



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



In the matter of:)
)
) ISCR Case No. 18-01099
)
Applicant for Security Clearance)

Appearances

For Government: Brian Olmos, Esq., Department Counsel
For Applicant: *Pro se*

03/11/2019

Decision

HEINY, Claude, Administrative Judge:

Applicant failed to timely file his Federal and state tax returns, has unpaid Federal and state income taxes, a state tax warrant, delinquent student loans, an unpaid judgment, and three collection accounts. He failed to mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for access to classified information is denied.

Statement of the Case

Acting under the relevant Executive Order, DoD Directive, and Security Executive Agent Directive 4¹ on April 26, 2018, the DoD issued a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. On May 15, 2018,

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 Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017the adjudicative guidelines (Sept. 1, 2006 AG) effective within the DoD on September 1, 2006.

Applicant answered the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).

On November 26, 2018, DOHA issued a Notice of Hearing scheduling a hearing that was conducted on December 11, 2018. At the hearing, five Government exhibits (Ex. 1-5) and three Applicant exhibits (Ex. A-C) were admitted into evidence without objection. Records submitted by Applicant as attachments to his answer were considered. Applicant testified, as reflected in a transcript (Tr.) received on January 2, 2019. The record was held open after the hearing for Applicant to submit additional documents. No documents were received.

Findings of Fact

In Applicant's answer to the SOR, he admitted the two delinquent student loans (SOR 1.c, \$9,158 and SOR 1.d, \$7,415), an unpaid state tax warrant (SOR 1.e, \$1,805), and an unpaid judgement (SOR 1.f, \$1,493). He denied the remaining allegations. After a thorough review of the pleadings, testimony, and exhibits, I make the following additional findings of fact.

Applicant is a 46-year-old aircraft avionics technician who has worked for a defense contractor since July 2015. (Tr. 19, 20) He is seeking to obtain a security clearance.² (Ex. 1) From May 1991 through June 2011, he honorably served in the U.S. Navy. One of his assignment was as a Navy recruiter. (Tr. 20) After retiring, he obtained a job paying \$17 an hour, which was a decrease in monthly income of approximately \$1,500. (Tr. 41) His current monthly budget shows a total income of \$4,648, which includes his \$1,260 Navy retirement pay, and total expenses of \$4,531. (Ex. B) His overtime pay is not reflected in his budget because it is not a guaranteed monthly amount. (Tr. 50) His annual household income is approximately \$78,000. (Tr. 60)

Applicant is married and has three children ages 21, 21, and 18. (Ex. 1) Two of his children are in college, and the third graduated high school a couple months following the hearing. (Tr. 46) His daughter pays for her tuition with student loans and his son is attending community college. Both live at home, and he provides them with funds for food and gas. (Tr. 53)

On Applicant's September 2016 Electronic Questionnaires for Investigations Processing (e-QIP), he indicated he had failed to file tax returns for tax years 2010, 2011, 2012, and 2013. (Ex. 1) He did have taxes withheld from his wages during those years. (Tr. 31) For tax year 2015, he asserted he had filed a request for an extension. (Ex. 1) He indicated the student loans were "in default and [the Internal Revenue Service (IRS) was] going to garnish any returns. I thought I was going to be able to catch up and get my return[s]. I was unable to and lost track of time." (Ex. 1) He stated he had hired a law firm

² In 1995, Applicant obtained a DoD secret clearance and in February 1991, he received a secret clearance after an Expanded National Agency Check (ENAC). (Ex. 2)

in May 2016 to assist him with his unpaid taxes. (Ex. 1) No other delinquent accounts or unpaid judgment were listed on his e-QIP.

At the time Applicant retired from the Navy, his wife stopped working due to fibromyalgia. (Ex. 2, Tr. 24) Additionally, she had been working in the housing financial industry, which took a serious downturn in 2011. (Tr. 39) He pays \$200 monthly medical bills for his wife's treatment with the remainder paid by TRICARE. (Tr. 25) She receives \$1,000 monthly in disability payments, which he did not include as income in his budget because he considered that income to be her income. (Tr. 39)

On December 7, 2017, Applicant had an enhanced subject interview. (Ex. 2) He listed his current financial status as "poor." (Ex. 2) In his household, his wife manages their finances. (Tr. 66) He discovered a number of delinquent accounts when his wife obtained a copy of their credit report. He was unaware of the delinquent accounts at the time he completed his e-QIP. He attributed his financial problems to retiring from the military. While in the military his salary and cost-of-living adjustments covered his expenses. When he left the military, paying his debts became harder. He said he now had a good paying job and planned to get his finances in order. He expressed a willingness to pay his debts. (Ex. 2)

In Applicant's interview, he stated he did not know why he failed to file his Federal and state income tax returns. He stated he meant to file each year, but he was busy, and the time slipped away. He did not know how much he owed in taxes and penalties. (Ex. 2) He admitted owing a state tax warrant (SOR 1.e, \$1,805) entered against him in 2017. (SOR Response) In October 2018, the state filed a \$1,297 state tax warrant. (Ex. 5) The record does not reflect if there are two separate warrants issued for different tax years or just one tax warrant that duplicated the same tax debt. In his December 2017 interview, he said he planned to immediately contact his attorney to determine how to satisfy the tax debt. (Ex. 2) He contacted his attorney in July 2016. (Tr. 29) At the hearing, Applicant stated he did not know what had been filed on his behalf. (Tr. 33)

At the hearing, Applicant stated his 2009 federal tax refund had been intercepted and applied to his student loan obligation. He said he did not file his 2010 returns because he hoped to get his student loan obligation in order so his tax refunds would not be intercepted and again applied to his student loan debt. (Tr. 27) As an active duty military member, his home state did not require him to file a state return for 2010 because he was serving outside of his home state. (Tr. 28)

A December 2018 letter from his attorney stated he had "already brought [Applicant] into filing compliance and are actively working toward resolving the liabilities owed to the IRS." (Ex. A) No documentation showing copies of returns or other evidence of filing accompanied the letter. The letter made no reference to state tax return filings, but Applicant asserted his attorney was also filing his state tax returns. (Tr. 36) At the hearing, he stated he was still trying to determine how much he owed in taxes and could not remember receiving any correspondence from the IRS. (Tr. 22, 29) He stated the IRS

was seeking approximately \$20,000 for delinquent taxes. (Tr. 32) However, he believes he had overpaid his taxes for the years in question and believes he will receive a refund once everything is determined. (Tr. 32) His attorney had advised him not to make any payments until the amount of his tax obligation was determined. (Tr. 36, 47) Based on his monthly budget, he anticipates he will be making \$200 monthly for tax repayment plan. He currently makes no payments. (Ex. B, Tr. 24, Tr. 55)

Applicant asserted he had filed his 2016 and 2017 tax returns in a timely manner and expected to receive an \$859 Federal tax refund for 2017, and he owed \$288 for 2017 state taxes and \$400 for his 2016 state taxes. (Tr. 35, 37) No state tax was taken from his Navy retirement pay resulting in the state tax owed. (Tr. 37, 63) At the hearing, he presented a copy of his 2017 Federal income tax return, which was returned to him. He was asked to submit copies of his 2016 and 2017 returns following the hearing. (Tr. 61, 62, 64, 66) No documents were received following the hearing. He said he had a copy of his 2016 return in his vehicle. He said he attempted to get copies of his tax transcripts, but was requested to provide a credit card number to obtain the transcripts. (Tr. 35) Since he had ended his use of his credit cards in 2008, he was unable to provide the requested credit card number and, therefore, was unable to get copies of his tax transcripts. (Tr. 35, 64) No copies of tax returns, tax transcripts, or correspondence with the IRS were received following the hearing.

In 1998 and 1999, Applicant obtained student loans totaling \$18,000. (Ex. 2) He is four classes short of obtaining his bachelor's degree and has not taken any college class in the past ten years. He asserted, but provided no documentation, that the loans had been in deferment status on and off over the years. His last payment was made in 2017. In his interview, he said he stopped paying due to an "oversight," not further explained, and planned to start making payments as soon as possible. (Ex. 2) His 2009 Federal income tax refund had been intercepted and applied to his student loan obligation. (Tr.23) The record does not reflect the amount applied to his student loan obligation.

Applicant's October 2016 credit report lists two education collection accounts (SOR 1.c, \$9,158 and SOR 1.d, \$7,415). (Ex. 3) His March 2018 credit report lists the two collection accounts with the comment "Paid Collection; Student Loan." However, the credit report also lists a "Student Loan Assigned to the Government." (Ex. 4) His budget anticipates a \$200 monthly payment on a loan, which Applicant says is for his student loan payment. (Ex. B, Tr. 24) he admits owing approximately \$18,000 on his student loans and is currently making no payments on his student loans. (Tr. 45) Once his taxes are straightened out. He intends to start a \$200 monthly allotment for his student loans. (Tr. 45) He does not know who currently holds his student loans. (Tr. 56)

During Applicant's interview, he stated he had no knowledge concerning a number of delinquent debts including the following SOR debts: SOR 1.a (\$429), SOR 1.b (\$300), and SOR 1.g (\$981). (Ex. 2) He did acknowledge a 2012 judgment (SOR 1.f, \$1,493) against him by the owners of his former residence. His rent was \$1,200 and he believed the amount of the judgment represented one month's rent plus late fees and expenses.

(Ex. 2) He did not respond to the notice of hearing he received because he thought it only concerned eviction and not for unpaid rent and additional amounts. (Tr. 48, 67) At the time of his interview, he stated he intended to look into the matter and, if responsible, to satisfy the debt as soon as possible. At the hearing, he stated he intended to address the judgment because he had a better understanding of what was happening. (Tr. 48)

When asked about the delinquent accounts, Applicant could not provide the dates the debts were incurred, why they were incurred, when they became delinquent, any action taken to satisfy the debts, and he did not know the creditors' telephone numbers or addresses. (Ex. 2) He intended to look into the accounts and begin to satisfy them one at a time.

In 2013, Applicant's vehicle was repossessed and he received a refund because his equity in the vehicle exceeded what was owed on the loan. (Tr. 41) In 2011, his home went into foreclosure. (Tr. 40) His mortgage company requested no payments following the foreclosure. He asserts he made payment on the debt in SOR 1.a (\$420) on November 20 and December 20, which paid the debt. (Ex. C, Tr. 42) He received no correspondence from the creditor indicating the debt was paid, but showed funds were withdrawn from his bank account. (Ex. B, Tr. 43) Applicant disputes the \$300 debt (SOR 1.c), which was for cable equipment. He had decided to end his cable service and returned the equipment. (Tr. 44) The television provider says the equipment was not received. He also denies the \$981 (SOR 1.g) collection account for telephone service. (Tr. 48) He asserts this was for equipment that he returned and the creditor asserts was not received. (Tr. 48) He has had no contact with the telephone company for two or three years. (Tr. 49)

Applicant asserted that over the last couple of months he had started climbing out of the financial difficulties incurred following his retirement from the Navy. (Tr. 46) He is not receiving any correspondence from creditors regarding delinquent accounts. (Tr. 52) He has approximately \$30,000 in his 401(k) retirement plan. (Tr. 52) He has no car payments. (Tr. 65) He has not received any financial counseling. (Tr. 56)

Applicant was asked to provide copies of his tax returns. (Tr. 60) He informed the record was being held open to allow him to supplement the record with additional documentation of addressing his delinquent obligations. (Tr. 5, 18, 74) No documentation was received.

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(a), the adjudication process is an examination of a sufficient period and a careful weight of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is known as the whole-person concept.

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 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 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 . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable 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 failed to file his 2010 through 2015 Federal income tax returns and his 2011 through 2015 state income tax returns in a timely manner, was delinquent on his student loans, had an unpaid judgment, had an unpaid state tax warrant, and three delinquent accounts in collection. AG ¶ 19 includes four disqualifying conditions that could raise a security concern any may be disqualifying in this case: "(a) inability to satisfy debts;" "(b) unwillingness to satisfy debts regardless of the ability to do so;" "(c) a history of not meeting financial obligations;" and "(f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required."

The Government's evidence and Applicant's own admissions raise security concerns under AG ¶¶ 19(a), 19(b), 19(c), and 19(f). The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. September 22, 2005)). Applicant has the burden of presenting evidence of explanation, extenuation, or mitigation to overcome the financial considerations security concerns.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in

Egan, supra. “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.” Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

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 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;

(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; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's 2009 Federal income tax refund was intercepted and applied to his student loan debt. In 2010, he did not file his Federal income tax return hoping to correct the problem with his student loans so his tax refunds would no longer be intercepted. He made the decision not to file for fear he would not get his refund. His state of residence did not require him to make a 2010 state income tax return. He asserted he meant to file his returns, but time slipped away from him. He hired an attorney to assist him in filing his delinquent returns. A letter from his attorney stated Applicant is now in compliance with his tax filing requirements. However, this letter is the only indication Applicant's delinquent tax returns have been filed. No other documentation was presented showing compliance.

Applicant hopes to reach a repayment agreement with the IRS and state tax authority. However, intentions to pay debts in the future are not a substitution for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct 23, 2013) He does not know how much Federal and state tax is owed. He stated the IRS was seeking \$20,000 in delinquent taxes, but he believes he will be entitled to a refund of taxes paid. He provided no documentation supporting this belief. He acknowledged a \$1,805 state tax warrant issued against him in 2017, and he has a \$1,297 state tax warrant. It is unclear from the record if the two warrants involve the same tax debt for the same tax years. He had taxes withheld from his wages, but has made no additional tax payments. His attorney told him not to make payments until a repayment arrangements have been made.

There is no documentary evidence Applicant has contacted his creditors or has established repayment agreements with his creditors. An applicant is not required to be debt-free or to develop a plan for paying off all debts immediately or simultaneously, but he is required to act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by “concomitant conduct,” that is, actions which evidence a serious intent to effectuate the plan. See ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008).

Applicant obtained student loans in 1998 and 1999 to attend college. He is not currently making payments on the \$18,000 delinquency on those loans. He has not made payment on the judgment obtained by the rental company. He paid one of the collection debts, but the two other collection debts have not been paid.

Applicant was repeatedly informed during the hearing that he need to support his assertions with documents. Copies of tax returns, tax transcripts, correspondence with the IRS and state tax authority, correspondence with creditors, or documents showing payment of his debts. No documentation was received following the hearing.

The date Applicant’s tax returns were actually filed is not part of the record. However, in December 2017, he said he was going to contact an attorney to help him file his returns and the letter from his attorney asserting filings had been made is dated December 2018. A willful failure to timely make (means completed and filed with the IRS) a federal income tax return is a misdemeanor-level federal criminal offense.³ For

³Title 26 U.S.C, § 7203, willful failure to file return, supply information, or pay tax, reads:

Any person . . . required by this title or by regulations made under authority thereof to make a return, keep any records, or supply any information, who willfully fails to . . . make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor

A willful failure to make tax return, keep records, or supply information when required, is a misdemeanor without regard to existence of any tax liability. *Spies v. United States*, 317 U.S. 492 (1943); *United States*

purposes of this decision, I am not weighing Applicant's failure to timely file his federal income tax returns against him as a federal crime. The failure to timely file federal tax returns has security implications because:

Failure to file tax returns suggests that an applicant has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information. ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002). As we have noted in the past, a clearance adjudication is not directed at collecting debts. See, e.g., ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). By the same token, neither is it directed toward *inducing an applicant to file tax returns*. Rather, it is a proceeding aimed at evaluating an applicant's judgment and reliability. *Id.* A person who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). See *Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961).

The Appeal Board ruled that "even in instances where an "[a]pplicant has purportedly corrected [his or her] federal tax problem, and the fact that [applicant] is now motivated to prevent such problems in the future, does not preclude careful consideration of [a]pplicant's security worthiness in light of [his or her] longstanding prior behavior evidencing irresponsibility" including a failure to timely file federal income tax returns. See ISCR Case No. 15-01031 at 3 and note 3 (App. Bd. June 15, 2016).

Notwithstanding the lack of any tax debt owed, failing to timely file tax returns indicates an individual fails to demonstrate the degree of good judgment and reliability required of persons granted access to classified information.

In this instance AG ¶ 20(g) does not apply because none of the delinquent taxes have been paid and there is no arrangement with the IRS or the state tax authority to repay the delinquent taxes. Applicant's reason for his failure to file his federal and state tax returns in a timely manner was not reasonable.

Applicant's indicated his current financial status was poor, but that he was working his way out of his financial problems. He has been employed in his current job three and a half years, but the only debt he has established as paid is a \$420 (SOR 1.a) debt. He has provided no correspondence showing he has remained in contact with his creditors or the holder of the judgment. He has been less than diligent in addressing his longstanding financial problems.

v. Walker, 479 F.2d 407 (9th Cir. 1973); *United States v. McCabe*, 416 F.2d 957 (7th Cir. 1969); *O'Brien v. United States*, 51 F.2d 193 (7th Cir. 1931).

None of the mitigating conditions sufficiently mitigate the financial considerations security concerns. AG ¶ 20(a) does not apply because the behavior did not happen long ago, the delinquent debts remain unpaid, and are, therefore, “a continuing course of conduct.” Additionally, he failed to file his Federal tax returns for six years and his state returns for five years.

Applicant did have a number of events that were beyond his control. His 2011 retirement from the Navy was a major shift in his lifestyle. After retiring, he was unable to secure a job paying as much as his Navy compensation. At the same time, his wife developed medical problems, which forced her to stop working outside of the home. For AG ¶ 20(b) to apply there must be factors beyond his control causing his financial difficulties and he must act reasonably under the circumstances. He has not acted aggressively to address his delinquent obligations or to contact his creditors. Under the circumstances, he has not acted reasonably. There has been no showing of a good-faith effort to repay overdue creditors

Applicant disputes the \$300 debt arising from television provider equipment and \$900 debt from a telephone service provider. He asserts he returned the equipment, which the companies deny. For AG ¶ 20(e) to apply there must not only be a reasonable basis to dispute the debt, but Applicant must provide documented proof substantiating the basis of the dispute or provides evidence of action to resolve the issue. Applicant provided no documentation substantiating the basis of his claims, and he said he had not been in contact with one of the creditors in two or three years.

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 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.

A security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. Applicant is a 46-year-old avionics technician who has been employed by a defense contractor since July 2015. He honorably served in the U.S. Navy from 1991 through 2011. While serving, he had an assignment as a Navy recruiter a position routinely given only to service members showing excellent character and judgment. He transitioned from military service to civilian life, which is a major lifestyle change and often stressful. However, that change occurred seven years ago.

Two of Applicant's largest debts of concern were two student loan obligations. Incurring a student loan is seen as an obligation incurred to improve an individual's life, with respect to future employment and career prospects, and, as such, is viewed differently than a debt obligation incurred to purchase a new car or incurred for credit card debt. However, the student loan obligations remain unpaid.

Applicant has been aware of the Government's concern about his delinquent debts since his December 2017 interview when he was specifically confronted about each of his delinquent accounts now listed in the SOR. Additionally, the April 2018 SOR put him on notice of the Government's concern about his delinquent accounts. He paid one small collection account. He provided no documentation regarding his past efforts to address his delinquent debt and has failed to establish repayment agreements to address the delinquent debts. Applicant has 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, Applicant may well demonstrate persuasive evidence of his security worthiness should he pay the judgment and establish repayment agreements addressing his delinquent taxes and his delinquent student loan obligations.

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)) Overall, the record evidence leaves questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, Applicant has failed to mitigate the financial considerations 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

Subparagraph 1.a: For Applicant

Subparagraphs 1.b – 1.j: 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 a security clearance. Eligibility for access to classified information is denied.

CLAUDE R. HEINY II
Administrative Judge