



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



In the matter of:)	
)	
)	ISCR Case No. 14-00146
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard A. Stevens, Esq., Department Counsel
For Applicant: *Pro se*

07/07/2014

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations and Guideline E, personal conduct. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On March 12, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

Appellant answered the SOR on April 7, 2014, and requested a hearing before an administrative judge. The case was assigned to me on April 30, 2014. The Defense

Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 5, 2014. I convened the hearing as scheduled on June 12, 2014. The Government offered exhibits (GE) 1 through 8, and they were admitted into evidence without objection. Applicant testified on his own behalf. He did not offer any exhibits. I held the record open until June 26, 2014, to allow him to submit documents. He submitted Applicant's Exhibit (AE) A through F, which were admitted into evidence without objection.¹ DOHA received the hearing transcript (Tr.) on June 23, 2014.

Findings of Fact

Applicant admitted SOR allegations ¶¶ 1.a, 1.g, 1.i, 1.s, and 2.a. He denied the remaining allegations with explanations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 50 years old. He earned a general equivalency diploma in 1985 and has completed some college credits, but does not have a degree. He served in the Army from 1985 to 1990 and was discharged honorably. He served in the National Guard from 2003 to 2006. He has been married three times and divorced twice. He has been married to his current wife since 2012. Her 14-year-old son lives with them. Applicant has five children, ages 32, 29, 27, 21 and 17.²

In March 2006, Applicant received from the U.S. Army a letter of intent to deny him a security clearance and access to sensitive compartmented information due to financial considerations and personal conduct. It is unknown if final action was taken on this matter. He was interviewed by a government investigator as part of his background investigation in January 2005 about his financial difficulties. He indicated he had financial problems due to not earning enough income and poor debt management. He indicated that that was all in his past, and he was trying to be more financially responsible.³

Applicant purchased a home in 2001. He fell behind on his mortgage payments and other bills. In 2002, he filed Chapter 13 bankruptcy and made monthly payments for a period, but had difficulty making those payments. The Chapter 13 was dismissed and converted to a Chapter 7 Bankruptcy. The Chapter 7 was dismissed in February 2004. Applicant explained that it was dismissed because he failed to appear at the creditors meeting. He was aware that he was supposed to attend but felt he received bad advice from a credit counseling service. He wanted to meet with the creditors directly and arrange payments. In 2006, Applicant filed a Chapter 13 bankruptcy petition, and it was dismissed in May 2006. He did not make any payments through the Chapter 13. He explained that he negotiated a deal on his house so he did not proceed. The house was

¹ Hearing Exhibit I is Department Counsel's memorandum.

² TR. 23-24, 28, 37-41.

³ GE 1, 4, 5.

sold in 2006 through a “short sale.” Applicant did not owe any deficiency. He indicated he paid some of the delinquent debts he owed, including \$18,000 for a car repossession.⁴

The debts in SOR ¶¶ 1.b through 1.e (\$8,081 for 2011; \$2,516 and \$434 for 2007; \$318 for 2005) are for state tax liens. Applicant explained he contacted the state imposing the liens numerous times to inquire about them. He was told the debt was due to him withdrawing money from his 401(k) account. After Applicant contacted the state it conducted an audit and advised him he owed other taxes. He last contacted the state in 2013 and was told to refile his tax returns for 2011, 2010 and 2007. Applicant indicated he complied. He is now waiting for a final accounting from the state to show how much he owes. Applicant did not provide documentation to show he has refiled his tax returns or regarding other action he has taken to resolve the liens. These debts remain unresolved.⁵

The debt in SOR ¶ 1.f (\$2,041) is a judgment for delinquent child support. The debt in SOR ¶ 1.h (\$1,599) is a collection account for unpaid child support. Applicant believes these are for the same child and are the same debt. Applicant stated that he only had one state-supervised child support order for his 21 year old. He was required to pay \$241 every two weeks until she was 21 years old. He indicated that he had custody of the child for part of the time and was paying the mother support but not through the state. When he was unemployed he stopped making payments and was in arrears for about \$2,000. His obligation to pay support ceased in November 2013 because his daughter turned 21. Applicant provided documentation that confirms he has satisfied his child support obligations.⁶

The debt in SOR ¶ 1.g (\$679) was a personal loan Applicant obtained in 2004. The total amount of the loan was larger and he made payments. He admitted he owed the balance as alleged in the SOR. He stated that when he had the money to make the final payment, the account was closed and he could not pay it. He indicated that later the debt was charged off. It remains unresolved.⁷

The debt in SOR ¶ 1.i (\$791) is a collection account for a power bill. Applicant stated the account was opened in his name while living in another state with his then wife. He testified his ex-wife is responsible for the debt. The account is not a joint account. He has disputed it on his credit report, but he also acknowledged that he is responsible for his debts from when he was married and living in another state. He intends on contacting the creditor.⁸

⁴ Tr. 29-33, 57, 68-75; GE 1, 3.

⁵ Tr. 76-81; GE 6, 7, 8.

⁶ AE B, D, E, F.

⁷ Tr. 81 83; GE 4, 6, 7, 8.

⁸ Tr. 83-84; GE 8.

The debt in SOR ¶ 1.j (\$94) is for cable services. Applicant stated he paid the debt years ago. He did not provide documented proof of payment or that he disputed the debt with the credit bureau.⁹

The debt in SOR ¶ 1.k (\$150) is for telephone services. Applicant stated he had an account with the company in 2008. He disputes he owes the debt. He did not provide proof that he paid the account or that he disputed it with the credit bureau.¹⁰

The debt in SOR ¶ 1.l (\$430) is a debt that was charged off in 2009. Applicant stated he is working on settling the debt. He stated in March 2014 he offered to pay half of the amount. He did not follow up on his offer. The debt remains unresolved.¹¹

The debt in SOR ¶ 1.m (\$6,520) is for an unpaid lease. Applicant claims this is a fraudulent debt. He never lived at the apartment complex claiming the debt. He stated he went to the apartment and asked them to produce documents showing he was the tenant. He disputed it on his credit report in 2013.¹²

The debt in SOR ¶ 1.n (\$1,573) is for unpaid rent. Applicant disputes this debt stating he had an agreement with the landlord to provide security services to the complex in exchange for rent. There was a lease at the time. The management company later changed. He stated he never received notice that the lease arrangement had changed. He indicated he disputed this debt on his credit report in 2012. Applicant provided a recent credit report and wrote in the margin by this debt that he intended to dispute it. He did not produce a copy of the lease agreement. The debt is unresolved.¹³

The debt in SOR ¶ 1.o (\$461) is for unpaid car insurance. Applicant disputes this debt claiming he provided notice of termination of his insurance coverage to the company. He disputes he owes the debt. He has not provided proof of resolution of the debt.¹⁴

The debt in SOR ¶ 1.p (\$473) is a medical debt from 2011. Applicant stated the medical debt was due to an injury sustained on the job and should have been covered by workers' compensation. He indicated he had insurance at the time. He stated he

⁹Tr. 84-85; GE 6, 7, 8.

¹⁰ Tr. 85-87; GE 4 at page 4, 6, 7, 8.

¹¹ Tr. 87-89; GE 6, 7, 8.

¹² Tr. 89-91; GE 6, 7, 8 AE A, B, C.

¹³ Tr. 91-98; GE 6, 7, 8; AE A, B.

¹⁴ Tr. 98-99; GE 6, 7, 8.

went back to the employer to try and resolve the debt. He stated he has continued to follow up on the debt, but it remains unresolved.¹⁵

Applicant stated that the debts in SOR ¶ 1.q (\$162) for cable services; ¶ 1.r (\$434) for an apartment complex debt, and ¶ 1.t for water services are owed by his ex-wife from when Applicant lived in a different state with her. He testified that his divorce decree stated his ex-wife was responsible for these debts. Post-hearing Applicant acknowledged that he misinterpreted his divorce decree and the debts remaining in his name are his responsibility. He intends to contact the creditors to resolve the debts. These debts remain unresolved.¹⁶

The debt in SOR ¶ 1.s (\$1,154) is a credit card debt. Applicant stated the original debt was \$300. He has no idea when he defaulted on the debt or how old it is. He stated he contacted the creditor to offer to settle the debt. They agreed to settle it for \$600, but Applicant could not afford to pay the settlement amount. He offered to pay \$100. The debt is unresolved.¹⁷

