



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



In the matter of:)	
)	
)	ISCR Case No. 18-00096
)	
Applicant for Security Clearance)	

Appearances

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

01/23/2019

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On January 29, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective on June 8, 2017.

Applicant answered the SOR on February 17, 2018, and requested a hearing before an administrative judge. The case was assigned to me on October 1, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 12, 2018. I convened the hearing as scheduled on November 6, 2018. The Government

offered exhibits (GE) 1 through 5.¹ Applicant testified and offered Applicant Exhibits (AE) A and B. There were no objections to any exhibits offered, and all were admitted into evidence. The record was held open until November 20, 2018, to allow Applicant to submit additional documents, which he did. They were marked AE C through F and admitted into evidence without objection. DOHA received the hearing transcript on November 15, 2018.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.c through 1.e. He denied the allegations in SOR ¶¶ 1.a and 1.b. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 60 years old. He earned a bachelor's degree in 1982. He married in 1984 and divorced in 1994. He remarried in 1999 and has a 16-year-old child from that marriage and an adult stepchild. He has worked for his present employer, a federal contractor, since August 2016. Applicant completed a security clearance application (SCA) in April 2017. He disclosed short periods of unemployment between contracts. He testified that he worked part-time from May 2014 to December 2014. He disclosed he was unemployed from February 2007 to October 2008. He received unemployment compensation for this period. He testified that his current salary is \$120,000. His wife chose not to work in the past year so she could spend time with her grandchild.²

During his July 2017 interview with a government investigator, Applicant was confronted with the debt alleged in SOR ¶ 1.a (\$46,926). He did not disclose this debt on his SCA. He told the investigator that this was due to an error. He told the investigator that he believed this account may have related to a former home mortgage in 2013. The account was sold many times, and he believed the current creditor may hold the equity loan. The equity loan went delinquent after he did a short sale on his former residence in January 2014, but he was unaware that there was an open collection account for the loan. He intended to attempt to reach a settlement with the creditor and pay off the balance as soon as possible.³

In Applicant's answer to the SOR, he denied the debt in SOR ¶ 1.a. He stated:

I do not any have any recollection of this debt being mine or its origin (*sic*). This debt no longer appears on my credit report and my preliminary investigation shows this debt to be at least 10 years old. I was going to dispute this debt, but my research shows that it is beyond the statute of

¹ Hearing Exhibit (HE) I is the exhibit list and II is the discovery letter. HE III is an email from Department Counsel noting he had no objections to AE C through F.

² Tr. 22-27; GE 1, 2. On his SCA, Applicant disclosed his employment history. When he was interviewed by the government investigator, he modified and corrected his history. His testimony was not consistent with the previous dates provided.

³ GE 2.

limitations and no legal advantages would be gained if I successfully disputed the debt.⁴

Applicant testified that the debt in SOR ¶ 1.a did not belong to him. He had another account with the same creditor that was in good standing. He said he contacted this creditor in January 2018, but did not ask about this debt because he said it does not belong to him. He claimed he had a checking account stolen in 2006. He did not file a police report. He did not contact anyone about this account. He said he was not contacted by a collection company. He stated it is only reported on one credit report. He disputes its accuracy. He said he was not going to dispute a 10-year-old debt. He admitted that he was worried about the statute of limitations resetting.⁵

Applicant further stated that he had a lawyer when he had to do a short sale on his house. He was told by the lawyer not to pay any of his debts, but he continued to pay his debts. His lawyer advised him to file bankruptcy, but he did not want to do that. He estimated this occurred around 2010. He did a short sale on his house in 2014 because he had trouble making mortgage payments and was living off of credit cards. He further stated that he had one unsettled debt with this same creditor for an equity loan, and he assumed this was the same debt. He also stated that based on the amount of the debt he believed it was likely the same debt. The account is listed on his May 2017 credit report, which shows the account was opened in June 2013, and the last activity was in April 2017.⁶ The debt is unresolved.

Applicant was also confronted by the investigator with all of the debts alleged in the SOR. He had disclosed on his SCA that he settled the debts in SOR ¶¶ 1.b (\$88), 1.c (\$224), and 1.e (\$74) with collection companies by making prescribed payments. During his interview, he stated these debts were for utilities owed on a former residence. He did not receive the bills when he moved and later learned the accounts were delinquent and in collection. He told the investigator when he became aware of the debts, he contacted the original creditors and was advised the debts were held by collection companies. He said he made an error on his SCA, and the debts were not settled or paid as reported. He told the investigator that he was aware all three accounts remained unpaid. He said he was upset that he was not contacted by the original creditors before the accounts were placed in collection. He did not want to pay the collection agencies because they bought the debt for a much lower amount of money than what he owed. He does not agree with the collection process in general and would have no problem paying the original creditors directly. He would pay the delinquent collection accounts if it is required for him to obtain a security clearance, but otherwise he did not intend to pay the debts as it will have a negative effect on his credit score regardless.⁷

⁴ Answer to SOR.

