



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



In the matter of:)	
-----)	
)	ISCR Case No. 12-05607
)	
Applicant for Security Clearance)	

Appearances

For Government: Pamela Benson, Esquire, Department Counsel

For Applicant: *Pro se*

June 27, 2014

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on January 26, 2012. (Item 5.) On September 17, 2013, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct) concerning Applicant. 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 Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on October 9, and October 22, 2013, and requested a decision by an administrative judge without a hearing. (Item 4.) Department Counsel submitted the Government’s written case (FORM) to Applicant on January 23, 2014. The FORM contained twelve documents. Applicant acknowledged receipt of the FORM on March 24, 2014. He was given 30 days from receipt of the FORM to submit any additional documentation. Applicant elected not to submit any additional

information. The case was assigned to me on May 15, 2014. Based upon a review of the pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant is 44 and married. He is employed by a defense contractor and seeks to obtain a security clearance in connection with his employment.

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. Applicant admitted allegations 1.b, 1.d, 1.e, 1.o, 1.p, 1.q, 1.t, 1.v, 1.w, 1.z, and 1.aa in the SOR under this Paragraph. Those admissions are findings of fact. Applicant denied allegations 1.a, 1.c, 1.f, 1.g, 1.h, 1.i, 1.k, 1.l, 1.m, 1.n, 1.s, 1.x, 1.y, and 1.bb. He neither admitted nor denied allegations 1.j, 1.r, and 1.u. His silence is viewed as a denial of those allegations. He also submitted additional information to support his request for a security clearance.

The SOR lists 28 delinquent debts, totaling approximately \$54,735. The existence and amount of these debts is supported by credit reports dated February 10, 2012; May 2, 2013; and January 14, 2014. (Items 9, 10, and 11.) (See *also* Interrogatories submitted by Applicant on June 19, 2013. (Item 6.)) The current status of the debts is as follows:

1.a. Applicant denies that he is indebted to a creditor for a judgment in the amount of \$4,402. He admitted that this judgment was not paid in his interrogatory response. (Item 6 at 3.) The most recent credit report in the record, dated January 14, 2014, still shows this judgment as unpaid. (Item 11 at 1.) No payments were shown to have been made on this judgment. This debt is not resolved.

1.b. Applicant admits that he is indebted to a creditor for a judgment in the amount of \$678. He states in his Answer, "Could pay when I was unemployed because of contract ending. Just fell behind." (Item 4 at 1.) No other evidence was submitted. This debt is not resolved.

1.c. Applicant denies that he is indebted to a creditor for a judgment in the amount of \$997. He states that this debt is paid in his Answer and in his interrogatory. (Item 4 at 1, Item 6 at 4, 15.) Applicant further stated in his interrogatory that he would submit proof of payment. (Item 6 at 16.) No such evidence was submitted. The most recent credit report in the record still shows this judgment as unpaid. (Item 11 at 1.) Based on all available information, I find this debt is not resolved.

1.d. Applicant admits that he was indebted to a creditor for a medical bill in the amount of \$19. Applicant states in his Answer that this debt was paid. (Item 4 at 1.) The

most recent credit report in the record shows this debt as paid. (Item 11 at 1.) This debt is resolved.

1.e. Applicant admits that he was indebted to a creditor for a different medical bill in the amount of \$19. Applicant states in his Answer that this debt was paid. (Item 4 at 1.) The most recent credit report in the record shows this debt as paid. (Item 11 at 1.) This debt is resolved.

1.f. Applicant denies that he is indebted to a creditor for a mobile phone bill in the amount of \$1,660. However, he stated in his interrogatory that this debt is not paid. (Item 6 at 4-5.) No other information was submitted. This debt is not resolved.

1.g. Applicant denies that he is indebted to a creditor for a medical bill in the amount of \$218. He states in his Answer, "I don't know what this is. I have two different types of medical coverage." (Item 4 at 2.) However, he stated that this debt is not paid in his interrogatory. (Item 6 at 5.) The most recent credit report in the record still shows this debt as unpaid. (Item 11 at 2.) This debt is not resolved.

1.h. Applicant denies that he is indebted to a creditor for a medical bill in the amount of \$312. He states in his Answer, "Don't know what this is from." (Item 4 at 2.) However, he stated that this debt is not paid in his interrogatory. (Item 6 at 5.) The most recent credit report in the record shows this debt as unpaid. (Item 11 at 2.) This debt is not resolved.

1.i. Applicant denies that he is indebted to a creditor on a past-due mobile phone bill in the amount of \$598. He states in his Answer, "I have no knowledge of what this is." (Item 4 at 2.) However, he stated that this debt is not paid in his interrogatory. (Item 6 at 5-6.) The most recent credit report in the record shows this debt as unpaid. (Item 11 at 1.) This debt is not resolved.

1.j. Applicant did not admit or deny that he is indebted to a creditor on a past-due medical debt in the amount of \$389. He stated that this debt is not paid in his interrogatory. (Item 6 at 6.) The most recent credit report in the record shows this debt as unpaid. (Item 11 at 2.) This debt is not resolved.

1.k. Applicant denies that he is indebted to a creditor on a past-due debt in the amount of \$3,890. He states in his Answer, "I don't know what this is." (Item 4 at 2.) However, he stated that this debt is not paid in his interrogatory. (Item 6 at 6.) The most recent credit report in the record shows this debt as unpaid. (Item 11 at 2.) This debt is not resolved.

1.l. Applicant denies that he is indebted to a creditor on a past-due credit card bill in the amount of \$1,400. He states in his Answer, "My account was paid off. Re-opened and up to date." (Item 4 at 2.) He stated the same thing in his interrogatory, and in an interview with an investigator from the Office of Personnel Management (OPM). (Item 6 at 6, 15, 25.) The most recent credit report in the record shows three accounts

with this creditor.¹ One of these accounts, partial account number 764, is this debt. The credit report states, "Account transferred or sold." (Item 11 at 2.) Based on the available evidence I find that Applicant has not shown this debt to have been paid. This debt is not resolved.

1.m. Applicant denies that he is indebted to a creditor on a past-due debt in the amount of \$4,889. He states in his Answer, "Have no knowledge of what this is." (Item 4 at 2.) However, he admitted the existence of this debt in his interrogatory, and in an interview with an investigator from OPM. (Item 6 at 7, 24.) The most recent credit report in the record shows this debt to be unpaid. (Item 11 at 2.) This debt is not resolved.

1.n. Applicant denies that he is indebted to a creditor on a past-due credit card debt in the amount of \$2,887. He states in his Answer, "Have no knowledge of what this is." However, he admitted the existence of this debt in his interrogatory, and in an interview with an investigator from OPM. (Item 6 at 7, 24.) This debt is not resolved.

1.o. Applicant admits that he is indebted to a creditor on a past-due debt in the amount of \$570. (Item 4 at 2, Item 6 at 7, Item 11 at 3.) He submitted no other information. This debt is unresolved.

1.p. Applicant admits that he is indebted to a creditor on a past-due debt in the amount of \$2,486. (Item 4 at 2, Item 6 at 8, Item 11 at 2.) He submitted no other information. This debt is not resolved.

1.q. Applicant admits that he is indebted to a creditor on a past-due debt in the amount of \$570. (Item 4 at 2, Item 6 at 8, Item 11 at 2.) He submitted no other information. This debt is not resolved.

1.r. Applicant did not admit or deny that he is indebted to a creditor on a past-due debt in the amount of \$4,176. He stated that this debt is not paid in his interrogatory, and in an interview with an investigator from OPM. (Item 6 at 8, 24.) This debt is not resolved.

1.s. Applicant denies that he is indebted to a creditor on a past-due debt for a repossessed automobile in the amount of \$6,512. However, Applicant admits that this debt is unpaid in his interrogatory, and in an interview with an investigator from OPM. (Item 6 at 7-8, 25-26.) The most recent credit report in the record shows the debt as being charged off. (Item 11 at 4.) This debt is not resolved.

1.t. Applicant admits that he is indebted to a creditor on a past-due debt in the amount of \$505. (Item 4 at 3, Item 6 at 9, Item 11 at 4.) He submitted no other information. This debt is not resolved.

¹The second, partial account number 224, is concerned with allegation 1.bb. The third, partial account number 108, appears to have been opened in June 2013. (Item 11 at 2.)

1.u. Applicant did not admit or deny that he is indebted to a creditor on a past-due debt in the amount of \$490. He stated that this debt is not paid in an interview with an investigator from OPM. (Item 6 at 27.) The most recent credit report in the record shows the debt as being charged off. (Item 11 at 4.) This debt is not resolved.

1.v. Applicant admits that he is indebted to a creditor on a past-due debt in the amount of \$982. (Item 4 at 3, Item 6 at 9-10, Item 11 at 4.) He submitted no other information. This debt is not resolved.

1.w. Applicant admits that he is indebted to a creditor on a past-due debt in the amount of \$1,051. (Item 4 at 3, Item 6 at 10, Item 11 at 4.) He submitted no other information. This debt is not resolved.

1.x. Applicant denies that he is indebted to a creditor for a past-due debt in the amount of \$10,956. He states in his Answer, "Don't know what this is." (Item 4 at 3.) He admits this debt is not paid in his interrogatory. (Item 6 at 10.) He stated to the OPM investigator who interviewed him on April 2, 2012, that he was not aware of this debt or what it pertained to. He further indicated that he would contact the creditor to resolve the situation. (Item 6 at 24.) No further information was provided. This debt is not resolved.

1.y. Applicant denies that he is indebted to a creditor for a past-due debt in the amount of \$116. He states in his Answer, "Don't know what this is." (Item 4 at 3.) He admits this debt is not paid in his interrogatory. (Item 6 at 10.) He stated to the OPM investigator who interviewed him on April 2, 2012, that he was not aware of this debt or what it pertained to. He further indicated that he would contact the creditor to resolve the situation. (Item 6 at 25.) No further information was provided. This debt is not resolved.

1.z. Applicant admits that he was indebted to a collection agency for a past-due debt in the amount of \$342. He states in his Answer, "This is being taken care of. I spoke to a representative about it." (Item 4 at 3.) No further information was provided. This debt is not resolved.

1.aa. Applicant admits that he is indebted to a creditor for a past-due debt in the amount of \$471. (Item 4 at 3.) No further information was provided. This debt is not resolved.

1.bb. Applicant denies that he is indebted to a creditor on a past-due credit card bill in the amount of \$3,150. He states in his Answer, "This was paid and account is current." (Item 4 at 2.) He stated the same thing in his interrogatory, and in an interview with an investigator from OPM. (Item 6 at 15, 25.) As stated under 1.i, above, this is another one of the three accounts Applicant has with this creditor. Partial account number 224 is this debt. The credit report states, "Account transferred or sold." (Item 11 at 2.) Based on the available evidence I find that Applicant has not shown this debt to have been paid. This debt is not resolved.

Applicant submitted no evidence that he has received any financial counseling. He states that some periods of unemployment, which encompass eight months during the time from June 2008 to December 2011, had an impact on his finances. The evidence also shows that he has been gainfully employed since January 2012, with a monthly remainder of approximately \$2,000. (Item 6 at 14, 21.)²

Paragraph 2 (Guideline E - Personal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has made false statements to the Department of Defense during the clearance screening process. Applicant denied the three allegations under this paragraph.

Applicant filled out a Government questionnaire in January 2012 in which he stated that he had not had any judgments entered against him, that he had not had bills turned over to a collection agency, and that he had not had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed. (Item 5 at Section 26.) These answers were not true, as set forth in detail under Paragraph 1, above.

Applicant states that he did not intend to mislead the Government in regards to his answers on the questionnaire. He states in his Answer that he “overlooked” the questions about his financial situation, including the judgments, automobile repossessions and bad debts. He further stated in his Answer, “I truthfully answered the questions based on the knowledge that I have for the time period asked during the investigation. In no way did I mean to give the perception of falsifying paperwork.” (Answer at 6.)

However, given the state of the evidence, Applicant’s financial situation was precarious and he knew, or should have known, the extent of his problems. Applicant has simply not presented enough evidence to show that the alleged falsifications were the result of innocent error. Therefore, under the circumstances, I find that they were intentional.³

Applicant provided no evidence concerning the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

²There is also evidence in the record that indicates Applicant was having financial problems as long ago as 2002. (Items 7, 8.)

³It is noted that Applicant also failed to discuss his bad debts in a security form he filled out in 2002, as he admits in a sworn statement to an agent of the Defense Security Service on June 14, 2002. (Item 8.)

Policies

Security clearance decisions are not made in a vacuum. When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used as appropriate 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 AG ¶ 2 describing the adjudicative process. The administrative judge's over-arching 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, "Any 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 avoided drawing 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, "The 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 clearance 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. Security clearance decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination 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

Paragraph 1 (Guideline F, Financial Considerations)

The security concern relating to the guideline 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. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant has over \$54,000 in past-due debts, all of which had been due and owing for several years. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying conditions may be mitigated where “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.” Applicant’s financial difficulties have been in existence since at least 2008, and he had financial problems all the way back in 2002. With the exception of allegations 1.d and 1.e, he has not resolved any of the debts that caused the problems, which continue to date. This mitigating condition does not have application in this case.

AG ¶ 20(b) states that the disqualifying conditions may be mitigated where “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.” Applicant stated, but did not support, allegations that some of the debts were the result of periods of unemployment. No evidence was introduced showing that he had acted responsibly with regard to any of these debts, except the two \$19 medical debts that he repaid.

AG ¶ 20(d) states it can be mitigating where, “the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Allegations 1.d and 1.e, each in the amount of \$19, were shown to be paid by a credit report submitted by

the Government. Applicant has not submitted any evidence to show that he has made successful payment arrangements with, or made payments to, any of the other creditors listed in the SOR. Applicant stated that he paid off several other debts, but he did not submit any documentary evidence to support his statements. He was interviewed by an investigator from OPM in April 2012. (Item 6 at 21-28.) Accordingly, he has had knowledge for almost two years that his financial situation was of concern to the Government.

Applicant submitted no evidence that he had taken any action to contest any of the debts in the SOR. Accordingly, AG ¶ 20(e) does not apply. It requires that “the individual [have] 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.”

In conclusion, as stated above, looking at Applicant’s entire financial situation at the present time, I cannot find that “there are clear indications that the problem is being resolved or is under control,” as is required by AG ¶ 20(c). Paragraph 1 is found against Applicant.

Paragraph 2 (Guideline E - Personal Conduct)

The security concern relating to Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty or unwillingness to comply with rules or 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.

I have examined the disqualifying conditions under AG ¶ 16 and especially considered the following:

(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 knowingly and purposely falsified his security clearance application on January 26, 2012. He alleges that his failure to list his financial difficulties was due to oversight, and not an intentional act. However, the fact remains that for years he has had financial difficulties. It simply strains credulity for Applicant to claim to have had virtually no knowledge of his very bad financial situation.

I have reviewed the mitigating conditions and find none of them apply to the facts of this case. In particular, I have examined the span of time, just about two years, since

the falsifications. There is insufficient evidence that Applicant currently shows good judgment or is reliable. Paragraph 2 is found against Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the relevant circumstances. 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. The administrative judge must 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. The discussion under Guidelines F and E, above, applies here as well. Applicant has had financial problems for several years, which have not been resolved. He has a long history of not paying his debts. Applicant's conduct with regard to his finances was not mitigated. In addition, Applicant failed to show that the false denials and omission of relevant and material information from his e-QIP were accidental and not intentional.

Under AG ¶ 2(a)(3), his conduct is recent and continuing. I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I also cannot find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); or that there is no likelihood of continuation or recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial situation, and falsifications to the Government. Accordingly, the evidence supports denying his request for 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:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	Against Applicant
Subparagraph 1.s:	Against Applicant
Subparagraph 1.t:	Against Applicant
Subparagraph 1.u:	Against Applicant
Subparagraph 1.v:	Against Applicant
Subparagraph 1.w:	Against Applicant
Subparagraph 1.x:	Against Applicant
Subparagraph 1.y:	Against Applicant
Subparagraph 1.z:	Against Applicant
Subparagraph 1.aa:	Against Applicant
Subparagraph 1.bb:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a.:	Against Applicant
Subparagraph 2.b.:	Against 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 national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

WILFORD H. ROSS
Administrative Judge