The debt in SOR ¶ 1.u (\$5,055) is a debt for a truck lease. He stated he leased the truck and returned it. The company claimed there was damage to the truck, and Applicant received a bill for over \$5,000 to repair the truck. Applicant disputed the truck was damaged and was not told when he returned the truck that there was damage. He stated there is a class action lawsuit against this creditor. Applicant did not provide any supporting documents to substantiate the basis of his dispute.¹⁸

When Applicant completed his Electronic Questionnaire for Investigation Processing (e-QIP) he did not disclose he had any delinquent debts. Applicant stated he should have listed his delinquent debts, but his omissions were not intentional. He explained the application was long and tedious. He knew there were things on his credit report that he should have disclosed. He acknowledged that he was aware that he had tax liens that he did not disclose. He stated he made a mistake and should have listed his debts. He also stated that some of his delinquent debts were beyond seven years so he did not think he had to disclose them. He admitted some of his debts were also within seven years. I did not find Applicant's explanation for failing to disclose his delinquent debts credible. I find his omissions were deliberate.¹⁹

Applicant was unemployed from October 2012 to February 2013, for two months in 2008, and for a couple of weeks in 2006. He also experienced periods when his pay

¹⁵ Tr. 100-102; GE 6, 7, 8.

¹⁶ Tr. 102-107, 109; GE 6, 7, 8; AE A.

¹⁷ Tr. 108-109; GE 6, 7, 8.

¹⁸ Tr. 109-113; GE 6, 7, 8.

¹⁹ Tr. 113-118, 126; GE 1.

was reduced. He has approximately \$1,700 in the bank. He and his wife moved into a house in March 2013 that they are renting with an option to buy.²⁰

Applicant stated he ignored his debts because he did not have the means to pay them. He now has a good wife and his credit is important to him so they can purchase a house in the future. He stated he has been paying his monthly bills on time and is trying to save money.²¹

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 are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

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

²⁰ Tr. 25, 119.

²¹ Tr.123-125.

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 as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and the following two are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has numerous delinquent debts that he is unwilling or unable to pay. Some of the debts are several years old. Applicant has a long history of financial problems. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant has had financial problems dating back to at least 2005. He has addressed a few debts, but most remain unresolved. I cannot find that these circumstances are unlikely to recur and do not cast doubt on his current reliability, trustworthiness or good judgment. AG ¶ 20(a) does not apply.

Applicant has had periods of unemployment or reduced income. Some of his debts were incurred while he was married to a former wife. These are conditions that were beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. He has addressed some debts, disputed others, but most remain unpaid, including delinquent taxes. He has not provided sufficient evidence to conclude he is actively attempting to resolve his delinquent debts. Due to the lengthy period he has had delinquent debts, I am unable to find he has acted responsibly under the circumstances concerning his finances. AG ¶ 20(b) partially applies.

There is no evidence he has received financial counseling. Applicant has too many remaining delinquent debts. I cannot find there are clear indications his financial problems are under control. AG ¶ 20(c) does not apply. He has resolved his child support debts alleged in SOR ¶¶ 1.f and 1.h. AG ¶ 20(d) applies to those debts.

Applicant disputed the debt in SOR ¶ 1.m on his credit report in 2013, stating the debt did not belong to him. He provided proof of his dispute. He disputed the debt in SOR ¶ 1.i on his credit report and provided proof. AG ¶ 20(e) applies to these debts.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern 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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following potentially applies:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant had numerous delinquent debts, including tax liens that he was aware of and failed to disclose on his e-QIP. He provided a statement in 2005 to a Government investigator regarding his finances and his delinquent debts when he was applying for a security clearance. He was on notice at that time of the Government's concern about delinquent debts. I did not find his explanation that he made a mistake was credible. I find his omissions were deliberate. AG ¶ 16(a) applies.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

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

(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;

(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; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

I have considered all of the evidence and conclude none of the mitigating conditions apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

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

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under these guidelines, but some warrant additional comment.

Applicant is 50 years old. He served in the military and received an honorable discharge. He has a long history of financial difficulties. He has tax liens that are unresolved. Most of his debts remain unpaid or unresolved. Applicant was aware of his financial problems and intentionally failed to disclose his delinquent debts and tax liens on his e-QIP. Applicant has not met his burden of persuasion. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraphs 1.h-1.i:	For Applicant

Subparagraphs 1.j-1.l	Against Applicant
Subparagraph 1.m:	For Applicant
Subparagraphs 1.n-1.u:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

In light of all of the circumstances it is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge