



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



In the matter of:)	
)	
)	ISCR Case No. 12-06245
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Esq., Department Counsel
For Applicant: *Pro se*

05/23/2013

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. Applicant has three unpaid judgments plus numerous charged-off and collection accounts, which are unresolved. When he completed a security clearance questionnaire he failed to reveal adverse financial information. Applicant failed to rebut or mitigate the financial considerations and personal conduct security concerns. Clearance is denied.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on January 3, 2013, the DoD issued an SOR detailing security concerns. DoD adjudicators could not make the preliminary affirmative finding that it is clearly consistent with the national

¹ Executive Order 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 adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

interest to grant or continue Applicant's security clearance. On January 28, 2013, Applicant answered the SOR and elected to have the matter decided without a hearing. Defense Office of Hearings and Appeals (DOHA) Department Counsel submitted the Government's case in a File of Relevant Material (FORM), dated March 15, 2013. The FORM contained ten attachments. On March 26, 2013, Applicant received a copy of the FORM, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions.

On April 4, 2013, Applicant response to the FORM was received. The response contained 13 attachments, which were marked as exhibits (Ex.) A through M. Department Counsel did not object to the response and attachments, which were admitted into the record. On May 2, 2013, I was assigned the case.

Findings of Fact

In Applicant's Answer to the SOR, he denied one debt (SOR 1.a, \$82) and admitted the remaining judgments, charged-off, and collection accounts. He neither admitted nor denied the personal conduct falsification allegation (SOR 2.a). I incorporate Applicant's admissions as facts. After a thorough review of the pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 52-year-old technician who has worked for a defense contractor since June 2009, and seeks to obtain a security clearance.

When Applicant completed his January 30, 2012 Electronic Questionnaires for Investigation Processing (e-QIP), he indicated, in Section 26, that he was approximately \$13,000 delinquent on his child support because he had been out of work for a year. (Item 5) He also indicated that he had no judgments entered against him in the previous seven years, had not had a debt turned over to a collection agency, nor had he been or currently was more than 120 days delinquent on any account. (Item 5)

Applicant was divorced in January 2004, following a three-year marriage, and in January 2010, following a ten-year marriage. (Item 8) He was required to pay \$600 monthly child support, which was later raised to \$700. (Item 8)

From November 2008 through June 2009, Applicant was unemployed and received \$230 weekly unemployment compensation. He borrowed money from his mother to help pay his expenses. (Item 8) In October 2011, his 2005 Ford truck was repossessed. (Item 8)

In February 2012, Applicant had a personal subject interview concerning his finances. (Item 8) He indicated he had accounts which had been past due or in collection. He also stated he had judgments entered against him. (Item 8) At that time, he stated his creditors would only accept the entire balance, owed and he was saving his funds in order to pay the creditors. He did not explain why he failed to reveal his adverse financial information on his e-QIP.

In November 2012, Applicant completed financial interrogatories. (Item 8) He indicated his net monthly income was \$1,950, his monthly expenses were \$1,526, and his monthly debt payment was \$346, which left him with a monthly net remainder of \$77. The interrogatories asked him about the 20 SOR debts. He failed to respond to the questions asked about the debts and he did not provide documentation showing payments of those debts.

Applicant stated that during the past four years he had lost his home, job, spouse, and had been financially destroyed. He asked to be granted a clearance so he could pay his debts. (Item 8) In response to the FORM, Applicant states he is working as a sub-contractor to a DoD contractor. If he gets his clearance, he can obtain a high paying information technology position with the DoD contractor. His current annual salary is \$45,000. The job he applied for has a \$152,000 annual salary. (Ex. A)

In June 2012, a collection agency stated they were in possession of a \$75 post-dated check for an account with a \$424 balance. (Ex. D) None of the SOR debts lists this amount owed or list this creditor. There is also a June 2012 letter from the same collection agency regarding the same debt indicating they were in receipt of a \$150 post-dated check from Applicant. There is a hand-written notation, but no other documentation, stating the debt was paid. (Ex. K)

In June 2012, a collection agency sent Applicant a letter stating he owed \$143 for what appears to be medical services. (Ex. I) A letter from the collection agency states the debt was paid in full on July 18, 2012. (Ex. I) There is no SOR debt corresponding to this creditor or an SOR debt of this amount.

