



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



In the matter of:)
)
) ISCR Case No. 12-04369
)
Applicant for Security Clearance)

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

02/07/2014

Decision

O'BRIEN, Rita C., Administrative Judge:

Based upon a review of the pleadings, exhibits, the Government's File of Relevant Material (FORM) and Applicant's Response, I conclude that Applicant has mitigated the security concerns raised under the financial considerations guideline. Accordingly, his request for a security clearance is granted.

Statement of the Case

On July 11, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) (Item 1), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006. The SOR listed security concerns addressed in the Directive under Guideline F (Financial Considerations) of the AG. In his Answer to the SOR, notarized on August 6, 2013, Applicant admitted 12 of the 14 allegations, and requested a decision based on the written record in lieu of a hearing. (Item 4)

Department Counsel for the Defense Office of Hearings and Appeals (DOHA) prepared a presentation of the Government's case in a FORM dated November 11,

2013.¹ The FORM included ten documents (Items 1-10) proffered in support of the DOD CAF's preliminary decision to deny Applicant's request for a security clearance. Applicant received the FORM on December 28, 2013. He was given 30 days from the date he received the FORM to file a response, and he submitted a timely response (Response, pages 1-25). The case was assigned to me on February 3, 2013.

Findings of Fact

Applicant's admissions in response to the SOR are incorporated as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the FORM, I make the following additional findings of fact.

Applicant is 53 years old. He was married in 1982 and divorced in December 2007. He has two adult children from his first marriage. He married again in 2009. He served as an enlisted member of the Navy from 1979 to 1982, and was in the active reserve from 1988 to 2005. He earned a bachelor's degree in 1986. He first received a security clearance in 1994. Applicant disclosed his financial status and delinquencies in his December 2011 security clearance application. (Item 5; Response at p. 3)

After Applicant's first wife lost her job in about 2006, he had difficulty meeting his financial obligations, and his accounts started to become delinquent. Following his divorce in 2007, he was required to pay \$500 per month in child support for his youngest child, as well as alimony, which varied according to his ex-wife's income. Applicant also paid his ex-wife's mortgage payment and utilities. His obligations to his ex-wife and children were current in January 2012. (Item 6)

Applicant stated in his January 2012 security interview that his ex-wife's unemployment, his obligations for her support after the divorce, and the child support, resulted in his becoming delinquent in his debts. As of that time, he had more than 20 delinquent debts listed in his credit report. He had not had financial counseling, and he was unaware of several of the delinquencies. During his interview, he stated his intention to obtain his credit report, contact the creditors to verify the accuracy of the debts, dispute any invalid debts, and pay all valid debts or arrange payment plans. His April 2013 credit report shows 14 delinquent debts, and his November 2013 credit report shows 6 past-due debts. (Items 5, 6, 10)

As part of his May 2013 interrogatory response, Applicant completed a personal financial statement (PFS). His net monthly income, including his wife's income, is \$11,447. His monthly expenses include utilities, insurance, groceries, and medical expenses, and total \$1,481. He listed monthly debt payments of \$1,495. (Item 6)

¹ See Directive, Enclosure 3, Section E3.1.7.

The delinquencies listed in the SOR total approximately \$41,000. They appear in credit reports dated December 2011, April 2012, and November 2013, (Items 8-10) as well as July 2013 and January 2014 credit reports Applicant provided with his Answer and Response. The status of the debts follows.

Allegation 1.a, Rent, \$5,291. Disputed. Applicant paid his rent for 9 months of his 12-month lease. He then provided notice to the landlord regarding his upcoming military transfer. He disputes owing this past-due rent. He filed a dispute with a credit agency, which is documented in his July and November 2013 credit reports. The debt does not appear on the April 2013 credit report provided by the Government. (Items 4, 7, 9, 10; Response)

Allegation 1.b, Medical, \$156. Paid. Applicant provided evidence of a payment in May 2013, and states in his Response that the debt is paid. His 2013 credit report shows the account is "Paid" and the balance owed is zero. (Items 4, 9, 10; Response at 15)

Allegation 1.c, Medical, \$1,152. Payment plan. Applicant stated at his 2012 security interview that he did not recognize this account. However, in his Answer he listed the status as "Pending (resolving dispute)." He provided proof of a June 2013 payment of \$155, and stated he has a payment plan. His November 2013 credit report shows the balance has been reduced to \$997. (Items 4, 6, 10)

