



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



In the matter of:)	
)	
)	ISCR Case No. 12-09887
)	
Applicant for Security Clearance)	

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

09/30/2015

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On April 18, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

Applicant answered the SOR on May 15, 2015, and requested a hearing before an administrative judge. The case was assigned to me on August 12, 2015. The

Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 18, 2015. I convened the hearing as scheduled on September 16, 2015. The Government offered exhibits (GE) 1 through 4, which were admitted into evidence without objection. In addition, the Government submitted a copy of the discovery letter sent to Applicant and an exhibit list that were marked as Hearing Exhibits I and II. Applicant and two witnesses testified. He offered Applicant Exhibits (AE) A and B, which were admitted into evidence without objection. On September 11, 2015, Applicant requested a continuance so he could have more time to gather documents.¹ His continuance request was denied, and he was told he could submit documents after the hearing if requested. At the conclusion of the hearing, Applicant did not request the record be held open and it closed. Post-hearing Applicant provided documents that were marked as AE C through G. The Government did not object to the documents and they are admitted into evidence.² DOHA received the hearing transcript (Tr.) on September 24, 2015.

Findings of Fact

Applicant denied all the allegations in the SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 60 years old. He served in the Navy from 1972 to 1974 and was honorably discharged. He married in 2004. He has no biological children. His wife has two grown children. He has worked for the same federal employer for 16 years. His wife works for the same employer and has been employed for 15 years. His annual salary is approximately \$98,000 and his wife's is approximately \$45,000.³

The SOR alleges 19 delinquent debts totaling approximately \$65,842. Eight of the debts are for medical services totaling \$1,727. The remaining debts are consumer debts.

Applicant attributed his delinquent debts to his wife's uncontrollable medical condition, which caused her to shop compulsively. He stated that he was unaware of her condition and that she was compulsively shopping, hiding their bills, and not paying their debts. He testified that she was misdiagnosed in 2004 or 2005 and was given the wrong medication. He acknowledged that he saw credit card bills delivered to their house and thought she was paying them. He indicated that her shopping was out of control and over a couple of years he begged her, more than once, to stop shopping. He was aware that she would take all of their credit cards and use all the available credit down to the last penny to make purchases. She promised stop, but did not.⁴

¹ HE III is Applicant's continuance request.

² HE IV is the Government's email memoranda.

³ Tr. 19-23.

⁴ Tr. 23, 29-34, 62.

Applicant initially denied being aware of the delinquent debts that he attributed to his wife's medical condition and denied being responsible for them. He explained his wife handled all of their finances. He stated he was aware she was spending money, but he was not aware she was accumulating huge unpaid debts. She was supposed to be paying the bills. He stated his wife would hide the bills from him. He indicated that around 2007, he was suspicious that their bills were not being paid. He asked her to stop spending and to pay the bills. He stated that he did not see the bills and was not handling finances. After further examination, he admitted he was aware of her excessive shopping habit. He stated that in 2008, he "dropped the hammer"⁵ and destroyed all of their credit cards. However, he continued to permit his wife to handle their finances, which continues to date. When asked why in 2008 he did not take control of their finances, he stated that he had hoped her guilt would force her to address their outstanding debts. He stated he did not realize the extent of their debts. He also admitted the reason he did not know the extent of their debts was because he did not ask about it.⁶

Applicant explained that he and his wife have joint accounts. He used his income to pay the household expenses and she used her income for her personal expenses. He stated that some of the credit cards were in both of their names, but many of the credit cards were individual accounts in his name only because he applied for them at his wife's request because she could not get credit. They do not keep a written budget.⁷

Applicant stated that from 2008 to 2015, his wife's shopping slowed down. In 2009, they had some medical expenses that were not covered by insurance. They incurred hospital and dental expenses. He stated that his wife had previously worked in the medical records field, and she is contesting many of their medical bills. She refused to pay certain medical debts because of her disputes and has stopped pursuing resolution of the debts.⁸

Applicant completed his security clearance application (SCA) and signed it in March 2012. He answered "no" to all questions about any financial delinquencies regarding his accounts, including if he had accounts that were 120 days delinquent. At his hearing, Applicant admitted he should have answered "yes." He admitted he was aware of their delinquencies, but was not aware of the extent. He stated at the time he was only aware of their delinquent medical debts, and he did not think they were a concern, so did not disclose them. Applicant's testimony was not credible. I find at the time Applicant completed his SCA he was aware he had delinquent debts and deliberately failed to disclose them.⁹

⁵ Tr. 63-64.

⁶ Tr. 30-34, 36, 51-53, 65, 68.

⁷ Tr. 30-32, 34-36, 69.

⁸ Tr. 36-37.

⁹ Tr. 37, 69-73.

During Applicant's interview in May 2012 with an Office of Personnel Management investigator, he denied knowledge of all of the debts alleged in the SOR. He told the investigator that he and his deceased father have the same name. He indicated his financial status was good and no one would question his ability to pay his debts or live within his means. He told the investigator that he believed it was possible that either he or his father's identity was stolen, and he was going to contact each creditor on his credit report to figure out what was going on. He also indicated to the investigator that his wife handles the finances. When asked at his hearing about his statements to the investigator, and why he did not disclose his wife's spending habits at that time, he explained he did not mention his wife had a mental health issue because she had not been properly diagnosed at that time. He also explained he "was a little embarrassed." Applicant's testimony was not credible and he deliberately concealed his delinquent debts to investigators.¹⁰

Applicant stated that his wife did not get a correct diagnosis until 2013. She is now on the correct medication and is seeing a therapist. She has gotten better and is not shopping excessively.¹¹

Each account alleged in the SOR is supported by credit reports from April 2012 and October 2014.¹²

- 1.a is a charged-off individual credit union credit card account (\$14,732) that Applicant opened in 2003, prior to his marriage. He stated that he thought he had closed the account and the amount owed was less than the current balance. He admitted he does not keep very good records. This account is not attributed to his wife. The last activity on the account was 2008. It is unpaid.¹³
- 1.b is a collection account for an individual credit card account (\$13,133) opened at a luxury store in 2006. Applicant indicated he thinks he opened this account because his wife could not get credit. The last activity on the account was 2008. It is unpaid.¹⁴

¹⁰ Tr. 78-79. Applicant's statement to the investigator is not alleged as a falsification and will not be considered for disqualifying purposes, but will be considered when analyzing his credibility and the whole person.

¹¹ Tr. 65-67.

¹² GE 3 and 4.

¹³ Tr. 38-42.

¹⁴ Tr. 28, 42-44.

- 1.c is a charged-off individual credit card account (\$8,497) in Applicant's name. The last activity on the account was 2008. It is unpaid.¹⁵
- 1.d is a charged-off joint credit card account (\$6,560) opened at a luxury store in 2005. The last activity was 2008. It is unpaid.¹⁶
- 1.e is a charged-off individual credit card account (\$5,755) in Applicant's name opened in 2005. The last activity was in 2008. It is unpaid.¹⁷
- 1.f is a charged-off individual credit card account (\$5,053) in Applicant's name opened in July 2006. The last activity was 2008.¹⁸
- 1.g is a charged-off joint department store credit card account (\$3,518) opened in July 2004, and the last activity was 2008.¹⁹
- 1.h is a charged-off individual home improvement store credit card account (\$3,362). It was opened in February 2006 and charged off in April 2008. Applicant believed he purchased home appliances with the account, but his wife failed to pay the bill.²⁰
- 1.i is a charged-off joint credit card account to a woman's clothing store (\$3,028). It was opened in 2005, and the last activity was in 2008. Applicant admitted he was aware of this account.²¹
- 1.j, 1.k, 1.m through 1.p, 1.r, and 1.s are medical accounts that Applicant's wife is disputing and refuses to pay. No documents were provided to show the basis of the dispute or actions taken to resolve the debts. Applicant indicated the bills were from 2014, and his wife believes the claims were not properly submitted to the insurance company. They remain unresolved.²²

¹⁵ Tr. 44.

¹⁶ Tr. 44-45.

¹⁷ Tr. 45-46.

¹⁸ Tr. 46-47.

¹⁹ Tr. 47-48.

²⁰ Tr. 48-51, 53.

²¹ Tr. 53-54.

²² Tr. 54-57.

- 1.l is a satellite television bill (\$385). Applicant indicated that he discontinued services with the company because it was unreliable, and he thought he paid the final bill. He did not provide proof of payment.²³
- 1.q is a bill for Internet service (\$92) that was sent to collection in 2011. Applicant stated he paid this bill. He indicated he had the receipt. I accept his testimony and will consider the bill paid.²⁴

Applicant plans on paying down his delinquent debts. He stated he has been paying off larger debts, and he plans on going through the SOR and paying each debt. Both of his cars are now paid so he will have additional funds to make payments towards his delinquent debts. He has no savings and no retirement accounts. He lives paycheck to paycheck. He testified that his wife would hide their bills from him. He stated some of the bills were sent to an old address. He does not have any credit cards.²⁵

Applicant's wife testified on his behalf. She explained she sought medical treatment in 2006 and some medication she was prescribed made her sick, another made her euphoric. She acknowledged she asked Applicant to obtain credit cards for her use, and he agreed. She stated she could not stop shopping. She hid things she purchased from Applicant. She made payments on the debts until they were unmanageable. She did not share this information with Applicant for many years. She has been seeing a therapist for years. She believed the medication she was taking caused her to act excessively. She stated she is doing better now with her spending habits. She has not participated in credit counseling, but believes it might be helpful. She is attempting to pay some of their past debts, and she resolved two debts last month.²⁶ She is attempting to sell items she purchased in a consignment shop to make money. She believes she and her husband are living within their means. She does not believe the medical debts are fair and wants to fight them. She has contested them, but has been unable to resolve them.²⁷ Her therapist provided a letter confirming that she is addressing her guilt related to a manic phase, in which she obsessively shopped, to the point of destroying her husband's credit.²⁸

A friend of Applicant's wife testified. She confirmed Applicant's wife's excessive spending habit. The friend indicated she attempted to stop Applicant's wife from

²³ Tr. 57-58, 61.

²⁴ Tr. 61-62.

²⁵ Tr. 58-60, 65.

²⁶ Tr. 90, 92-93. These debts were not alleged in the SOR.

²⁷ Tr. 81-93.

²⁸ AE A and B.

spending, but was unsuccessful. His wife would hide some of her purchases. The witness estimated the time period when Applicant's wife was in an excessive spending mode was from 2006 to 2009.²⁹

After the hearing, Applicant provided a letter from a personal financial coaching program manager indicating that Applicant and his wife enrolled in the program on September 17, 2015. It is a program that supports people to establish a successful budget, reduce debt, improve credit issues, as well as accomplishing longer term planning goals. They have been assigned a financial coach and there is a monthly fee to participate in the program. They anticipate meeting with their coach two to three times a month.³⁰

Post-hearing Applicant also provided copies of current credit reports.³¹ He indicated in a post-hearing letter that the current status of his delinquent debts reflect his total amount of delinquent debts in collection is \$2,189. He indicated that the other delinquent debts that were alleged in the SOR exceed the statute of limitations for collectability and reporting, and he is no longer legally liable for them. He also indicated that he is now working with the above-mentioned financial coach and is looking to rebuild a solid financial future to include living within his means and managing his debts and expenses more effectively.³²

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

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

²⁹ Tr. 94-99.

³⁰ AE C.

³¹ AE E, F, G.

³² AE D.

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

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

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

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

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

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

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

Applicant has 19 delinquent debts that have been owed since at least 2008 that are unpaid or unresolved. The above disqualifying conditions apply.

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

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant and his wife have been consistently employed for the past 16 and 15 years respectively. Applicant attributed his financial problems to his wife's excessive shopping habit. He indicated that for a period of time he was unaware of it. She handles the finances, and he believed she was paying their bills. To a certain extent, this was beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant was aware of his wife's excessive shopping and repeatedly asked her to stop. It is unclear exactly when he became aware that their bills were not being paid, but he became suspicious in 2007-2008. He was aware she was using the maximum credit available on their credit cards. He obtained credit cards in his name because she was unable to get credit, and he permitted her to use them. He asked her to stop shopping. In 2008, he acted on his concern and destroyed their credit cards due to her excessive shopping. He may not have known the extent of her spending, but admitted it was because he did not ask. He continued to

have her handle their finances. He had a duty to inquire about their finances and chose to ignore it. Only one small debt alleged in the SOR is paid. Applicant did not act responsibly. AG ¶ 20(b) partially applies.

Applicant's delinquent debts remain unpaid and unresolved. He failed to take charge of his finances when he was aware of his wife's excessive spending habits. He has been aware of the problem since at least 2008. He continues to have his wife handle their finances. I find the behavior did not occur under unique circumstances that are unlikely to recur. Although he contends some of his delinquent debts are barred by the statute of limitations, he has others that remain are unpaid. His past conduct casts doubt on his reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

After his hearing, Applicant and his wife enrolled in a personal financial coaching program. Applicant indicated that most of the alleged delinquent debts are no longer listed on his credit reports, and he believes they are barred by the statute of limitations. Reliance on the statute of limitations is a legally available option, but it does not constitute a good-faith effort to resolve his delinquent debts.³³ Applicant was aware that his wife's spending was out of control since at least 2008 when he destroyed their credit cards. He chose to look the other way rather than taking charge of their finances. Some of the credit cards are for individual accounts in his name. He may rely on the statute of limitations and creditors may be barred from seeking payment, but it does not show he has acted responsibly, honestly, or adhered to his obligation to repay creditors for legitimate debts. Other than one small debt that he paid, none of the other 18 delinquent debts have been paid or resolved. He failed to show responsible conduct regarding resolving his debts. AG ¶ 20(c) marginally applies to the extent that he sought financial counseling after his hearing. AG ¶ 20(d) applies to SOR ¶ 1.q.

Applicant testified that his wife is disputing their medical debts. She refuses to pay them because of the disputes. No documentary proof was provided to substantiate

³³ The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of Financial Considerations Mitigating Condition 6, [the good-faith mitigating condition] an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty obligation.' Accordingly, applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of Financial Considerations Mitigating Condition 6.

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)). Although Applicant legally may rely on the running of the statute of limitations to avoid payment of a debt, such reliance does not constitute a good-faith effort to resolve debts within the meaning of the Directive. See ISCR Case No. 08-18900 at 5 (App. Bd. Jun. 6, 2008); ISCR Case No. 07-09966 (App. Bd. June 25, 2008).

the basis of the dispute or to show what actions were taken to resolve the debts. AG ¶ 20(e) does not apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct;

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following potentially applicable:

(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 deliberately failed to disclose his delinquent debts on his March 2012 SCA. He was aware of his wife's excessive spending habit. He admitted he was aware that his medical bills were delinquent. The above disqualifying condition applies.

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

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

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant deliberately failed to disclose his delinquent debts on his SCA. He was aware that he had delinquent debts. He may not have known the total extent of his delinquencies, but he was aware that he had medical debts that were unpaid and his wife's shopping was causing financial difficulties. He destroyed their credit cards in 2008. He told the OPM investigator that he believed he was a victim of identity theft, yet failed to disclose his wife's issues. He provided no evidence that he took action to investigate if he was a victim of identity theft. His falsifications were deliberate, not

minor, and did not happen under unique circumstances. I cannot find this behavior is unlikely to recur. His actions cast doubt on his reliability, trustworthiness, and good judgment. AG ¶¶ 17(a) and 17(c) do not apply.

Whole-Person Concept

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

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

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

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

Applicant is 60 years old. He has worked for a federal contractor for 16 years. He has been married since 2004. Applicant was aware of his wife's shopping habits and chose not to deal with them. He obtained credit cards in his name, because she could not obtain her own due to her credit history, and then permitted her to use them. She continues to control the family finances. He paid one small debt, but has not paid or resolved any of the others. He was aware he had delinquent medical debts and deliberately failed to disclose them and others on his SCA. Applicant may not have known each specific delinquent debt he had, but he was aware that through his wife's spending habits they had debts that were not being paid. Applicant's conduct raises questions about his judgment, reliability, and trustworthiness. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the financial considerations and personal conduct guidelines.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.p:	Against Applicant
Subparagraph 1.q:	For Applicant
Subparagraphs 1.r-1.s:	Against Applicant
Paragraph 2, Guideline E:	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 national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge