



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



In the matter of:)
)
) ISCR Case No. 18-00707
)
Applicant for Security Clearance)

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: *Pro se*

01/29/2019

Decision

HEINY, Claude R., Administrative Judge:

Applicant owes \$15,649 for an unpaid judgment and six delinquent accounts. The obligations remain unpaid. He provided no documentation showing any efforts to address the past-due debts. He provided false answers on his January 20, 2016 Electronic Questionnaires for Investigations Processing (e-QIP). He failed to mitigate the security concerns under Guideline F, financial considerations and Guideline E, personal conduct. Applicant’s eligibility for access to classified information is denied.

Statement of the Case

On March 15, 2018, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, and Guideline E, personal conduct, explaining why it was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DoD CAF took the action 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 National

Security Adjudicative Guidelines (AG) effective June 8, 2017, for all adjudications for national security eligibility or eligibility to hold a sensitive position.

On April 4, 2018, Applicant responded to the SOR allegations and requested a decision on the written record by an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On May 30, 2018, the Government submitted a File of Relevant Material (FORM), consisting of six exhibits (Items 1-6). DOHA forwarded a copy of the FORM to Applicant and instructed him to respond within 30 days of receipt. On July 2, 2018, Applicant's response was received. There being no objection to the response, it was admitted as Item A. On October 26, 2018, I was assigned the case to determine whether it is clearly consistent with national security to grant or continue a security clearance for Applicant.

Evidentiary Ruling

Department Counsel submitted as Item 3 a summary of a personal subject interview (PSI) of Applicant conducted on April 4, 2017. The summary was part of the DoD Report of Investigation (ROI) in Applicant's case. Under ¶ E3.1.20 of the Directive, a DoD personnel background report of investigation may be received in evidence and considered with an authenticating witness, provided it is otherwise admissible under the Federal Rules of Evidence. The interview summary did not bear the authentication required for admissibility under ¶ E3.1.20.

In ISCR Case No. 16-03126 decided on January 24, 2018, the Appeal Board held that it was not error for an administrative judge to admit and consider a summary of personal subject interview where the applicant was placed on notice of his or her opportunity to object to consideration of the summary; the applicant filed no objection to it; and there is no indication that the summary contained inaccurate information. In this case, Applicant was provided a copy of the FORM and advised of his opportunity to submit objections or material that he wanted the administrative judge to consider. In a footnote, the FORM advised Applicant of the following:

IMPORTANT NOTICE TO APPLICANT: The attached summary of your Personal Subject Interview (PSI) is being provided to the Administrative Judge for consideration as part of the record evidence in this case. In your response to this File of Relevant Material (FORM), you can comment on whether the PSI summary accurately reflects the information you provided to the authorized OPM investigator(s) and you can make any corrections, additions, deletions, and updates necessary to make the summary clear and accurate. Alternatively, you can object on the ground that the report is unauthenticated by a Government witness. If no objections are raised in your response to the FORM, or if you do not respond to the FORM, the Administrative Judge may determine that you have waived any objections to the admissibility of the summary and may consider the summary as evidence in your case.

Concerning whether Applicant understood the meaning of authentication or the legal consequences of waiver, Applicant's *pro se* status does not confer any due process rights or protections beyond those afforded him if he was represented by legal counsel. He was advised in ¶ E3.1.4 of the Directive that he may request a hearing. In ¶ E3.1.15, he was advised that he is responsible for presenting evidence to rebut, explain, or mitigate facts admitted by him or proven by Department Counsel and that he has the ultimate burden of persuasion as to obtaining a favorable clearance decision. While the Directive does not specifically provide for a waiver of the authentication requirement, Applicant was placed on sufficient notice of his opportunity to object to the admissibility of the interview summary, to comment on the interview summary, and to make any corrections, deletions, or updates to the information in the report. Applicant is a college graduate, who can reasonably be held to have understood the footnote, and he did not object to the PSI or indicate that it contained inaccurate information. Accordingly, I accepted Item 3 in the record, subject to issues of relevance and materiality in light of the entire record.

