



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



In the matter of:)
)
) ADP Case No. 18-02261
)
)
Applicant for National Security Eligibility)

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: *Pro se*

08/31/2020

Decision

WHITE, David M., Administrative Judge:

Applicant incurred more than \$90,000 in delinquent consumer debt since 2016, most of which remains unresolved. He denied, and attempted to conceal, his financial issues when applying for a trustworthiness determination. Based upon evaluation of the testimony, pleadings, and exhibits, national security eligibility to occupy a designated sensitive position is denied.

History of Case

On May 12, 2017, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On March 5, 2019, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) alleging trustworthiness concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). The action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective June 8, 2017.

Applicant answered the SOR in writing on April 10, 2019 (Answer), and requested a decision based on the administrative record, without a hearing before an administrative judge. On June 3, 2019, the Government elected to request a hearing pursuant to Directive ¶ E3.1.7. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on June 6, 2019. DOHA issued a Notice of Hearing on August 8, 2019, setting the hearing for September 11, 2019. A continuance of the hearing date until November 6, 2019, was granted to the Government due to an unforeseeable circumstance. On that date, Department Counsel offered Government Exhibits (GE) 1 through 8 into evidence. Applicant testified, and offered Exhibits (AE) A through I into evidence. All exhibits were admitted without objection. I granted Applicant's request to leave the record open until November 20, 2019, to permit submission of additional evidence. DOHA received the hearing transcript (Tr.) on November 19, 2019. Applicant timely submitted additional evidence, which was marked and admitted into evidence as AE J and AE K, without objection.

Findings of Fact

Applicant is 56 years old, and has four adult children. He and his first wife divorced in February 2014, after almost 25 years of marriage. He remarried in December 2016. He earned a high school diploma in 1983, a licensed practical nurse (LPN) diploma in 1992, and an online associate's degree in 2014. He first enlisted in the National Guard in 1984, and retired from the U.S. Army with an honorable discharge in December 2006 as a staff sergeant (pay grade E-6). He held a Secret clearance during most of his enlisted service. He began his current employment as a medical training project lead with a major defense services contractor in March 2015, and applied for a trustworthiness determination in connection with that position. (GE 1; GE 2; GE 3; AE J; Tr. 7, 39, 54-57.)

Following his retirement from the Army, Applicant worked as a civilian federal (GS) employee at a major military hospital from April 2007 to October 2008, from April 2009 to November 2014, and again from June 2015 to May 2016. From November 2008 to April 2009 he worked at the same hospital as a medical trainer but was employed by a defense contractor. Applicant voluntarily left his GS position in November 2014 under unfavorable circumstances after some workplace incidents. After being rehired in June 2015, he was fired by the hospital in May 2016 for missing too many days of work without justification. He was unemployed from February to June 2015, taking "time off" after his previous contract position ended; and again from May 2016 to September 2016, after being fired from his GS hospital job. He reported that during both brief unemployment periods he, "was supported financially from his military disability pay and military retirement ... [and he] had no problems from not working." (GE 1; GE 3; Tr. 57.)

Applicant largely attributed the absenteeism that led to his May 2016 dismissal, as well as his financial mismanagement and memory problems, to some unspecified service-related injuries and a more recent head injury he received on July 4, 2015. One of the guests at a neighborhood family barbecue party that Applicant hosted that evening struck him with a beer bottle as he intervened in an alcohol-fueled altercation. Applicant provided documentation showing that his assailant was convicted of Malicious Mischief in the First

Degree and Assault in the Fourth Degree on April 29, 2016, after she pled guilty for her part in the altercation. During the evening of July 7, 2015, Applicant went to the emergency room at the military hospital, where he had just resumed working, complaining of headaches from this incident. He was diagnosed with post-concussion syndrome and lacerations to his face, and received pain medications. (Answer; AE E; AE F; AE G; AE H; Tr. 58-63, 75-76.)

As alleged in SOR ¶ 2.a, Applicant falsely responded, “No,” to the question in Section 26 of his May 12, 2017 e-QIP, which asked whether he had any delinquencies involving routine financial accounts during the past seven years. In fact, he had six delinquent personal loans or credit card accounts, as described in detail below, which exceeded \$90,000. (GE 1; GE 4; GE 8.)

