



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



In the matter of:)	
)	
)	ISCR Case No. 18-01883
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: Daniel P. Meyer, Esq.

01/21/2020

Decision

Curry, Marc E., Administrative Judge:

Although Applicant has made some progress in reducing his delinquent debt, it is too soon to conclude that his finances are under control, given the length of time that his debts were delinquent, and the recency with which he initiated the payment plans. Applicant failed to mitigate the financial considerations security concern. Lingering concerns about Applicant’s judgment and credibility, related to his explanation for failing to disclose income to the state’s unemployment compensation authority, compel me to conclude that he has not mitigated the personal conduct security concern. Clearance is denied.

Statement of the Case

On December 19, 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 security to grant security clearance eligibility. 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 Adjudicative Guidelines (AG) effective for any adjudication made on or after June 8, 2017. On August 1, 2018, Applicant answered the SOR, admitting the allegations in except 1.n through 1.r, and subparagraph 2.c. He requested a hearing, whereupon, the case was assigned to me on May 10, 2019. On September 9, 2019, the Defense Office of Hearings and Appeals issued a notice of hearing, scheduling Applicant's case for October 9, 2019. The hearing was held as scheduled. I received eight Government exhibits (GE 1 – GE 8) and five Applicant's exhibits (AE A - AE E), together with the testimony of Applicant. Also, I received a copy of Department Counsel's discovery letter to Applicant (Hearing Exhibit I). At the close of the hearing, I left the record open at Applicant's request, to allow him the opportunity to submit additional exhibits. On November 22, 2019, within the time allotted, he submitted 17 exhibits which I incorporated into the record as AE F through AE V. The transcript (Tr.) was received on October 21, 2019.

Preliminary Ruling

SOR subparagraph 2.b alleges as follows:

You falsified material facts on an Electronic Questionnaire for Investigations Processing (eQip), executed by you on or about July 24, 2017, in response to Section 13A – Employment Activities. You stated that you took a job at Staples, Inc. “[t]o help maintain financial stability.” You actually took the job at Staples, Inc. because your history of traffic citations meant that you could not drive legally unless you were employed and need to travel to work. You later admitted that you falsified your eQIP because you thought you would not get a clearance otherwise.

The basis of this allegation is contained in an enhanced subject interview conducted in January 2018, encapsulated within a report of investigation (ROI) prepared by an investigative agent. (GE 2 at 8) When asked in interrogatories, propounded by the government, whether the January 2018 ROI accurately reflected the information that he provided to the investigator on the day he was interviewed, Applicant answered “no,” specifically objecting to the information in the ROI upon which SOR subparagraph 2.b is based. (GE 2 at 5) In light of Applicant's denial, and absent any other record evidence on file supporting the allegation set forth in subparagraph 2.b, I resolve this allegation in Applicant's favor. (E3.1.20)

Findings of Fact

Applicant is a 69-year-old single man. Since 2017, he has possessed legal guardianship of his ex-girlfriend's child. (Tr. 64) He earned an associate's degree in 1970 and a bachelor's degree in 1979. (GE 1 at 13) Since February 2016, he has been working for his current employer, a federal contractor, as a senior safety engineer. (Tr. 29) According to a former coworker who worked with Applicant in the 1990s, Applicant was “always responsible in all matters related to protecting classified material and would

diligently follow all rules and protocols to ensure the protection of classified material.” (AE D at 1)

Applicant has incurred approximately \$90,000 of delinquent debt. Applicant's financial problems began when he was laid off from his job in April 2015 as part of a reduction in force. (GE 1 at 7) He was subsequently either unemployed or underemployed for the remainder of that year. Despite having \$100,000 invested in a stock portfolio, Applicant exhausted these funds and fell behind on his debt payments. (Tr. 64) His finances became delinquent in part because he chose to neglect them in order to help his ex-girlfriend and her three children financially, providing them with several hundred dollars per month while he was unemployed. (Tr. 63-64; GE 2 at 18)

Applicant regained full-time employment in February 2016. He then retained a debt consolidation agency to help him resolve his debts. (Tr. 16) As part of the agreement, the debt consolidation agency agreed to contact each creditor, negotiate balance reductions, and develop repayment plans. (Tr. 16) Also as part of their agreement, Applicant was to make monthly payments to the debt consolidation agency, and was not to negotiate with any of the creditors himself. (Tr. 16-17)

The debt consolidation agency did not fulfill its responsibilities under the agreement, either not contacting all of the creditors, as promised, or not making the agreed-upon payments. (Tr. 18) In 2017, Applicant terminated his agreement with the debt consolidation agency and began attempting to resolve the debts himself.