Allegation 1.d, Medical, \$117. Paid. Applicant paid the debt in full and provided evidence of a May 2013 deduction from his bank account of \$121. (Items 4, 7, 9)

Allegation 1.e, Credit card, \$1,043. Disputed. Applicant stated in his Answer that the original balance was \$3,500, and he paid \$2,457. His 2011 credit report confirms the balance was reduced by \$2,457. The creditor charged off the \$1,043 remainder. His November 2013 credit report indicates he is disputing the remaining \$1,043, though Applicant's reason is unclear from the record. (Items 4, 8, 10; Response)

Allegation 1.f, Utility, \$118. Paid. Applicant provided documentation from the creditor dated June 2013, showing he paid the debt in full and the balance is zero. His November 2013 credit report also shows the debt is paid. (Items 4, 8, 10)

Allegation 1.g, Unknown type, \$754. Paid. Applicant's 2011 credit report shows that this account was transferred to a collection agency. He provided confirmation from the collection agency that he paid \$345.90 on May 7, 2013, which settled the account. His January 2014 credit report shows a zero balance. (Items 4, 7, 8; Response at 13)

Allegation 1.h, Cable account, \$1,152. Duplicate. The SOR lists a cable debt of \$1,152, the same amount as the medical debt alleged at SOR ¶ 1.c. Applicant's 2011 credit report shows that the same collection agency owned a medical debt (\$96) and a cable debt for Applicant. His other credit reports show that this debt is a past-due

medical debt of \$1,152. The SOR conflates the two debts; allegation 1.h is a duplicate of allegation 1.c. I find for the Applicant on allegation 1.h.²

Allegation 1.i, Cable account, \$88. Paid. At his security interview in 2012, Applicant stated he did not recognize this cable debt. After completing his interrogatory response, and prior to the issuance of the SOR, Applicant provided a a chart of his debt payments, in which he referred to a bank statement showing he paid \$97 to this creditor. The bank statement is not included in the record. However, the debt does not appear on Applicant's April 2013 credit report. (Items 4, 6, 7, 8, 9; Response)

Allegation 1.j, Unknown type, \$634. Paid. Applicant's 2011 credit report describes the debt as "unknown loan type" and shows that the balance of \$634 was charged off in 2008. When interviewed in 2012, Applicant did not recognize the debt. In his Answer, Applicant stated it was paid. The debt does not appear on his April 2013 credit report. (Items 4, 6, 8, 9; Response)

Allegation 1.k, Student loan, \$5,282.³ Payment plan. Applicant's student loans were deferred while he was in the Navy. This student loan was in collection status in 2011. He provided documentation showing that in February 2013, he entered a loan rehabilitation program, with a monthly payment plan of \$50. His submission to the DOD CAF in June 2013 stated the account was current. Applicant's January 2014 credit report shows a balance of \$3,287. (Items 7-9; Response at 18)

Allegation 1.l, Auto loan, \$24,955. Paid. The alleged amount is the original loan balance when Applicant purchased a car in 2001. He made timely payments for several years. When his first wife lost her job in about 2006, the account became delinquent. He contacted the lender and was advised to surrender the vehicle, which he did. He stated in his security interview that it was sold at auction. He believed the car's value at the time was \$5,600, and listed this delinquent amount in his 2011 security clearance application. He has not been contacted by the creditor about a deficiency balance since he surrendered the car in October 2006. In his 2014 Response, he stated the debt is paid. It does not appear on his April or November 2013 credit reports. (Items 5, 6-10; Response)

Allegation 1.m, Medical, \$107. Paid. Applicant stated in his security interview that he did not recognize the debt. In his Answer to the SOR, he provided a copy of a check showing a payment of \$107 to the medical creditor, dated August 1, 2013. Although he cites the cancelled version of the check in his Response, he did not enclose the cancelled check. (Items 4, 8, 9; Response)

² When the same conduct is alleged twice under the same guideline, one of the duplicate allegations should be resolved in Applicant's favor. ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice).

³ Applicant stated in his Answer he believes this SOR allegation was mis-identified, and it refers not to a car loan, but to a collection agency with a similar name that owns his student loan debt of \$3,404. (Item 4)

Allegation 1.n, Cable account, \$293. Unresolved. In his June 2013 submission to the DOD CAF, and in his January 2014 Response, Applicant stated he paid the debt on June 14, 2013. However, the record contains no supporting documentation. (Items 7, 8; Response)

Allegation 1.o, Unknown type, \$126. Resolved. Applicant stated in his 2012 security interview that he did not recognize this debt, which was listed as on his 2011 credit report as in collection status. However, it does not appear on his July or November 2013 credit reports. (Items 6, 8)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.⁴ Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the guidelines, commonly referred to as the “whole-person” concept. The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guideline F (Financial Considerations).

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁵ for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to applicant to refute, extenuate, or mitigate the Government’s case.

Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.⁶ A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the national interests as his or her own. The “clearly consistent with the national interest” standard

⁴ Directive. 6.3.

⁵ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁶ See *Egan*, 484 U.S. at 528, 531.

compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.⁷

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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

I have considered the following disqualifying conditions under AG ¶19:

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

Applicant's delinquent debts, as listed in the SOR, totaled more than \$41,000 (approximately \$39,800 after deducting the duplicate allegation). Some have been delinquent for several years. His history of financial delinquencies supports application of disqualifying conditions AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c) (*a history of not meeting financial obligations*).

Under AG ¶ 20, the following conditions could potentially mitigate security concerns:

- (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;

⁷ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

(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's delinquencies are recent because several remain unresolved. However, he has made significant efforts over the past three years to reduce his debt. Given his conduct, and his sufficient income, it is unlikely that such delinquencies will recur. His debt reduction in the past three years reflects well on his trustworthiness and reliability. AG ¶ 20(a) applies.

AG ¶ 20(b) relates to financial problems stemming from conditions an applicant could not foresee or control. Some of Applicant's debts resulted from such circumstances. Applicant's ex-wife became unemployed in 2006, which affected his ability to meet the family financial obligations. When they later divorced, he became responsible for child support and alimony for his wife. He also continued to help with her support by making payments on her mortgage and utilities. He met these obligations, but they caused other debts to become delinquent. For full mitigation, an applicant must show that he has acted reasonably in response to the unexpected circumstances. Applicant has contacted the creditors, disputed debts he believed to be invalid, paid numerous debts, and significantly reduced his delinquencies. AG ¶ 20(b) applies.

Although Applicant has not received counseling, he has shown a good-faith effort to resolve his debts. He provided evidence of actual debt reduction through his actions since 2011: at that time, he had more than 20 delinquent debts listed in his credit report. He paid numerous debts before the SOR was issued. Additionally, he paid eight SOR debts and established payment plans for two other debts. His April 2013 credit report lists 14 delinquent debts, and his November 2013 credit report shows only 6 past-due debts. His financial situation is under control. Based on his persistent efforts, and his sufficient income, it is likely he will resolve the remaining debts. AG ¶ 20(c) and (d) apply.

Applicant disputed allegations 1.a and 1.e. His credit reports show that, in both cases, he informed the credit agencies of his dispute. The debt at allegation 1.a has been removed from his credit report. The record is insufficient to show if his dispute regarding allegation 1.e is legitimate. He receives partial credit under AG ¶ 20(e).

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. I have evaluated the facts presented and have applied the

appropriate adjudicative factors under the cited guideline. I have also reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a).

The Appeal Board has held, “. . . an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR.” It also stated, “There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time.”⁸

Although Applicant has not resolved all of his delinquent debts, he has shown diligence in working to pay many of them over the past three years. He stated in his security interview that he would contact creditors, and pay or establish payment plans for those that were his. He has followed through on that intention and significantly reduced his delinquencies. While he had more than 20 delinquent debts in 2011, his 2013 credit report lists 6. Based on this history, it is likely he will continue to resolve the remaining debts.

A fair and commonsense assessment of the available information shows Applicant has satisfied the doubts raised about his suitability for a security clearance. For these reasons, I conclude he has mitigated the security concerns arising from the financial considerations guideline.

Formal Findings

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

Paragraph 1, guideline F:	FOR APPLICANT
Subparagraphs 1.a – 1.o	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to allow Applicant access to classified information. Applicant's request for a security clearance is granted.

Rita C. O'Brien
Administrative Judge

⁸ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).