⁵ Tr. 34-36.

⁶ Tr. 28-38, 64-65.

⁷ GE 1, 2. In his SCA, Applicant disclosed he had utilities bills that were in collection status. Applicant stated, "Settled debt with collections by making prescribed payments."

In his answer to the SOR, Applicant denied the debt in SOR ¶ 1.b. He stated he had no recollection of this debt belonging to him or its origin. He was unsuccessful in his “initial attempts to dispute the debt and decided to not pursue any correction to the credit report as this debt is no longer listed.” Applicant stated he has a current account with this creditor. Applicant testified that he contacted the creditor in SOR ¶ 1.b and was told it no longer had a record of any unpaid account. He said he tried to pay the original creditor. Applicant’s testimony is inconsistent with his SCA disclosure and statements made to the government investigator.⁸ This debt is unresolved.

In Applicant’s answer to the SOR, Applicant acknowledged owing the debts in ¶¶ 1.c and 1.e. He reiterated he was unaware the accounts were in collection until 2017. He did not want to pay a collection company because the debts already had a negative impact on his credit rating. He did not intend to pay them. He stated that he is now aware of his error and contacted the collection companies for the debts in ¶¶ 1.c and 1.e, and paid the accounts. He provided documented proof of his payments.⁹ The debts are resolved.

Applicant was confronted by the government investigator with the debt alleged in SOR ¶ 1.d (\$9,253). He failed to disclose this debt on his SCA. He told the investigator his failure to report the debt was due to error. He acknowledged the debt to the investigator and explained it was a credit card debt that became delinquent in 2013. He was offered a settlement agreement by the creditor in 2013, but he could not afford to pay it. The debt was charged off. Applicant told the investigator that he received a cancellation of the debt for 2014 and it was included in his 2014 tax return.¹⁰

In Applicant’s answer to the SOR, he admitted the debt in ¶ 1.d and said the debt became delinquent in 2014 after the early termination of a contract he was working on. He said he contacted the creditor because he could not pay the debt. He could not pay the settlement offer and the account became delinquent. He said when he resumed employment, and after he caught up on all of his past due accounts, he learned the debt was charged off. He said in his answer:

In addition, I had not received any collection notices so I thought this debt was already included as income for me. I see now that I was wrong. Even though the account shows it has been charged off, there is still an outstanding balance showing, and even though I have negative feelings about how the customer service at [creditor] treated me relative to all the other creditors who were willing to work with me during my unexpected employment, I understand I owe what I owe. I was contacted by [creditor] earlier this month and I have agreed to a repayment plan. This plan requires

⁸ Tr. 39-48.

⁹ Tr. 48-50, 58; Answer to SOR.

¹⁰ GE 2.

less than the full amount because I have agreed to repay them in 1 year instead of 5.¹¹

Applicant testified that in 2014 he tried to work out an agreement with the creditor in SOR ¶ 1.d, but could not afford the payments. He said he thought this debt was included as a cancelation of debt and an IRS 1099C form was issued. He did not attempt to pay the debt until after he received the SOR because he did not want to restart the statute of limitations clock.¹² Applicant provided a copy of the settlement agreement to pay \$385 a month for 12 months for a total settlement of \$4,626. He also provided proof that he has made payments from March through August 2018.¹³ It is being resolved.

Applicant testified that he does not owe the collection companies and does not have an obligation to them. He did not borrow money from the collection company. He stated: "I paid every debt that I could research and find that were mine."¹⁸

The Government's evidence included five IRS 1099-C Cancelation of Debt forms from the same creditor for tax year 2014. The amounts of the canceled debts were \$7,859, \$9,637, \$2,409, \$4,925 and \$1,453. An additional IRS 1099-C form was also included as evidence from a different creditor in the amount of \$3,448.¹⁹ These discharged debts were not alleged in the SOR. The allegations in the SOR are supported by Applicant's admissions, testimony, and credit reports from May 2017 and January 2018.²⁰

Applicant testified that when he understood he was required to pay collection accounts he did. He admitted he had to rely on credit cards for a period after his unemployment to pay his bills. He also stated that he had investments that did not work out. He participated in financial counseling as part of the Home Affordable Refinance Program. His current finances are better. He has four or five credit cards that he pays monthly and have a cumulative balance of approximately \$14,000. He owns four vehicles, including a 2018 recently purchased car. At the end of the month, he has several hundred dollars in expendable income. He does not have any savings and has about \$20,000 in a 401K account. Post-hearing, Applicant provided copies of credit reports from November

¹¹ Answer to SOR.

¹² Tr. 50-58.

¹³ AE A. An additional document was provided of a check transfer made in October 2018 that shows a \$400 transaction. It does not indicate the name of the creditor, but because it is included with the other payments, presumably it is to the same creditor.

¹⁸ Tr. 67-69.