Summary of SOR Allegations

The SOR alleges that, as of January 3, 2018, Applicant had an unsatisfied judgement and six delinquent obligations which together totaled \$15,649. In his answer to the SOR, he admitted the delinquent obligations listed in SOR 1.a (\$12,710) and SOR 1.b (\$305), but disputed the amounts owed. He denied the remaining allegations. His SOR response provided no explanation about the delinquent accounts. He denied falsifying his January 20, 2016 e-QIP stating he had not reviewed his credit report prior to completing his e-QIP because he does not use credit.

Findings of Fact

After considering the FORM, Applicant's response to the FORM, and his response to the SOR (Item 1), I make the following findings of fact.

Applicant is a 50-year-old foreman and has worked for a defense contractor since November 1999. He holds a confidential clearance, which is required for him to perform his job. From September 1987 through September 1990, he honorably served in the U.S. Army. (Item 2) His rank while serving is not contained in the record. In April 2004, he married his wife. He had previously been married from December 1989 through July 1993. (Item 2) His son, who lives with him, is 17 years old and he has two adult step-children. (Item 3) The record does not reveal if his wife is currently working, what her income is if working, his income, the amount of the household's income, or what their monthly expenses are.

In 2012, Applicant purchased a truck with monthly loan payments of \$520. In 2014, the truck was repossessed when his payments were three months delinquent. He became delinquent on his payments when his adult step-children moved in with him, and he started paying their bills. Following the repossession, a \$12,710 (SOR 1.a) debt resulted. (Item 3) The debt has been transferred from the original creditor to a collection agency. (Item 3) As of October 2017, he had not made any payments on the debt because he asserts he has

not been contacted by the original creditor since the repossession. (Item 3) In his PSI, he indicated he intended to satisfy this debt, but did not provide a date for doing so. (Item 3) This delinquent obligation appears on his February 2016, January 2018, and July 2018 credit reports. (Item 4, Item 5, Item A)

Applicant, in his January 20, 2016 e-QIP, failed to list the 2014 repossession even though Section 26 specifically asked him to list any repossession that occurred in the previous seven years. (Item 2) He stated he did not list the debt on his e-QIP due to an oversight.

During Applicant's PSI, he indicated the \$61 medical collection debt (SOR 1.g) may have been his copayment on one of his children's medical bill. He intended to look into the account and satisfy it at some future date. (Item 2) He believes the \$176 collection account (SOR 1.f) was the final bill for his cable service. He intended to satisfy the debt at some future date. He had no knowledge about the \$305 cable collection debt (SOR 1.b). This delinquent obligation appears on his February 2016, January 2018, and July 2018 credit reports. (Item 4, Item 5, Item A) He incurred a \$1,026 delinquent obligation (SOR 1.d) on a rental agreement that was charged off in January 2014. (Item 4) He had a \$388 credit card debt (SOR 1.e) charged off in August 2009. (Item 4)

During the November December 2008 time period, Applicant became behind on his \$800 monthly rent when his wife lost her job. (Item 3) He answered "no" on the question on his e-QIP that asked if during the previous seven years he had been evicted for non-payment of rent. The record is insufficient to show that an eviction occurred only that he became delinquent on his rent payments. Based on the amount owed the landlord, he was more than six months behind on his rent. In February 2009, the landlord obtained \$5,231 judgement against Applicant. (Items 3 and 6) A garnishment of \$450 to \$500 every two weeks was obtained against Applicant. (Item 3) As of July 2010, \$4,536 was yet owed on the \$5,231 garnishment. (Item 6) As of October 2010, \$2,990 was yet owed on a \$3,331 garnishment. It is not clear from the record if these garnishments were the same obligation. In March 2003, a garnishment of \$2,919 was obtained by a different creditor. In February 2012, another creditor obtained a garnishment of \$1,998. (Item 6) In November 2013, a judgment action was filed against Applicant in the amount of \$983 (SOR 1.c). (Item 4) The judgment remains unsatisfied. In his SOR response, he asserted he did not list his garnishments on his e-QIP because he asserts the garnishments had occurred before 2010. (Item 1) He provided no documentation supporting the garnishments occurred prior 2010, which was the seven-year period of concern in the e-QIP.

When Applicant completed his January 20, 2016 e-QIP, he answered "no" when asked if during the past seven years he had any property repossessed, had his wages garnished, had bills turned over to a collection agency, had accounts charged off, suspended or canceled, or had ever been more than 120 days delinquent on any debt. He had had accounts turned over for collection, other accounts that had been charged off, and other accounts that were more than 120 days delinquent. Additionally, he answered "no" when asked if a judgment had been entered against him during the previous seven years. The November 2013 judgment had been entered against him only three years earlier. He

also answered “no” when asked about his wages being garnished during the previous seven years even though garnishment actions had been entered against him in March 2010, July 2010, October 2010, and February 2012. (Item 6)

Applicant in his July 2018 SOR response, he denied falsifying his e-QIP or any other document. (Item A) Included with his SOR response were copies of his July 2018 credit reports.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 are required to 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 overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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. 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. 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 concerns about financial considerations are set forth 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.

Applicant is not required to be debt free, but he is require to manage his finances in a way as to exhibit sound judgment and responsibility. The concern under Guideline F is broader than the possibility that an individual might knowingly compromise classified information in order to raise money to address debts. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information.

Guideline F security concerns are established by Applicant’s unpaid judgment and six delinquent obligations totaling \$15,649. Disqualifying conditions 19(b), “unwillingness to satisfy debts regardless of the ability to do so,” and 19(c), “a history of not meeting financial obligations,” apply. In October 2017, during his subject interview, Applicant indicated he intended to pay some of these obligations, but provided no anticipated date for payment. There is no documentation that the past-due debts have been paid.

Financial delinquencies are potentially mitigated under one or more of the following 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 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 person has received or is receiving 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.

AG ¶ 20(a) does not apply because there are numerous unpaid obligations. Applicant's failure to take any steps to repay the debt following the repossession of his truck, his cable account debt, and other credit card accounts continues to cast doubts on his judgment and reliability.

Applicant asserted his rental debt was due to his wife losing her job, which would be a factor largely beyond the person's control. However, he failed to explain when this occurred or how it impacted on the household finances. Also his adult children moved in with him and he started paying their bills. Adult children living with him and his decision to pay their debts is not a factor beyond his control. There is no indication that he communicated with his creditors or attempted to repay any of the debts. There is no documented payments of even the smaller debts of the \$61 medical debt or the \$176 cable bill. For AG ¶ 20(b) to fully apply he must have acted responsibly under the circumstances and there is no evidence he has done so.

Neither AG ¶ 20(c) nor AG ¶ 20(d) is established without some effort on his part to address the debts. There is no evidence of financial counseling or evidence of him having made any payments on SOR delinquent obligations. Some of his delinquent debt has been charged off by the creditors. A creditor charge-off is an account transfer made when a creditor no longer expects to be repaid. Debts may continue to be legally enforceable even after they are charged off.

Appeal Board precedent requires that "a person acts in such a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation."¹ In the past,

¹ The DOHA Appeal Board stated in ISCR Case No. 07-06482, decided on May 21, 2008, in part:

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). However, an applicant is not required, as a matter of law, to establish that he has paid off

some of his financial delinquent obligations not listed in the SOR have been paid through garnishment. However, a garnishment does not constitute a “good faith” effort to pay his debts. Payment of a debt “though garnishment rather than a voluntary effort diminishes its mitigating force.² Satisfaction of a debt through the involuntary establishment of a creditor’s garnishment is not the same as, or similar to, a good-faith initiation of repayment by the debtor.

Applicant denied some of the SOR delinquent obligations, but for the mitigation of AG ¶ 20(e) to be established he must provide documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue. The only documents he provided were copies of his credit reports. The copies of the credit reports do not substantiate the basis of his denials of the debts. Concerns persist about his financial judgment.

Guideline E, Personal Conduct

The concerns about personal conduct are articulated in AG ¶ 15:

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.

AG ¶ 15 expresses the security concern pertaining to personal conduct, 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.

Applicant’s concealment of relevant and material information demonstrates a lack of candor required of cleared personnel. 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. Applicant’s conduct suggests he is willing to put his personal needs ahead of legitimate government interest.

each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate[s] that he has “. . . established a plan to resolve his financial problems and taken significant actions to implement that plan.” See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006).

² Compare ISCR Case No. 08-06058 at 4 (App. Bd. Aug. 26, 2010) with ISCR Case No. 04-07360 at 2-3 (App. Bd. Sept. 26, 2006) (payment of two of four debts through garnishment did not bar mitigation of financial considerations concerns).

Of primary concern in this case is Applicant's demonstrated lack of trustworthiness in deliberately concealing his repossession, garnishments, charged-off accounts, accounts turned over for collection, and accounts more than 120 delinquent when he completed his January 20, 2016 e-QIP. AG ¶ 16(a) applies to his falsification, as follows:

(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.

When Applicant completed his January 20, 2016 e-QIP he answered "no" when asked if during the previous seven years he had any property repossessed, had his wages garnished, had bills turned over to a collection agency, had accounts charged off, suspended or canceled, or had ever been more than 120 days delinquent on any debt. When he completed the e-QIP he had accounts that had been charged off, turned over for collection, were more than 120 delinquent. He had four garnishments during the previous seven years. In 2014, within two years of him completing his e-QIP, his truck was repossessed.

Applicant indicated he did not use credit and had not checked his credit report before completing his e-QIP. This explanation may explain why he did not list some of his charged-off and collection accounts. However, it does not explain why he failed to list the repossession and garnishment actions. One may forget about a past due debt, but his claims of a lack of memory are not credible when one day he was driving his truck and the next day it was gone because it was repossessed. It is also difficult to forget that every two weeks \$450 to \$500 was being garnished from his wages. At a minimum, he should have revealed the repossession and garnishments on his e-QIP.

None of the mitigating factors apply. AG ¶ 17(a), "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts," does not apply. The omissions or concealments were not caused by legal advice or by advice from another, AG ¶ 17(b). AG ¶ 17(c) provides:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Falsifying a security questionnaire is not minor, it occurred three years ago, it did not happen under unique circumstances, and it does cast doubt on Applicant's reliability, trustworthiness, or good judgment. AG ¶ 17(c) does not apply. The mitigating conditions in AG ¶¶ 17(d), 17(e), 17(f), and 17 (g) do not apply. Applicant exercised "questionable judgment" within the general security concerns set forth in AG ¶ 15 when he failed to give truthful answer on his e-QIP.

Whole-Person Concept

In assessing the whole person, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). The analysis under Guideline F is incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

The security clearance adjudication is not aimed at collecting an applicant's personal debts. Rather, it involves an evaluation of an applicant's judgment, reliability, and trustworthiness in light of the security guidelines in the Directive. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). At the same time, Applicant has the burden of presenting evidence of relevant facts and circumstances to show why he should be granted security clearance eligibility notwithstanding the delinquent debt information on his credit record. By continuing to ignore evidence of a financial judgment, Applicant places in doubt whether he can be trusted to comply with rules and regulations regarding the handling and safeguarding of classified information.

Applicant has been aware of the Government's security concern about his delinquent obligations since his January 20, 2016 interview when he was specifically confronted about his delinquent obligations. Additionally, the March 2018 SOR and May 2018 FORM put him on notice of the Government's concern about the delinquent obligations. The FORM specifically informed him there was little evidence that payment had been made on the collection or the charged-off accounts. Since his October 2017 interview, he has failed to provide documentation showing payment of even the smallest of his delinquent accounts of \$61 and \$175. When questioned about his finances on his e-QIP, at a minimum, he should have remembered and revealed his truck repossession and his wage garnishments.

In requesting a decision without a hearing, Applicant chose to rely on the written record. In so doing, however, he failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding his circumstances, articulate his position, and mitigate the financial security concerns. He failed to offer evidence of financial counseling or provide documentation regarding his past efforts to address the delinquent debt. By failing to provide such information, and in relying on only the limited response in his SOR Answer, financial considerations and personal conduct security concerns remain.

The issue is not simply whether all the delinquent obligations have been paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(c)) He has not documented payment on his delinquent obligations nor provided an explanation that mitigates his false answers on his January 20, 2016 e-QIP.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security

clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. Based on the evidence before me, I am unable to conclude that it is clearly consistent with the national interest to grant security clearance eligibility for Applicant. Applicant has failed to mitigate the financial considerations and personal conduct security concerns.

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-1.h:	Against Applicant
Paragraph 2, Personal Conduct:	Against Applicant
Subparagraph 2.a:	Against Applicant

Conclusion

In light of all of the circumstances, 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.

Claude R. Heiny
Administrative Judge