About five weeks later, on June 20, 2017, Applicant completed, certified as true, and filed a federal court petition for Chapter 13 bankruptcy relief. (SOR ¶ 1.g.) All six of the delinquencies alleged in the SOR were listed on Schedule E/F of that petition, which included a total of \$124,964 in nonpriority unsecured debts. Schedules I and J of the petition declared that his monthly income and expenses were, respectively, \$6,388 and \$5,537; yielding a monthly net income of \$851. Applicant changed his mind about making the payments necessary to obtain bankruptcy relief, and his case was dismissed on September 19, 2017. (Answer; GE 3; GE 8; AE A; AE D; Tr. 77-78.)

On December 1, 2017, Applicant enrolled in a debt resolution program (DRP) with a national for-profit debt-relief company to address his delinquencies. He testified that he makes fixed monthly payments of \$1,543 to this company under his DRP, for their use in negotiating and paying settlements of his delinquencies. He implied, but did not document, that he made all of those payments. At that rate he would have paid \$37,032 through November 2019 to the company. His September 2019 Program Summary from the company shows an account balance of \$910 and, as detailed below, the company reported total payments of \$7,504 toward his delinquent accounts. There is no information concerning the \$28,618 difference between the \$37,032 paid into the DRP and the \$8,414 paid out or retained for future payments by the company. (GE 3; AE A; AE I.; Tr. 83.)

An investigator for the Office of Personnel Management (OPM) conducted a personal subject interview (PSI) of Applicant on April 12, 2018. The interview was conducted, by mutual agreement, in the dining area of a public coffee house. Applicant said that this arrangement made it uncomfortable for him to discuss derogatory personal information and that the interviewer seemed somewhat accusatory and unprofessional. (Answer; Tr. 36-39.) He later reviewed the interviewer’s summary of the PSI and provided some corrected information. (GE 3.)

Applicant told the interviewer supplemental information to update many of his e-QIP answers concerning his contact information, his education, his employment and military histories, and his family members. When the issue of his financial considerations was discussed, he first told the interviewer that he had begun credit counseling and debt consolidation through his DRP, and was paying them \$1,500 per month for their use in

resolving his personal loans and credit card debts. He then, reportedly, “confirms that he has no delinquent accounts that should have been reported on the case papers and the accounts being handled by [the DRP] would not pertain to the financial questions asked.” (GE 3 at 4-8.)

The interviewer then confronted Applicant with information from his credit bureau report (CBR) concerning eight delinquent debts, including the six that were subsequently alleged in the SOR. He said that one small collection account had been fully repaid in 2017, and that the other seven were being handled in his DRP. He acknowledged and explained details concerning each of these eight delinquent debts to the interviewer, and said each one was not listed on his e-QIP, “due to oversight,” when asked about them individually. After discussing his dismissed bankruptcy petition with the interviewer, he told her that he:

stopped making payments on all the above accounts when he thought he’d file for bankruptcy which was in early 2017 which is why the accounts became delinquent and some were sent to collections for non-payment. [He] thought it would all be resolved with the bankruptcy however he then decided not to file. [He] did not list each account on the case papers due to oversight and agrees with all the confronted information.

(GE 3 at 8-10.)

In his Answer to the SOR, Applicant claimed that he was unaware of delinquent debts when he completed his e-QIP because he thought all of his bills were being automatically paid by his bank. He claimed that he was not aware of his delinquencies until they were brought to his attention during the April 2018 interview, then once he “had been made aware of how bad the situation was [he] took corrective action went to a lawyer filed a Chapter 13.” He said that when he became aware that he would only be able to keep about \$400 a month for many years under the Chapter 13 plan he filed to dismiss that, and later entered into his DRP. However, he could not explain during his hearing why he said he was unaware of his delinquencies until the OPM PSI in April 2018, when he had filed the bankruptcy petition involving those debts shortly after certifying the false e-QIP, then entered the DRP to resolve them, both of which took place in 2017 while he said he did not know they were delinquent. (Answer; Tr. 74-82.)

SOR ¶ 2.b alleges that Applicant violated a 300-foot restraining order, contained in the 2014 Decree of Dissolution of his marriage to his first wife, at least twice during February 2016 by accosting her in her place of employment. At the time, they both worked at the major military hospital discussed above. There is no record evidence detailing any such incidents, and Applicant denied that any of their communications during that period were not mutually consensual. Department Counsel introduced a copy of the Decree in question, which specifically excludes encounters at, “their mutual place of work,” from application of the order’s 300-foot restriction. This SOR allegation is without merit. (Answer; GE 2; Tr. 89-92.)

