicant claimed this debt was paid in full on January 30,

2014. His December 2013 credit report reflected that this debt became delinquent in November 2012. This debt remains unresolved. (GE 2; AE B; Tr. 59-60.)

Applicant was indebted on a medical account in the approximate amount of \$232, as alleged in SOR ¶ 1.j. Applicant claimed this debt was paid in full on June 6, 2014, but provided no documentation to support this claim. His December 2013 credit report reflected that this debt became delinquent in July 2012. This debt remains unresolved. (AE B; GE 2; Tr. 59-60.)

Applicant was indebted on a medical account in the approximate amount of \$172, as alleged in SOR ¶ 1.k. Applicant claimed this debt was paid in full on June 6, 2014, but provided no documentation to support this claim. His December 2013 credit report reflected that this debt became delinquent in May 2013. This debt remains unresolved. (AE B; GE 2; Tr. 59-60.)

Applicant was indebted to a bank on a charged-off credit card account in the approximate amount of \$35,907, as alleged in SOR ¶ 1.l. He contacted this creditor and made a payment of \$1,079 on August 20, 2015. This debt is being resolved. (AE G; Tr. 60-61.)

Applicant was indebted to the Federal Government for delinquent taxes in the approximate amount of \$5,511 for the tax year 2011, as alleged in SOR ¶ 1.m. Applicant provided a record of account from the Internal Revenue Service that shows a zero balance for the tax period ending December 31, 2011. This debt is resolved. (AE A; AE F.)

Applicant failed to file his 2011 Federal Income tax return, and his 2012 state income tax return. Applicant's record of account from the Internal Revenue Service for the tax period ending December 31, 2011, shows that his 2011 Federal Income tax return was filed December 3, 2012. He received and paid a penalty for the late filing of this return. (AE F; Tr. 39-42.)

Applicant failed to provide sufficient documentation to show that his 2012 state income tax return was filed. The only documentation that he provided from his state related to the garnishment of his wife's wages to pay the taxes owed for 2012. At hearing he testified, "we have not filed for the [s]tate for 2012 yet." I find that his state 2012 income tax return remains unfiled. Additionally, Applicant owes the Internal Revenue Service \$8,041 for his unpaid 2012 Federal Income taxes. Applicant is resolving his Federal tax obligation through an installment agreement. (AE F; Tr. 42.)

Applicant's wife has inherited \$58,669.72 from a relative, however the funds have not yet been disbursed. Applicant and his wife plan to use those funds to resolve their remaining debt. (AE H; Tr. 26, 33, 62.)

Applicant does an excellent job at work. His supervisor, who wrote a letter advocating that Applicant receive a promotion, highlighted that he is a team player and is a great asset to their team. In 1999, 2001, and 2014, Applicant received awards from

his employer for his exceptional efforts on the job. His work performance evaluations show he “consistently exceeds expected level of performance.” (AE C; AE D.)

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing 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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable clearance 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 protect or 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.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to 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

The security concern for Financial Considerations is set out in AG ¶ 18, as follows:

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.

AG ¶ 19 describes three conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant was in debt to 12 commercial creditors in the approximate amount of \$115,044. He was delinquent on his 2011 Federal Income taxes in the amount of \$5,511; failed to file his 2011 Federal Income tax return; and failed to file his 2012 state income tax return. The evidence raises all of the above security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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's financial problems are ongoing. He has yet to file his 2012 state income tax return and he failed to document payments on his medical debts. While Applicant is taking positive steps to be involved with his family's finances and has begun to make payments on seven of his delinquent accounts, he did not overcome his recent history of financial problems and show that future financial problems are unlikely, despite the expected inheritance. AG ¶ 20(a) has not been fully established.

Applicant took full responsibility for his financial problems. He attributed his delinquencies to not paying attention to his family's finances. His wife admitted that she overspent when they were experiencing marital difficulties. These are not situations beyond his control. Further, Applicant failed to act responsibly to address the debts in a timely manner. He has only recently taken documented steps to resolve his consumer debt. AG ¶ 20(b) has not been fully established.

Applicant failed to produce documentation to show he received counseling for the problem. There are no clear indications that his financial problems are being resolved or are under control. Applicant has recently brought his mortgage current, through a withdrawal from his wife's retirement savings. He has made an initial payment on six other debts. He paid his 2011 delinquent tax obligation. However, five medical debts remain unresolved. Further, he failed to document he has filed his 2012 state income tax returns. AG ¶¶ 20(c) and 20(d) have not been established.

Applicant did not dispute any of the alleged debts. AG ¶ 20(e) has not been established.

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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant is respected by his colleagues and performs well at work. He and his wife will receive almost \$60,000 in inheritance when the money is released by the probate court. He appears sincere in his intentions to resolve his debts and is currently taking a proactive role in managing his family's finances. However, his recent flurry of payments on seven of his debts fails to demonstrate a track record of responsibility. The debts remained unresolved for a number of years before he took any actions on them. He has rehabilitated his home mortgage in the past and then once again defaulted on that obligation. While he claimed to have resolved five other medical debts, he failed to document their status. He also failed to show that his 2012 state income tax return was filed.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Financial Considerations security concerns. I conclude the whole-person concept against Applicant.

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:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	For Applicant
Subparagraph 1.o:	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.

Jennifer I. Goldstein
Administrative Judge