



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



In the matter of:)	
)	
)	ISCR Case No. 12-09497
)	
Applicant for Security Clearance)	

Appearances

For Government: Aubrey DeAngelis, Esq., Department Counsel
For Applicant: *Pro se*

05/25/2016

Decision

CERVI, GREGG A., Administrative Judge:

Applicant mitigated the financial considerations and personal conduct security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On September 5, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR¹ and included several documents in support of his Answer on September 21, 2015, and requested a hearing before an administrative judge. He confirmed his answers to the SOR in a letter dated October 17, 2015. The

¹ SOR ¶ 2.a was not answered, therefore, it is deemed denied.

case was assigned to me on February 25, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 3, 2016, scheduling the hearing for March 24, 2016. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through J, which were admitted without objection. DOHA received the hearing transcript (Tr.) on April 1, 2016. The record was held open for Applicant to submit additional information. He submitted several additional exhibits,² consolidated into (AE) K through M, which were admitted without objection.

Findings of Fact

Applicant is a 50-year-old employee of a defense contractor. He has worked for his current employer since 1996, and earns a substantial salary. He is applying to renew his security clearance, which he held for more than 20 years. He is a high school graduate, and honorably served in the U.S. Navy from 1984 to 1987. He was married in 1986 and divorced in 1997, and again married in 1998 and divorced in 1999. He has two children from his first marriage, ages 22 and 28 years-old, and one grandchild.³

Applicant has a history of financial problems, mostly related to unpaid medical debts, a judgment for a medical debt, and a state tax lien. Applicant's divorce from his first spouse resulted in a February 1997 consent order granting joint legal custody of the children to both parents, but physical custody to his spouse. In July 1997, Applicant applied to the court for *pendente lite* custody, after he accused his spouse, on active duty at the time, of substance abuse problems which resulted in criminal activity and questionable personal decisions impacting the safety of the children.⁴ Applicant was granted physical custody and his spouse left the state for a new duty station, and essentially abandoned the children. Despite efforts to collect child support while his children were minors, his ex-spouse failed to pay. She currently owes Applicant approximately \$76,000 for unpaid child support, which she has now begun paying.⁵

Applicant's spouse listed the children as dependents, entitling them to health care through the military. He used the military health care facilities when he was able and had access. Applicant testified that he needed his children to have military ID cards to obtain off-base medical services using the military insurance plan. He complained that his spouse failed to sign a document to permit his children to obtain a military dependent identification card (ID) when they were old enough. Despite efforts made through her former command to obtain her compliance, she refused to cooperate and

² After the hearing, the record was held open until April 15, 2016. Per Applicant's request, the period was extended to May 6, 2016.

³ Tr. at 27-29, 52-53.

⁴ AE K. No evidence has been presented to show the results of the motion or to show which party is responsible for health care costs.

⁵ Tr. at 51. Applicant now receives \$641 per month from his spouse.

Applicant believed he was left without recourse.⁶ Without access to military ID cards for the children, Applicant paid cash or used his civilian health insurance. Applicant obtained his own lower cost health insurance, which covered him and his children.⁷ He stated that he did not receive invoices for medical services; rather he only received statements from providers showing submissions to the military insurance and his personal health insurance as a secondary payer, and assumed his ex-spouse was being billed for any unreimbursed costs.⁸ He complained about the quality of his insurance coverage and the company's claims record, and contends the result is exhibited in some of the SOR debts. He submitted complaints from online forums from other customers of the company, to show that others had similar complaints.⁹ He no longer uses this insurance company.

The SOR debts on which Applicant claims he paid, made payment arrangements, or is making payments, include SOR ¶¶ 1.a, c, d, i, n, t, y, bb, ii, and ll. Of these debts, Applicant has shown a payment of \$200 in October 2015 toward the debt in SOR ¶ 1.a, although he claimed that he has paid \$570 and tries to make a \$50 payment each month.¹⁰ Applicant claimed that he paid \$60 toward the debt in SOR ¶¶ 1.i, and that he was talking further with the creditor regarding its final resolution. Applicant stated he had an oral agreement to pay \$20 per-month toward SOR ¶ 1.ii, and that he made two payments in November 2015 toward this debt, and intends to apply his 2016 tax refund to pay off the entire debt. All debts except SOR ¶¶ 1.a, c, d, i, and n, have been removed from his credit report.

SOR ¶ 1.bb is a state tax lien, entered in 2011. Applicant provided evidence with his Answer to show that the taxes have been satisfied and the lien released. This debt is resolved. Additionally, there is evidence showing Applicant paid the debt in SOR ¶ 1.ii.¹¹ This account is satisfied.

⁶ Tr. at 66.

⁷ This insurance was from an off-brand, less expensive provider. Applicant testified that he could not afford the insurance coverage provided by his company, and was forced to resort to a non-sponsored company. He was partially compensated by his employer to purchase insurance outside the plans offered by the employer. Tr. at 71.

⁸ Tr. At 64-68. Applicant claimed he attempted to contact his spouse through the Navy and social services to obtain assistance with obtaining ID cards, but was unsuccessful in obtaining the documentation or other items from her, and that since she worked in finance and disbursing, she was able to manipulate the system to her benefit.

⁹ He submitted some general on-line complaints about his health care insurance company, however they are not specifically tied to his individual situation. AE G and H.

¹⁰ Applicant produced a receipt for payment of \$200 accredited to an account substantially similar to SOR ¶ 1.a with his Answer, and provided a copy of a check dated May 2016, for \$150, made out to the same collection agent but without attribution as to the applicable account number.

¹¹ AE K, letter dated April 11, 2016.

Applicant asserted the following debts were disputed with the credit bureaus, invalidated and removed from his CBR, or there is no record of the account with the listed creditor: SOR ¶¶ 1.b, c, d, f, g, h, l, n, m, o, u, v, o, w, cc, dd, gg, hh, jj, and kk. Of these debts, SOR ¶ 1.v and 1.hh are duplicates of the same debt.

Applicant provided evidence to confirm that the debts in SOR ¶¶ 1.h and 1.l have been removed from his account. These debts are resolved. After inquiry with creditors, Applicant was unable to locate accounts for SOR ¶¶ 1.f, g, o, dd, jj, and kk. These debts are no longer reported on his CBR. No further action can be taken toward their resolution.

SOR ¶ 1.cc is a judgment filed in 2010. Applicant claimed that he appeared as a defendant in a district court de novo appeal hearing on the judgment, but the creditor did not appear at the hearing and the case was dismissed. This was supported by a court document supplied by Applicant. Applicant contends that the judgment is not valid. No further collection actions have been attempted, although the debt remains on his credit report.

The following debts are listed in the SOR by partial account number only, but no creditor or collection agent can be found: SOR ¶¶ 1.e, j, k, q, r, s, z, aa, ee, and ff. The Applicant made efforts to associate the accounts with particular creditors, but was unsuccessful. These debts have been removed from his CBR and are considered resolved.

SOR ¶¶ 1.p and 1.mm are accounts with listed collection agencies, but his attempts to contact the collection agents were unsuccessful. These debts have since been removed from his credit report.

Applicant inquired into the state tax lien, alleged in SOR ¶ 1.bb, and paid it. The lien was released in June 2015. He testified that all other federal and state tax obligations have been filed on time and paid. He provided evidence of his current 2015 tax filings, showing refunds owed to him.

Applicant worked with a consumer credit counseling and money management company to contest debts and obtain credit counseling. He provided a recommended financial action plan. He also testified that he now closely tracks his expenses and debts, and is able to meet his monthly financial obligations with approximately \$800 remaining each month. He assists with the expenses of his granddaughter's medical treatment for a brain tumor, to the extent possible. By his efforts to date, he reduced his overall indebtedness from approximately \$22,000 to approximately \$3,500 of undisputed debts on his CBR. He has approximately \$1,000 in his bank assets and a retirement plan worth approximately \$20,000. He withdrew a \$2,700 hardship loan from his retirement account in 2015 to apply toward delinquent debts, and also borrowed \$7,000 from the account to pay for school expenses for his children, which he has substantially paid back. He currently owes the account approximately \$900, which is being paid through regular payroll deductions. His current credit report shows no new delinquencies and he has been able to meet his financial obligations as required.

Applicant asserted that when he completed his security clearance application (SF 86), he was not aware of most of the medical debts or tax lien, and believed that debts in which he was aware were the responsibility of his ex-spouse or insurance carrier. Additionally, since the judgment action against him was dismissed, he believed it was not required to be reported. Applicant provided extensive letters of recommendation and support, indications of his faithful and successful service with the company, his community and church activities, and his close relationship with his children.

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 to be 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, administrative judges apply the guidelines 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."

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." 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 EO 10865 provides that adverse 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 under AG ¶ 19. The following are potentially applicable in this case:

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

Applicant had a history of delinquent debts that he was unable or unwilling to pay. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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.

There is sufficient evidence to determine that Applicant's financial problems have been resolved or will be resolved within a reasonable period. I find that he acted responsibly under the circumstances once he was made aware of the extent of the delinquencies. He made good-faith efforts to identify difficult-to-find medical creditors, determine whether he was the responsible party and dispute those that qualify, and took action to resolve his debts. He took significant action to contact creditors, dispute and remove debts that did not belong to him, and make partial payments toward others. The majority of the debts have been resolved. By his efforts, he reduced his overall indebtedness from approximately \$22,000 to approximately \$3,500 of undisputed debts on his CBR. I am confident Applicant will continue to address the remaining debts based on his available resources.

His overall efforts show a clear intent to resolve the outstanding debts that remain. He has demonstrated that he has gained control of his financial situation, and has taken action to prevent similar delinquencies from occurring in the future. He has a long work history and his position pays well. His financial issues no longer cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), (b), (c), (d), and (e) apply as there is sufficient evidence of debts accumulated while raising children that are now adults, confusion over insurance coverage and responsibilities of an ex-spouse that sponsored the children's medical insurance, credit counseling and assistance with resolving the delinquencies.

Overall, Applicant's financial problems are being or have been resolved or are under control. I find that the financial considerations concerns have been sufficiently mitigated.

Guideline E, Personal Conduct

The concern under this guideline is set out in AG ¶ 15:

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.

The relevant disqualifying condition in this case is:

AG ¶ 16(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.

When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission.¹² An applicant's level of education and business experience are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate.¹³

Applicant asserted that when he completed his security clearance application (SF 86), he was not aware of most of the debts or tax lien, and believed that debts of which he was aware were the responsibility of his ex-spouse or insurance carrier. Additionally, he believed that the judgment against him was dismissed, and therefore he was not required to report it. There has been no evidence presented to show Applicant deliberately and intentionally misled the government when completing the SF 86. Although Applicant's are expected to carefully read the questionnaire and answer truthfully, based on the evidence in the record, Applicant's omissions fail to rise to the level of intentional or deliberate falsifications.

Once Applicant became aware of the debts alleged above and was able to obtain assistance with the task of determining responsibility, he found that most of the debts were unverified or otherwise not attributable to him. Additionally, he has taken action to acquire financial education and a financial awareness that makes a reoccurrence unlikely. Finally, his children are adults now and the circumstances arising from disputes over his responsibility for the children's health care and his questionable insurance are no longer factors. I believe Applicant's current financial situation has been substantially resolved, and concerns arising from it are no longer present.

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

¹² See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004).

¹³ ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

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.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial considerations and personal conduct security concerns.

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:	For Applicant
Subparagraphs 1.a-1.mm:	For Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraph 2.a:	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 grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

GREGG A. CERVI
Administrative Judge