The following subparagraphs describe the origin and status of each of Applicant's six SOR-alleged debts, which totaled \$90,482 and became delinquent during 2016 or early 2017. These findings are based on the information contained in Applicant's answer to the SOR; his October 5, 2018 interrogatory response adopting and supplementing the report of his OPM PSI; the record CBRs; Applicant's Chapter 13 bankruptcy petition; and status documents from his DRP. (Answer; GE 3 through GE 8; AE I.)

SOR ¶ 1.a: Applicant opened this \$50,000 unsecured personal loan from an online personal finance company in November 2015. His payments became delinquent in December 2016, and the lender charged off the past-due loan balance of \$46,375 after his last payment in March 2017. The debt is "enrolled" in Applicant's DRP, with no reported settlement amount. His most recent (May 2019) record CBR shows no payments and an outstanding balance due of \$46,375. This debt is not resolved.

SOR ¶ 1.b: Applicant opened this \$35,000 unsecured personal loan from a major financial institution in July 2012. His payments became delinquent in March 2017 and the lender reported charging off the \$19,878 past-due balance in December 2017, after dismissal of his bankruptcy plan. Applicant's DRP reported an agreed settlement amount of \$8,675 for this account, with "Payments Pending." There is no evidence of actual payments having been made to this creditor. This debt is not resolved.

SOR ¶ 1.c: Applicant also opened this \$15,000-limit credit card account with the major financial institution in July 2012. He made his last timely payment toward the account in October 2016, and the lender charged off the \$16,096 past-due balance in May 2017. Applicant's DRP reported an agreed settlement amount of \$7,244 for this debt, and that payments of this amount were complete as of September 2019. His May 2019 CBR showed receipt of an unspecified partial payment to this account in April 2019, and a past-due balance of \$11,896. This debt is probably resolved.

SOR ¶ 1.d: Applicant opened this \$5,000-limit credit card account with a different bank in May 2015. His payments became delinquent in March 2016 and he made his last payment toward this debt in September 2016. The lender charged off the \$5,346 past-due balance in late 2017 or early 2018, after dismissal of Applicant's bankruptcy plan. Although Applicant said during his OPM PSI that this debt was included in, and being actively repaid through, his DRP, that claim was incorrect. When asked during the hearing to clarify the situation, he claimed that he had reached out to the bank and was told that he did not have to worry about it anymore since it was charged off. He could not recall receiving documentation of this, or an IRS Form 1099-C forgiving this debt. He did not pay any associated income taxes if the debt was forgiven, and did not submit pertinent documentation while the record remained open after his hearing so he could locate it. (Tr. 70-73; AE J; AE K.) This debt is not resolved.

SOR ¶ 1.e: Applicant opened this \$2,000-limit credit card account with the major financial institution in October 2015. He made his last timely payment toward the account in September 2016, and it was closed by the lender in January 2017. The \$2,331 past-due balance was charged off in October 2017, after dismissal of the bankruptcy plan. The debt is “enrolled” in Applicant’s DRP, with no reported settlement amount. His May 2019 CBR shows no payments and an outstanding balance due of \$2,331. This debt is not resolved.

SOR ¶ 1.f: Applicant opened this \$300-limit account with a major credit card company in April 2016. He made his last payment toward the already delinquent account in September 2016, and it was subsequently placed for collection with a past-due balance of \$456. Applicant’s DRP reported an agreed settlement amount of \$260 for this \$502 debt, and that payments of this amount were complete as of March 2019. His July 2018 CBR showed receipt of an unspecified partial payment by the debt collection agency in satisfaction of this account, and it no longer appears on his May 2019 CBR. This debt is resolved.

An Army major who served with Applicant in various capacities between 2000 and 2012, and remains in contact, wrote a letter praising Applicant’s medical knowledge, composure, leadership, trustworthiness, and professionalism. While on active duty, Applicant earned three Meritorious Service Medals, six Army Achievement Medals, six Army Good Conduct Medals, and various expeditionary or service awards. His NCO Evaluation Reports for his final three years of service reflected excellent performance in various capacities at two military hospitals. In November 2012, he was selected to join the Order of Military Medical Merit, in recognition of his many significant contributions to the U.S. Army Medical Department. It is, “a non-profit organization that depends upon [the participation of its members] to keep it viable.” (AE J; AE K.)

Policies

When evaluating an applicant’s national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Pursuant to Directive ¶ E3.1.15, an “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, and has the ultimate burden of persuasion as to obtaining a favorable [trustworthiness] decision.”