SOR subparagraph 1.a is a credit card account totaling \$16,947. In October 2019, Applicant negotiated a balance reduction and a payment plan. (AE E at 18) Under the plan, he was to begin making \$353 monthly payments, beginning in November 2019, approximately six weeks after the hearing. (AE E at 18)

SOR subparagraph 1.b totals \$14,913. Applicant disputes this debt, contending that he has been unable to contact the creditor, or identify the type of debt. He suspects it was a home equity line that was satisfied when he sold a home in 2017. (AE T at 3; Tr. 19)

Subparagraph 1.c is a credit card, totaling \$11,580. At the hearing, Applicant denied responsibility for this debt. However, during the post-hearing record extension deadline, Applicant confirmed his responsibility for the debt, and developed a payment plan. Under the plan, Applicant was to begin making monthly \$323 payments, beginning in October 2019. (AE Q at 1)

Subparagraphs 1.d and 1.e are credit card accounts owed to the same creditor, collectively totaling approximately \$15,000. Applicant negotiated a settlement of subparagraph 1.d for \$2,644 and a settlement for subparagraph 1.e for \$1,842. According to the two separate agreements, he was to have begun satisfying subparagraph 1.d with \$440 payments, and subparagraph 1.e with \$307 monthly payments, on November 20, 2019. (AE H – AE I)

Subparagraph 1.f is a credit card totaling approximately \$6,639. Applicant arranged to satisfy this debt in \$350 monthly increments that were to have begun on November 23, 2019. (GE L)

Subparagraph 1.g is a delinquent credit card account totaling \$3,541. Applicant satisfied this account through a wage garnishment in September 2019. (AE E at 10)

The debt alleged in subparagraph 1.h totals \$3,174. It was charged off and reported as income to the Internal Revenue Service in tax year 2018. (AE J)

Subparagraph 1.i is a collection agent for a department store. Applicant's debt allegedly totals \$2,359. Applicant contests the payoff amount, contending that it is actually \$1,829. (AE T at 9) The collection agent filed suit against Applicant. Subsequently, he retained an attorney who successfully moved for dismissal of the case for defective service of process. (AE T; AE U at 9)

The creditor in subparagraph 1.j is a collection agent for a department store. The delinquency totals \$1,298. Applicant has been satisfying this debt in monthly \$106 increments since February 2019. (AE M)

The creditor in subparagraph 1.k is a collection agent for a department store. The debt totals \$1,144. Applicant denied this debt, contending that he satisfied it. He provided confirmation of satisfaction in his post-hearing submissions. (AE P)

The debt alleged in subparagraph 1.l totals \$15,082. Applicant admits owing money to this creditor, but disputes the amount, contending that the debt had been paid down to \$5,892. Further, he contends that the collection agency's "business had been halted on a legal challenge of improper debt manipulation, which included this account." (AE U at 10) He provided no documentary evidence in support of this contention.

Subparagraph 1.m, as duplicated in subparagraph 1.n is a delinquent cable television bill totaling \$321. (AE U at 11) Applicant satisfied this debt. (AE K at 1)

Subparagraph 1.o is a bill for the security system at Applicant's late mother's home. Applicant denies this bill, contending that as the trustee of her estate, he was not personally liable for her debts. (Tr. 27) Nevertheless, he paid this debt. (AE U at 11)

SOR subparagraph 1.p alleges that Applicant failed to file his federal income tax returns for tax years 2015 and 2016 on time. He attributes this failure to his continuing struggles to get out of debt after obtaining his current job in February 2016. (Tr. 29) Applicant filed both returns in March 2018. He owed no income taxes for either year. (AE A at 32-37)

Subparagraphs 1.q and 1.r allege that Applicant failed to file state income tax returns for tax years 2015 and 2016 for three states where he lived during that period. Applicant denied these allegations. He lived in two states (State 1 and State 2), relocating

to State 2 after losing his job located in State 1 in August 2015. SOR subparagraph 1.q alleges that he failed to file the 2015 income tax returns for State 1 and State 2. Applicant filed these income tax returns in March 2018. (Tr. 29; AE A, Attachments (Att.) 9, 10) He failed to file them on time, citing the same reason for failing to file his 2015 and 2016 federal income tax returns on time. Ultimately, he was entitled to a \$286 refund from State 1 (AE A, Att. 9), and owed no money to the revenue authority of State 2. (AE A, Att. 9 at 1)

Applicant lived in State 2 from August 2015 to December 2015. (AE U at 12) When he obtained his current job in January 2016, he relocated from State 2 to the state where he currently lives. (State 3) Applicant had no responsibility to file an income tax return in State 2 for 2016 because he did not live there that year.

Applicant has not yet filed his State 3 income tax return for 2016, as alleged in SOR subparagraph 1.s. With the help of a professional tax return preparer, he completed it in March 2018; however, he did not file it then because of what he alleged to be a discrepancy in the amount owed. Specifically, the return, as completed by the preparer, indicates that Applicant owes State 3 \$3,178, whereas, Applicant contends that he is owed a refund. (AE A, Att. 11 at 3; AE U at 12) Applicant contends that dispute is being investigated. He provided no evidence of any investigation.

Applicant maintains a budget. (GE 2 at 19) He earns \$113,000 per year. (Tr. 55) He receives \$352 in monthly pension payments stemming from two previous jobs. (GE 2 at 9) He has \$1,650 in monthly disposable income.

Applicant has received between 17 and 20 traffic citations in the past 7 years. Many of the tickets stemmed from driving an automobile with expired registration. Specifically, when Applicant relocated from State 2, he took with him two vehicles that he owned. (Tr. 38) The registration for one of the vehicles had expired. Struggling to make ends meet, Applicant only registered one vehicle after relocating. Most of the time, he left the unregistered vehicle parked on a private driveway, legally off the streets of State 3. Occasionally, however, if the registered vehicle was broken down and he did not have the money to repair it, he would drive the unregistered vehicle instead. (Tr. 37; GE 2 at 10) Periodically, while driving the unregistered vehicle, he would get stopped and ticketed. Applicant received the majority of these tickets for driving an unregistered vehicle while commuting to and from work. (Tr. 37, 99) He prioritized work attendance, preferring to occasionally commute with an unregistered vehicle, over paying to register his vehicle. (Tr. 37) The cost for registering a vehicle in State 3 is approximately \$150 per year. (Tr. 102)

Applicant's traffic citations include fines for driving with an expired driver's license. While living in State 2, Applicant was stopped and issued citations for operating a car without a valid registration and without a valid driver's license in 2015. (GE 2 at 10) As a result of these citations, his vehicle was impounded. Applicant obtained a temporary registration, but did not apply for a new driver's license. He failed to do so because he could not afford the registration fee. (GE 2 at 10)

Later in 2015, Applicant applied for unemployment benefits. When completing the application, he forgot to disclose his monthly pension income. (\$352) Upon realizing his mistake, he contacted his caseworker and disclosed the pension income. The caseworker told him that it was nominal, and would have no effect on the amount of unemployment compensation that he would receive. (Tr. 46) When Applicant obtained his part-time job later that year, he did not report the income to the unemployment office. Consequently, he was charged with the crime of misrepresentation of income to obtain unemployment benefits. (Tr. 92) As part of a settlement, Applicant was ordered to pay \$4,000 in overpayment expenses. (Tr. 93)

Applicant contends that he did not report the money from the part-time job because the income was nominal, similar to the pension income that he was told that he did not need to report. During cross-examination, he testified that the overpayment totaled slightly more than \$4,000, an amount “much more than the payments that [he] got from [his ex-employer].” (Tr. 94) He disclosed his failure to report the part-time income and its consequences, *vis a vis* his unemployment benefits, in depth on his 2017 security clearance application.

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 ¶ 1(d) 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.

Under the whole-person concept, 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). They are as follows:

- (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.

Analysis

Guideline F: Financial Considerations

The security concerns about financial considerations are set forth in AG ¶ 18, as follows:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified or sensitive information An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant's history of delinquent debts generates security concerns under AG ¶ 19(a), "inability to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations." Applicant's outstanding income tax debt owed to State 3 for 2016 triggers the application of AG ¶ 19(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 following mitigating conditions are potentially applicable:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

AG ¶ 20(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

AG ¶ 20(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 was either unemployed or underemployed for ten months in 2015. Before then, he had no financial problems. When Applicant lost his job, he had rainy day income invested in a stock portfolio totaling \$100,000. He admittedly could have done a better job of keeping his debts under control while unemployed, but deliberately chose to neglect them in favor of supporting his ex-girlfriend and her children, paying them hundreds of dollars per month during his unemployment. Under these circumstances, I cannot conclude that Applicant's financial problems stemmed from circumstances beyond his control. AG ¶ 20(b) is inapplicable.

Applicant provided proof supporting his contention that the debt alleged in subparagraph 1.b was satisfied when he sold his home in 2017. Although the evidence is not conclusive, it constitutes a reasonable basis for the dispute. AG ¶ 20(e) applies to the debt alleged in subparagraph 1.b, and I resolve it in his favor.

Shortly after regaining full-time employment in February 2016, Applicant retained a debt consolidation company to help him identify and pay his delinquencies. The company neither complied with their agreement, nor returned Applicant's deposit, prompting him to terminate their agreement in 2017. Since then, he has contacted creditors and satisfied the debts in subparagraphs 1.k and 1.m as duplicated in 1.n. He has been making payments towards the satisfaction of subparagraph 1.g since February 2019. AG ¶ 20(d) applies. I resolve subparagraphs 1.g, 1.k, and 1.m, as duplicated in 1.n, in his favor.

The debt alleged in subparagraph 1.h, totaling \$3,174, was charged off and reported to the IRS. As such, it generates no ongoing vulnerability to coercion. I resolve subparagraph 1.h in Applicant's favor.

Although Applicant does not dispute the debt alleged in subparagraph 1.i, he contends that the amount alleged delinquent is wrong, has retained an attorney, and is actively litigating the dispute. I conclude that AG ¶ 20(e) applies to the debt alleged in subparagraph 1.i, and resolve it in his favor.

Applicant's contention that he owes approximately \$10,000 less than the amount alleged in subparagraph 1.i (\$15,082) is unsupported by documentary evidence. Similarly, his contention that he is no longer responsible to complete debt satisfaction because the government suspended the debt because of deceptive lending practices, is unsupported by documentary record evidence. AG ¶ 20(e) does not apply to subparagraph 1.i, and I conclude that it remains outstanding.

Applicant satisfied the debt alleged in subparagraph 1.o. I resolve this allegation in his favor.

Although Applicant has entered payment plans to resolve the remainder of the consumer debts alleged in the SOR, no payments were scheduled to begin until a month after the hearing. Given the amount of this debt, it is too soon to conclude that Applicant's financial situation is under control. AG ¶ 20(c) is not applicable.

Applicant filed his 2015 and 2016 federal income tax returns and his income tax returns for State 2. I resolve subparagraphs 1.p and 1.q in his favor. Subparagraph 1.r alleges that Applicant failed to file 2016 income tax returns for State 2 and State 3. Applicant had no duty to file a tax return for State 2 because he did not live or work there that year. Applicant prepared his 2016 State 3 tax return, but did not file it because the return indicates that he owes \$3,178, an amount he disputes. He provided no documentary evidence establishing that he filed a formal dispute with the state taxing authority. Currently, it continues to remain unfiled. I conclude that Applicant owes the delinquency, as alleged in subparagraph 1.s, and that it remains outstanding. Under these circumstances, AG ¶ 20(g) is only partially applicable.

Personal Conduct

Under this guideline, “[c]onduct 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.” (AG ¶ 15) Moreover, “of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.” (*Id.*)

Seventeen to 20 traffic citations received over a seven-year period constitutes an average of approximately two to three traffic citations per year. Although this is not an excessive number of traffic citations, it is the circumstances surrounding the receipt of these citations rather than their frequency which generates a security concern. Specifically, Applicant testified that several of these tickets were for driving a vehicle that he did not register with the state motor vehicle authority because he could not afford the fee, and that rather than keeping it off the road, he periodically drove it when his registered vehicle was broken down, prioritizing his daily job attendance over the legal responsibility to register the vehicle. Under these circumstances AG ¶ 16(d), “credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a

whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information,” applies to subparagraph 2.a.

The personal conduct adjudicative guideline also addresses 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. (AG ¶ 16(a)) Applicant failed to disclose to State 1’s unemployment security compensation authority part-time income that he was earning while receiving unemployment compensation, leading to the criminal charge of misrepresentation to obtain unemployment benefits.

Applicant testified during direct examination that he did not disclose his part-time employment income because he thought it was minimal, like his pension, which was not required to be reported. On cross-examination, however, he acknowledged that his part-time income was much more than his monthly pension payments. Given this contradictory testimony, I conclude Applicant’s explanation for not reporting the part-time income to the unemployment compensation authority was not credible. I conclude AG ¶ 16(a) applies without mitigation.

Although Applicant deserves credit for disclosing this episode on his security clearance application, his subsequent, unbelievable explanation at the hearing renders the application of any of the mitigating conditions inapplicable. I conclude that Applicant has failed to mitigate the personal conduct security concerns.

Whole-Person Concept

Applicant’s decisions to drive an unregistered vehicle, rather than pay for its renewal, and his failure to disclose part-time income while receiving unemployment benefits epitomize the type of conduct that individuals may engage in if financially distressed. Moreover, any presence of rehabilitation is overshadowed by the unresolved tax debt and the fact that most of the payment plans were not scheduled to begin until after the close of the record. These concerns, combined with the intentional omission of relevant financial information to the state unemployment compensation authority, compel me to conclude that it is not clearly consistent with the national interest at this time to grant Applicant a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:

AGAINST APPLICANT

Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c – 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraphs 1.j – 1-k:	For Applicant
Subparagraph 1.l:	Against Applicant
Subparagraphs 1.m – 1.r:	For Applicant
Subparagraph 1.s:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	Against 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 for a security clearance. Eligibility for access to classified information is denied.

Marc E. Curry
Administrative Judge