



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



In the matter of:)	
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)	ISCR Case No. 12-12188
)	
Applicant for Security Clearance)	

Appearances

For Government: Douglas Velvel, Esquire
For Applicant: Alan V. Edmunds, Esquire

06/20/2016

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On July 9, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). The action was taken under 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.

In two undated responses, Applicant admitted the six allegations raised under Guideline F.¹ He also requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). I was assigned the case on October 28, 2015. The matter was originally scheduled on December 8, 2015, for a January 26, 2016, hearing. It was cancelled, however, due to inclement weather. On February 19, 2015, it was rescheduled for March 10, 2016. The hearing was convened as scheduled.

¹ See SOR Responses, undated, and Transcript at 8-9.

The Government offered three documents, which were accepted without objection as exhibits (Exs.) 1-3. Applicant offered testimony and 16 documents, which were accepted without objection as Exs. A-P. The record was held open through March 17, 2016, in the event the parties wished to submit additional material. The transcript (Tr.) was received on March 21, 2016. On March 23, 2016, Applicant mailed eight additional items, pre-marked as Exs. P-W. The Government posed no objections to the belated submissions. In order to align them with previously submitted materials, they were remarked and admitted as Exs. Q-X. The record was then closed. After review of the record as a whole, I find that Applicant failed to mitigate financial considerations security concerns.

Findings of Fact

Applicant is a 47-year-old network security engineer who has worked in the same position for over six years. He earned a high school diploma and attended a technical vocational school. He is married with three children and three stepchildren, ranging in age from 11 to 25. His wife does not work. Applicant earns about \$149,000 a year.

Applicant honorably served in the United States Marine Corps from 1987 until 1991, and then served in the National Guard for 11 years. He has maintained his present security clearance since 1996. Applicant is highly regarded at work for his knowledge and performance. He received financial counseling in March 2016 via Internet, although he was advised that he was not in need of debt counseling.² Consequently, no discussion occurred as to how he could address the debts at issue.

In this matter, the relevant delinquent debts (SOR allegations 1.a-1.f) are two mortgages, a car repossession, an adverse judgment, and other delinquent debt. Applicant admits the related allegations. At issue is approximately \$108,000 in delinquent debt. Most, if not all, of the delinquent debt was acquired at least seven years ago. Applicant first became aware of many of the debts at issue during an Office of Personnel Management (OPM) interview in 2012.³

Between about 2007 and 2008, Applicant's salary was reduced from about \$135,000 to \$85,000 after his employing subcontractor's contract was renewed.⁴ Until he received a substantial increase in his income a year later (to approximately \$127,000), he found it difficult to support his family and manage his obligations.⁵

At the time, Applicant's home had a primary mortgage, with a total loan balance of \$252,712, and a secondary mortgage, with a total balance of \$63,071. He informed

² Tr. 53-54; Ex. Q. The counseling certificate indicates that "a debt repayment plan was not prepared."

³ Tr. 35.

⁴ Tr. 21.

⁵ Tr. 55. These amounts slightly vary throughout the transcript.

his mortgagors of his reduced income. Applicant requested permission to conduct a short sale on the property, but was denied because he had a positive income and had not missed any payments. He eventually became indebted on those loans for \$13,478 and \$48,182, respectively.⁶ The house then faced foreclosure. Applicant does not remember if he received an IRS 1099 form for any deficiency.⁷ He has addressed the debts in a manner that has been “sporadic over the years.”⁸ He is presently trying to settle the amount at issue on the secondary mortgage.⁹ No actual payments, however, have been made toward the debts.¹⁰ He unsuccessfully approached his lender for another loan to use to satisfy his debts.¹¹ Applicant testified that he was recently offered an opportunity to settle the debts for \$6,000.¹²

Applicant also had an account charged off for approximately \$9,161, noted on the SOR as 1.c. He admits that the debt is valid. He attempted to contact the lender a few years ago.¹³ Applicant showed that it no longer appears on his credit report.¹⁴ He has not yet made any payments toward the debt. He prefers to be “saving [his] money and knocking [his debts] off one at a time.”¹⁵

In 2014, as noted at SOR allegation 1.d, an adverse judgment was entered against Applicant for approximately \$5,025. The delinquent debt was related to eye surgery that reshapes the cornea in order to reduce the need for corrective lenses. Applicant was first unaware of the basis for the judgment. He initially reported that he planned to have it satisfied by August 2015, but did not investigate the judgment until the following month. At the hearing, Applicant showed a cashier’s check he intended to

⁶ Regarding SOR allegations 1.a and 1.b. the two debts have been consolidated. Tr. 50; Ex. S. Applicant disputes the balances reflected. Tr. 27.

⁷ Tr. 23.

⁸ Tr. 39.

⁹ Tr. 27.

¹⁰ Tr. 39.

¹¹ Tr. 48.

¹² Tr. 49; Ex. S at 3. The settlement offer was for \$6,307.11. There is no documentary evidence showing that this September 15, 2015, offer was accepted. There is, however, a letter from the lender indicating that payment to be drafted for \$6,307.11 was expected on March 16, 2016. Ex. T.

¹³ Tr. 24.

¹⁴ Tr. 24. Applicant provided evidence that his most recent credit report did not reflect the debts noted as SOR 1.a-1.c.

¹⁵ Tr. 39.

send to the collection agent to satisfy the debt.¹⁶ Although the record was held open after the hearing, no evidence was presented showing that it was mailed or transacted.

Applicant also acquired a delinquent debt for \$2,649, noted at SOR allegation 1.e, that was placed for collection. Applicant testified that the debt was paid in full. He provided proof to that effect during the hearing.¹⁷

The final debt at issue, noted at SOR allegation 1.f, is related to a charge off balance of \$29,824 related to a 2006 vehicle that was repossessed. He is “still trying to find out who has the, the loan for that now.”¹⁸ He first started to investigate the matter about four years ago, but has not checked on it since. He disagrees with the amount at issue. Applicant was offered the opportunity to settle the balance. A confirmation of this settlement agreement is dated the day after the hearing, March 11, 2016.¹⁹ It states that a lump sum payment of \$6,070.66 is due on June 11, 2016. No evidence of early payment was provided.

Applicant asserts that allegations 1.a, 1.b, and 1.f, “are the balances that were owed at the time of the foreclosure and repossession. Since that time, the house has been sold. I’ve been in contact with [the secondary mortgage holder’s successor] . . . and the balance that I was quoted was \$61,000.”²⁰ To that end, Applicant testified that he is trying to negotiate a resolution.

Applicant noted that his salary has incrementally increased since it hit its nadir several years ago.²¹ He owns his own home with a monthly mortgage payment of \$1,125. Only one child, a minor, remains at home. Applicant earns sufficient income to cover his current bills and make contributions toward outstanding obligations, with sufficient funds left over for additional expenses.²² His annual tax refunds are spent on other bills. He does not have any notable reserves in either his savings or checking accounts, nor does he have any investments or other properties.²³ His monthly net remainder is approximately \$1,353.²⁴ He has been saving money which, as the hearing approached, he prepared to expend on the debt noted at SOR allegation 1.d.

¹⁶ Tr. 25; Ex. P. Satisfying this debt, plus attorney’s fees, will deplete Applicant’s bank accounts. Tr. 49.

¹⁷ Tr. 25-26; Ex. A.

¹⁸ Tr. 47.

¹⁹ Ex. R.

²⁰ Tr. 27.

²¹ Tr. 36-37; Ex. H.

²² Tr. 38.

²³ Tr. 41-42.

²⁴ Ex. X.

Applicant described his plan for addressing the debts henceforward. Regarding SOR 1.a and 1.b., he testified thusly:

Well, the plan going forward . . . has to change. The way that . . . I've been addressing it is obviously not the way that's acceptable, so contacting these people and setting up payment plans is, is going to have to be the motive of planning now . . . I've spoken with . . . the mortgage company, again, this morning . . . We've worked out a settlement agreement, initially, but I didn't - - I hadn't followed through with that. But that . . . is something that I'll be working with them.²⁵

It is his plan to speak with the lender again in the near future. As for the debt noted at 1.c, he stated that he still needs to contact the lender.²⁶ As previously noted, the debt at SOR 1.d appears to be poised for payment and the debt at 1.e has been satisfied. No progress has been made on the debt reflected in SOR allegation 1.f.

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.

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

²⁵ Tr. 43-44.

²⁶ Tr. 44, 46.

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. 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).

Analysis

Guideline F, Financial Considerations

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 engaging in illegal acts to generate funds.

Here, the Government introduced credible evidence showing Applicant is delinquent on multiple debts. This is sufficient to invoke financial considerations disqualifying conditions:

AG ¶ 19(a): inability or unwillingness to satisfy debts, and

AG ¶ 19(c): a history of not meeting financial obligations.

Five conditions could mitigate these finance related security concerns:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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 multiple delinquent debts outstanding, amounting to over \$100,000. Many are at least six or seven years old. Applicant concedes that he has little in the way of financial reserves or resources, although he does have a positive net remainder in excess of \$1,000 each month. While he did suffer a dramatic decrease in salary several years ago, he provided no examples of what he did to help make it through this difficult time except to contact his mortgagors. Then, within about a year, his salary vastly increased to a level near what it had been before. It has continued to increase since that time.

Applicant did receive financial counseling, but it apparently failed to address his current financial problem in a fruitful manner. Applicant provided evidence that the debt at SOR allegation 1.e for \$2,649 was satisfied. However, no other documentary evidence was provided showing that any other debts have gone beyond the settlement negotiation phase or established that significant progress has occurred. Indeed, evidence indicating that the cashier's check presented at the hearing was accepted or transacted is lacking. Finally, no documentary evidence displaying and explaining Applicant's dispute on any balances deemed owed was presented in his favor. At best, mitigating conditions AG ¶ 20(b) and AG ¶ 20(c) 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). 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 incorporated my comments under the two guidelines at issue in my whole-person analysis.

Applicant is a highly credible individual who has served his country honorably. He is well regarded at work. He has also raised a family. However, he accumulated a notable amount of delinquent debt after a single year of, albeit dramatic, reduced salary. That was well over five years ago. During that time, his income has stabilized and escalated with little to show in terms of progress on his significant delinquent debt. Until a coherent and suitable repayment strategy is devised and executed, his present methodology appears to be inadequate given his present resources. Consequently, financial considerations security concerns remain unmitigated.

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.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f:	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.

Arthur E. Marshall, Jr.
Administrative Judge