A person applying for national security eligibility seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of information compromise.

Analysis

Guideline F: Financial Considerations

The trustworthiness concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

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

- (a) inability to satisfy debts; and

- (c) a history of not meeting financial obligations.

Applicant incurred more than \$90,000 in delinquent consumer credit indebtedness since 2016, of which more than \$85,800 remains unresolved. He claims to have paid more than \$37,000 into his DRP, which reportedly paid out \$7,504 and is holding a current balance of \$910 in his account. The filing and dismissal of Applicant's Chapter 13 bankruptcy petition in 2017, as alleged in SOR ¶ 1.g, do not raise any disqualifying concerns independent of the underlying debt information or the light these actions shed on Applicant's state of mind at the times he subsequently denied being aware of them. Those concerns are adequately addressed under other SOR allegations. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate the resulting security concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate the trustworthiness concerns arising from Applicant's admitted 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, 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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's history of delinquent debt over the past four years is substantial, and his financial irresponsibility is ongoing. Neither his short-lived bankruptcy filing nor his DRP participation addressed the substantial, and otherwise unexplained, SOR-alleged delinquencies in a meaningful way. These debts create ongoing concerns about his reliability, trustworthiness, and judgment. He offered no reasonable basis to conclude that he has corrected his financial practices to preclude the continuation or recurrence of these issues. Mitigation was not established under AG ¶ 20(a).

Applicant described some circumstances that might have been beyond his control, such as his 2014 divorce and his head injury in an altercation at the July 2015 holiday barbecue party he hosted, but he did not demonstrate how these incidents caused him to keep borrowing additional funds on credit or stop paying his previously outstanding and new accounts. Nor did his bankruptcy actions or DRP participation establish that he acted responsibly under such circumstances, as required for mitigation under AG ¶ 20(b).

Applicant offered no evidence of effective financial counseling or budget information establishing solvency going forward, and demonstrated no ability to repay his current delinquencies. He failed to demonstrate that his financial problems are being resolved, are under control, or that a sensible good-faith effort toward resolution has actually been initiated. Accordingly, Applicant failed to establish mitigation of financial security concerns under the provisions of AG ¶¶ 20(c) or 20(d).

Guideline E: Personal Conduct

AG ¶ 15 expresses the trustworthiness concerns pertaining to personal conduct:

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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during the national security investigative or adjudicative processes.

AG ¶ 16 describes one condition that could raise trustworthiness concerns and may be disqualifying under the established facts alleged in the SOR:

(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 national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant falsified his May 12, 2017 e-QIP when he responded, "No," and denied that he had any delinquencies involving his routine financial accounts. His subsequent contradictory explanations for when he knew about these debts and why he denied them on the e-QIP were not credible, and illustrate his recognition of the significance of his failed attempt to conceal these debts. He held, and regularly renewed, a security clearance during most of his 20-year military career in the medical field. I conclude that he deliberately falsified his e-QIP by denying what he knew to be material facts concerning his financial issues. This evidence establishes substantial trustworthiness concerns under AG ¶ 16(a).

AG ¶ 17 includes four conditions that could mitigate the trustworthiness concerns arising from Applicant's personal conduct:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual

specifically concerning security processes. Upon being made aware of the requirements to cooperate or provide the information, the individual cooperated fully and truthfully;

(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; and

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Applicant did not provide evidence that would support mitigation under any of the foregoing conditions. He denied having reportable delinquencies during his OPM PSI until being confronted with the facts from his CBR. No one provided him responsible advice to conceal his debts. He continued to provide incredible and contradictory explanations for his falsification throughout the record proceedings, and failed to mitigate the doubts it cast on his trustworthiness, reliability, and judgment.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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(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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a mature adult, who is accountable for the financial irresponsibility he has displayed since 2016, resulting in more than \$85,000 in unresolved delinquent debt. He further demonstrated untrustworthiness through his attempts to conceal those issues, and his subsequent

efforts to justify those attempts. Significant potential for pressure, exploitation, or duress continues to exist. Overall, the evidence establishes substantial doubt as to Applicant's national security eligibility. He failed to meet his burden to mitigate the trustworthiness concerns arising under the Financial Considerations and Personal Conduct guidelines.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a, 1.b, 1.d, 1.e:	Against Applicant
Subparagraphs 1.c, 1.f, 1.g:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility to occupy a designated sensitive position. National security eligibility is denied.

DAVID M. WHITE
Administrative Judge