¹⁹ Tr. 59-62; GE 5. I have not considered any derogatory information that was not alleged for disqualifying purposes. I may consider it when making a credibility determination, in the application of mitigating conditions, and in a whole-person analysis.

²⁰ GE 1, 2, 3, 4.

2018 from the three major credit bureaus. The debt in SOR ¶ 1.a is not reported on them.²¹

Applicant made numerous inconsistent statements in his government interview, answer to the SOR, and testimony. I did not find him credible.

Policies

When evaluating an applicant's national security eligibility, 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 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, 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 national security eligibility will be resolved in favor of the 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 an 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.

²¹ Tr. 71-77. AE D, E, F. One vehicle is a vintage car that Applicant has registered and insured, but does not drive.

Section 7 of EO 10865 provides that 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 relating to the guideline for financial considerations is set out in AG ¶ 18:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has delinquent debts that began accumulating in about 2013 that he was unable and unwilling to pay. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to 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 aware he had delinquent debts that he did not want to pay because he did not like the collection agency process. He told the government investigator that he would pay the debts if his security clearance was contingent on it. He eventually paid the debts that were in collection in SOR ¶¶ 1.c and 1.e. He claimed the debt in SOR ¶ 1.d had been canceled by the creditor, and it was included in his 2014 tax returns. He later acknowledged it was not canceled, and after receiving the SOR he made payment arrangements. Applicant also acknowledged he had a large equity loan associated with his house that went through a short sale. He told the investigator he would contact the creditor and resolve the debt. He later denied the debt. He failed to contact the creditor and stated the debt was over 10 years old and subject to the statute of limitation. Applicant could have called the creditor, and determined the origin of the debt, but he refused to do so. There is sufficient evidence this debt belongs to Applicant, although it is no longer listed on his current credit reports. Applicant repeatedly provided inconsistent information and testimony about his debts. There is insufficient evidence to conclude future financial problems are unlikely to recur. Applicant's conduct casts doubt on his reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to periods of unemployment, which were beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant has been employed since August 2016. He told the government investigator that he did not want to pay collection agencies on debts he legitimately knew he owed because he does not like the process. He would only do so if he was required to do so in order to obtain his security clearance. After receiving the SOR he paid the delinquent utilities bills owed. He was not happy with the creditor in SOR ¶ 1.d, but eventually arranged a payment plan after receiving the SOR. He previously claimed the debt was included in his 2014 tax return, but that information was incorrect. He acknowledged during his interview that he had an equity loan associated

with the short sale of his house. He said his lawyer told him not to pay his debts. He was going to contact the creditor and resolve the debt. Later he denied owing the debt and has not contacted the creditor. Applicant has not acted responsibly regarding his debts. AG ¶ 20(b) partially applies.

Applicant said he went through financial counseling when he participated in HARP. He is making payments on one debt, but has not resolved or contacted the creditor for the debt in SOR ¶ 1.a. He did not resolve the debt in SOR ¶ 1.b. There is some evidence that his finances are coming under control, but his failure to address the largest debt alleged is a concern. I find ¶ AG 20(c) marginally applies. Applicant paid the debts in SOR ¶¶ 1.c and 1.e after receiving the SOR. He made payment arrangements for the debt in SOR ¶ 1.d after receiving the SOR. AG ¶ 20(d) applies to these debts.

Applicant told the government investigator that the debt in SOR ¶ 1.a was related to an equity loan. He explained how it originated. He intended to resolve it with the creditor. He later denied knowing anything about the debt. He refused to contact the creditor to determine its origin and validity. There is sufficient proof that the debt belongs to him. Throughout this investigative process, Applicant has made inconsistent statements. Regardless of whether the debt is beyond the statute of limitation, which he failed to show, Applicant has not resolved it. I have considered the fact that it is not listed on his most current credit reports. AG ¶ 20(e) does not apply.

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 the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (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(d) were addressed under that guideline, but some warrant additional comment.

Applicant is 60 years old. He experienced periods of unemployment that impacted his finances. Applicant had six debts totaling approximately \$29,731 that were canceled in 2014. He has resolved two small debts alleged in the SOR and has a payment arrangement for another debt. Applicant did not take action on these debts until after he received the SOR. He told the government investigator that he would not pay debts that were held by collection agencies because he did not like the process, but would pay the debts if it would impact his ability to obtain a security clearance. Applicant acknowledged the largest debt owed in SOR ¶ 1.a to the government investigator and then denied it. He failed to contact the creditor as he said he would. Applicant repeatedly provided contradictory statements and testimony. He has an unreliable financial track record. Although he eventually paid some debts or is paying them, he was aware they were legitimate, but did not attempt to resolve them until after he received the SOR. The record evidence leaves me with serious 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 security concerns arising under Guideline F, financial considerations.

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
Subparagraphs 1.a-1.b:	Against Applicant
Subparagraphs 1.c-1.e:	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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge