



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



In the matter of:)
)
) ISCR Case No. 12-09944
)
Applicant for Security Clearance)

Appearances

For Government: Gina L. Marine, Esq., Department Counsel
For Applicant: *Pro se*

12/04/2013

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings and exhibits in this case, I conclude that Applicant failed to rebut or mitigate the Government’s security concerns under Guideline F, Financial Considerations. His eligibility for a security clearance is denied.

Statement of Case

On October 29, 2012, Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP). The Department of Defense (DOD) issued Applicant an undated Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. The letter transmitting the SOR to Applicant was dated June 24, 2013. DOD acted 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 for SORs issued after September 1, 2006.

Applicant provided a notarized answer to the SOR, dated July 27, 2013, and requested that his case be determined on the written record. The Government compiled

its File of Relevant Material (FORM) on September 27, 2013. The FORM contained documents identified as Items 1 through 11. By letter dated September 30, 2013, the Defense Office of Hearings and Appeals (DOHA) forwarded a copy of the FORM to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the file on October 7, 2013. His response was due on November 6, 2013. Applicant timely submitted a one-page commentary within the required time period. On November 13, 2013, the case was assigned to me for a decision. I marked Applicant's one-page commentary as Item A and entered it in the record without objection.

Findings of Fact

The SOR contains eight allegations of disqualifying conduct under Guideline F, Financial Considerations (SOR ¶¶ 1.a. through 1.h.). In his Answer to the SOR, Applicant admitted all allegations, with the exception of the allegation at SOR ¶ 1.b., which he denied. Applicant's admissions are entered as findings of fact. (Item 1; Item 3.)

The facts in this case are established by the record provided by the Government and by information provided by Applicant. The record evidence includes Applicant's October 29, 2012 e-QIP; official investigation and agency records; Applicant's correspondence with DOHA and his responses to DOHA interrogatories;¹ and Applicant's credit reports of November 15, 2012, June 21, 2013, and December 16, 2009. (See Items 4 through 11.)

Applicant is 42 years old and, since August 2011, he has been employed as an independent contractor. He seeks reemployment as a technician by a government contractor. He earned a high school diploma in 1990, and he enlisted in the military in 1999, where he served for four years. In 2004, 2005, and 2006, he attended a technical school and earned several certificates of completion. (Item 1; Item 6.)

Applicant was married for the first time in 1995, and he and his first wife divorced in 2001. Applicant married again in 2003. He is the father of a son born in 1996. He was investigated for a security clearance in 2010, awarded an interim clearance, and sent overseas on assignment. While on assignment, he was served with interrogatories related to his financial responsibilities and directed to respond by a time certain. Because of the location and nature of his assignment, he was unable to respond timely to the interrogatories. As a result, his interim clearance was revoked, and Applicant was

¹ Applicant was interviewed by authorized investigators from the U.S. Office of Personnel Management (OPM) on June 2, 2010 and December 11, 2012. In response to DOHA interrogatories, he reviewed the investigators' reports and provided additional information. On June 8, 2011, Applicant signed a notarized statement after reviewing his June 2010 interview and stated that he either found the report to be accurate or he had corrected entries to make them accurate. On June 17, 2013, he made certain changes to the report and then signed a notarized statement asserting that the investigator's report of December 2012 did not accurately reflect the information he provided on the day of his second interview. (Item 5; Item 6.)

relieved of his assignment and sent back to the United States. (Item 3; Item 6; Item 7; Item 8.)

On his e-QIP, Applicant reported two periods of unemployment. He listed unemployment from May 2003 until October 2003, and from July to September 2011. (Item 4.)

The SOR alleges that Applicant owes eight delinquent debts totaling approximately \$11,972. They include a delinquent account in collection status to a bank for \$1,115 (SOR ¶ 1.a.); a credit card debt of \$2,183 in collection status (SOR ¶ 1.b.); and a credit card debt of \$1,002 in collection status (SOR ¶ 1.f.). Additionally, the SOR alleges that Applicant is responsible for a defaulted student loan debt of \$6,768 (SOR ¶ 1.d.). He also owes the following three debts in collection status: \$91 (SOR ¶ 1.c.); \$394 (SOR ¶ 1.e.); and \$333 (SOR ¶ 1.g.). Finally, the SOR alleges that Applicant is 180 days or more past due on a government account with a balance of \$86 (SOR ¶ 1.h.). Applicant's delinquent accounts are listed on the three credit reports in the FORM, and the balance due on his delinquent student loan account is specified in a documentary response to DOHA interrogatories. (Item 6; Item 9; Item 10; Item 11.)

In his interview with an authorized investigator in June 2010, Applicant attributed his student loan financial delinquency to unemployment. He told the investigator he intended to pay all of his delinquencies in full, and he did not intend to become past due on any future debts. (Item 5.)

In May 2013, DOHA served Applicant with financial interrogatories and requested current information on his financial delinquencies. In his June 2013 reply, Applicant asserted that he was disputing the debts alleged at SOR ¶¶ 1.a. and 1.f. and requesting that they be removed from his credit report because they were non-collectable under the statute of limitations in his state. He did not provide supporting documentation.

Applicant denied the debt alleged at SOR ¶ 1.b., even though the debt was listed on his credit bureau reports of December 2009 and November 2012. He reported that he was seeking payment arrangements for the debts alleged at SOR ¶¶ 1.c., 1.e., and 1.g. He also reported he had filed a deferment request for his delinquent student loan account (SOR ¶ 1.d.), citing unemployment. (Item 6.)

With his answer to the SOR, Applicant claimed the delinquent federal debt of \$86, alleged at SOR ¶ 1.h. had been paid in full. He attached a notice from the creditor, dated July 12, 2012, stating that if payment of a negative balance of \$80 was not received in 60 days, Applicant would be charged interest on the debt. Applicant attached a photocopy of the face of a check, dated July 20, 2013, made payable to the federal creditor for \$80. The record contains no documentation that the creditor received or accepted the payment. (Item 3.)

With his answer to the SOR, Applicant also claimed that the \$91.56 delinquent medical debt alleged at SOR ¶ 1.c. had been paid in full. He enclosed a photocopy of

the face of a check, dated July 20, 2013, showing payment of \$91.56 to the creditor identified at SOR ¶ 1.c. The record contains no documentation that the creditor received or accepted Applicant's payment. (Item 3.)

Applicant provided documentation showing payments on two of his student loans. His remaining student loans, in delinquency status, are alleged in the SOR. In his June 2013 response to DOHA interrogatories, Applicant provided documentation showing he was eligible for unemployment benefits, and in June 2013, he filed a statement with the student loan creditor requesting a deferment in paying his delinquent student loans for financial reasons. (Item 3; Item 6.)

In June 2013, in response to DOHA interrogatories, Applicant filed a personal financial statement showing his monthly net income and his wife's net monthly income. Applicant's net family monthly income totaled \$2,510. He reported the following monthly expenses: rent, \$945; groceries, \$400; utilities, \$271; car expenses, \$150; and child support, \$300. Applicant's monthly expenses total \$2,066.²

On his financial statement, Applicant identified his \$6,768 student loan debt, alleged at SOR ¶ 1.d., as in deferred status. In the assets category, he listed bank savings of \$500 and a vehicle valued at \$18,000. The record does not reflect that Applicant has had financial credit counseling. (Item 5; Item 6.)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant Applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

When evaluating an applicant's suitability for a security clearance, an 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 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, the administrative judge applies these guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's

² Applicant also reported miscellaneous expenses, but the amount he included was not legible. (Item 6.)

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.” 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 in seeking 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 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.

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 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 in this case. 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.

In his answer to the SOR, Applicant denied responsibility for a credit card debt of approximately \$2,183. The debt appears on Applicant’s credit reports of 2009 and 2012. In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), DOHA’s Appeal Board explained: “It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government’s obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.” (Internal citation omitted). Applicant failed to demonstrate that he was not responsible for the debt alleged at SOR ¶ 1.b.

Applicant provided photocopies of the faces of two checks, which he claimed were written to satisfy the delinquencies alleged at SOR ¶¶ 1.c. and 1.h. However, the record does not contain documentation establishing that the creditors received or accepted the payments. Applicant has been aware of the remaining six unpaid debts since at least 2010, and they remain unresolved. This evidence is sufficient to raise security concerns under AG ¶¶ 19(a) and 19(c).

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant’s financial delinquencies. Unresolved financial delinquency might be mitigated if it “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.” (AG ¶ 20(a)). Additionally, unresolved financial delinquency might be mitigated if “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.” (AG ¶ 20(b)). Still other mitigating circumstances that might be applicable include evidence that “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” (AG ¶ 20(c)) or “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts” (AG ¶ 20 (d)). Finally, security concerns related to financial delinquencies might be mitigated if “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.” (AG ¶ 20 (e)).

Applicant has a history of financial delinquencies, and his delinquencies remain unresolved. He asserted that his unemployment in 2003 and 2011 affected his ability to meet his financial obligations. Applicant's unemployment may have been a condition beyond his control. However, while he notified his student loan creditor of his unemployment in 2011 and, in June 2013 requested deferment, he failed to provide documentation that he had taken responsible steps to contact his other creditors, inform them of his unemployment and diminished capacity to pay his debts, and request forbearance.

Applicant stated in his answer to the SOR that he had disputed the debts alleged at SOR ¶¶ 1.a. and 1.f. because he believed they were no longer collectible under the statute of limitations in his state. He failed to provide documentation to support his assertion. Moreover, Applicant fails to distinguish between an acceptable legal remedy and a good-faith effort to resolve his long-standing financial delinquencies. DOHA's Appeal Board has explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [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 or obligation." Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or a statute of limitations]) in order to claim the benefit of [the "good-faith" mitigating condition.]

(ISCR Case No. 06-14521 at 2 (App. Bd. Oct. 15, 2007) (quoting ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006))).

Applicant's reported periods of unemployment were for short periods of time in 2003 and 2011. The majority of his debts remain unresolved. While Applicant deserves some credit for attempting to resolve two of his eight delinquent debts, he failed to provide documentation that the creditors to whom he sent checks in July 2013 received and accepted the payments. In disputing two debts as uncollectible under his state's statute of limitations, he failed to provide documentation to support his dispute and to demonstrate a credible and continuing good-faith effort to satisfy and resolve his delinquent debts. There is no evidence that his financial situation is under control. While AG ¶ 20(d) applies in partial mitigation, I conclude that AG ¶¶ 20(a), 20(b), 20(c), and 20(e) are not applicable in Applicant's case.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an 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. Applicant is a mature adult. His financial delinquencies are significant in number and in duration. He has been aware of them since at least 2010, when he was interviewed by an authorized investigator and asserted that he intended to pay all of his delinquent debts in full. He appears to have a monthly net remainder that he could use to pay the delinquent debts alleged in the SOR. Applicant's inability or unwillingness to resolve his debts raises concerns about his trustworthiness, judgment, reliability, and ability to protect classified information.

Overall, the record evidence leaves me with doubts about Applicant's eligibility and suitability for a security clearance. I conclude that Applicant failed to mitigate the security concerns arising from his financial delinquencies.

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.h.:	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.

Joan Caton Anthony
Administrative Judge