A summary of Applicant's judgments, charged-off, and collection accounts and their current status follows:

	Creditor	Amount	Current Status
a	Cable company collection account.	\$82	Unpaid.
b	Credit card collection account.	\$2,458	Unpaid.
c	Utility bill collection account.	\$199	In May 2012, the creditor sent a letter stating Applicant owed \$199 on this debt. (Ex. E) There is a hand-written notation, but no other documentation, stating the debt was being paid.
d	Collection account for what might be a medical co-payment debt. (Item 8)	\$56	Unpaid.

	Creditor	Amount	Current Status
e	Judgment entered June 2011.	\$2,084	Unpaid. Applicant never went to court, but is aware of the judgment. (Item 8)
f	Judgment entered March 2011.	\$1,246	Unpaid. Applicant never went to court, but is aware of the judgment. (Item 8)
g	Judgment entered July 2011.	\$1,390	Unpaid. Applicant never went to court, but is aware of the judgment. (Item 8)
h	Credit card collection account.	\$2,199	Unpaid.
l	Credit card collection account.	\$419	Unpaid. During his February-March 2013 personal subject interviews, Applicant said he intended to contact the creditor. (Item 8)
j	Bank collection account.	\$2,109	Unpaid. In his February-March 2013 personal subject interviews, Applicant stated he had no contact with the creditor of his credit card debt. (Item 8)
k	Credit card collection account.	\$1,952	Unpaid. As of March 2013, the attorney's office collecting his debt indicated a \$200 payment was due on March 25, 2013. (Ex. J) There is no documentation showing a payment was made.
l	Bank collection account.	\$1,474	Unpaid. As stated in his February-March 2013 personal subject interviews, Applicant had no contact with the creditor of his credit card debt. (Item 8))
m	Bank collection account.	\$91	In July 2012, the creditor stated they were in possession of a \$91 post-dated check. (Ex. C) During his February-March 2013 personal subject interviews, Applicant said he intended to contact the creditor. (Item 8)
n	Bank credit card collection account.	\$1,378	Unpaid. During his February-March 2013 personal subject interviews, Applicant said he intended to contact the creditor. (Item 8)
o	Collection account.	\$1,831	Unpaid.

	Creditor	Amount	Current Status
p	Charged-off account.	\$504	Paid. In May 2012, the creditor offered to settle this \$840 debt for \$336. (Ex. H) In July 2012, the debt was satisfied. (Ex. M)
q	Charged-off account.	\$3,431	Unpaid. Applicant's 2005 Ford truck was repossessed in October 2011. (Item 8) Applicant agreed to pay \$180 monthly on this \$4,235 debt starting in July 2012. (Ex. B) He provided no documents showing he made payments in accord with the agreement.
r	Charged-off credit card account.	\$689	Unpaid. During his February-March 2013 personal subject interviews, Applicant said he intended to contact the creditor. (Item 8)
s	Charged-off credit card account.	\$1,098	Unpaid. During his February-March 2013 personal subject interviews, Applicant said he intended to contact the creditor. (Item 8)
t	Mortgage foreclosure. Applicant purchased a home in March 2006 for approximately \$154,000. (Item 8)	No amount alleged.	No documentation of what Applicant's owes following foreclosure.
u	Department store credit card collection account.	\$1,770	Unpaid. During his February-March 2013 personal subject interviews, Applicant said he intended to contact the creditor. (Item 8)

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 must 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 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 interests of 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.

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.

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 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 (EO) 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

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

Applicant has a history of financial problems. Applicant has three unpaid judgments entered against him in 2011, which total approximately \$4,700. He has twelve unpaid collection accounts, which total approximately \$14,000 and four unpaid charged-off accounts, which total approximately \$5,700. Two of the obligations are less than \$100 each, which remain unpaid. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Five Financial Considerations 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 been aware of the security concerns over his unpaid accounts since his February 2012 and March 2012 interviews. Applicant received a settlement offer (\$336), and in March 2013, he satisfied the charged-off account (SOR 1.p). In response to the FORM he provided a letter from the creditor on which he made handwritten annotations that he was paying a gas utility bill (SOR 1.c, \$199). However, he provided no documentation showing actual payment. The creditor in his vehicle repossession (SOR 1.q, \$4,325) offered a consent agreement whereby Applicant was to pay \$180 monthly starting in July 2012. Applicant established the creditor made the settlement offer, but he failed to establish he has made any payments pursuant to that agreement.

Applicant provided a letter from the law firm collecting a credit card debt (SOR 1.k, \$2,039) informed him his post-dated check payment in the amount of \$200 was scheduled for March 25, 2013. He failed to provide any documentation that he made this payment or any subsequent payments. He failed to provide documents such as copies of cancelled checks or bank records showing debits, or other proof that he is actually making the payments.

Applicant documented that he satisfied a \$143 medical services obligation not listed in the SOR. On a different debt (\$424) not listed in the SOR, the creditor received two post-dated checks in the amounts of \$75 and \$150. He provided information that he was to make monthly payments on two other accounts, but failed to provide documents establishing that he made the payments to those creditors as agreed. Applicant provided no documents from the remaining creditors evidencing payment of these accounts or that he has arranged repayment plans on the judgments or delinquent accounts.

Applicant's three judgments and the majority of his delinquent debts remain unpaid. From November 2008 through June 2009, Applicant was unemployed and in January 2010, his marriage ended. These are conditions beyond his control that contributed to his financial problem. He has been with his current job since June 2010. He has shown payment or asserted payment of approximately \$650 on four debts, of which two are listed in the SOR. Considering the meager payments he has made since obtaining his current job almost three years ago, I do not find he has acted responsibly under the circumstances.

There is no evidence he has received financial counseling in the last several years. There is no clear indication that his financial problems are being resolved or are under control. There is evidence of a good-faith effort to repay four of his creditors, two of which are listed in the SOR. Overall, Applicant's response lacks evidence that he has acted responsibly to address the SOR debts. I find none of the financial consideration mitigating conditions fully apply.

Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

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 provides two conditions that could raise a security concern and may be disqualifying in regard to falsification of Appellant's security clearance application:

(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; and

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

The SOR raised the issue about Appellant falsifying his January 2012 security clearance application by intentionally failing to disclose derogatory financial information about his delinquent debts. Appellant failed to list three judgments entered against him in 2011. He did not attend the court proceeding, but stated he was aware of the judgments. He had numerous charged-off and collection accounts but failed to list any of them on his e-QIP. To his credit he did list on his e-QIP that he was approximately \$13,000 behind on his child support obligation due to being unemployed.

Applicant never explained why he failed to list this derogatory financial information on his e-QIP. None of the mitigating conditions apply to his conduct. The personal conduct concerns pertaining to Appellant's falsification of his 2012 security clearance application cannot be mitigated at this time.

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.

In not requesting a hearing, Applicant chose to rely on the written record. However, in so doing he failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding his circumstances, articulate his position, and mitigate the financial security concerns. He failed to offer evidence of financial counseling or provide documentation regarding his past efforts to address his delinquent debt. By failing to provide such information, and in relying on only a brief explanation, financial considerations security concerns remain.

In choosing to have this matter handled without a hearing, I am unable to evaluate Applicant's demeanor, appearance, or credibility. From the record, I am unable to find Applicant was sincere, open, and honest. Even if I found for him in these matters, there is no evidence of payment on the majority of the delinquent debts. Additionally, there is no explanation as to why he failed to list his recent judgments and derogatory financial information on his e-QIP.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a security clearance. The awarding of a security clearance is not a once-in-a-lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under Applicant's current circumstances a clearance is not recommended, but should Applicant be afforded an opportunity to reapply for a security clearance in the future, having paid the delinquent obligations, established compliance with a repayment plan, or otherwise addressed the obligations, he may well demonstrate persuasive evidence of his security worthiness. However, a clearance at this time is not warranted.

The issue is not simply whether all his debts are paid. It is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(a)(1)) Overall, the record evidence leaves me with substantial doubt 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 considerations and personal conduct.

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, Financial Considerations:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d through 1.l:	Against Applicant
Subparagraph 1.m:	For Applicant
Subparagraphs 1.n and 1.o:	Against Applicant
Subparagraph 1.p:	For Applicant
Subparagraphs 1.q through 1.u:	Against Applicant
Paragraph 2, Personal Conduct:	AGAINST APPLICANT
Subparagraph 2.a:	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 a security clearance. Eligibility for access to classified information is denied.

CLAUDE R. HEINY II