



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



In the matter of:)
)
) ISCR Case No. 13-01244
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

04/17/2014

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant fell behind on some financial obligations due to reduced work hours and having to care for his daughter and his daughter’s sister after the girls’ mother was deployed for the U.S. military. Applicant enrolled five accounts totaling \$31,878 in a debt repayment program, into which he has paid \$2,216 as of late March 2014, but he has no plan in place to resolve a \$24,337 charged-off consumer credit debt. More progress is needed toward resolving his debt. Clearance denied.

Statement of the Case

On December 13, 2013, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F (Financial Considerations), and explaining why it was unable to find that it is clearly consistent with the national interest to grant or continue his security clearance. The DOD CAF took action 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 on September 1, 2006.

Applicant answered the SOR allegations on January 14, 2014, and he requested a decision without a hearing. On February 19, 2014, the Government submitted a File of Relevant Material (FORM) consisting of nine exhibits (Items 1-9). DOHA forwarded a copy of the FORM to Applicant and instructed him to respond within 30 days of receipt. Applicant received the FORM on February 26, 2014. He filed an undated response, which was received by the Defense Office of Hearings and Appeals (DOHA) on March 27, 2014. On March 28, 2014, Department Counsel indicated the Government had no objections to its admission.

On April 3, 2014, the case was assigned to me to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On review of the file, I accepted Applicant's rebuttal to the FORM into the record as Applicant exhibit (AE) A.

Findings of Fact

The SOR alleges under Guideline F that as of December 13, 2013, Applicant owed \$33,550 in charged-off consumer credit debt (SOR 1.a-1.c) and collection balances of \$2,629 (SOR 1.d) and \$205 (SOR 1.f). Applicant was also alleged to be 90 days or more past due in the amount of \$1,563 on a mortgage balance of \$55,356 (SOR 1.e). (Item 1.) When he answered the allegations, Applicant admitted the debts. He was working with a debt resolution firm to pay the debts in SOR 1.a-1.d. With the help of his father and brother, he was bringing the mortgage current and turning the account over to his brother. He added that the debt in SOR 1.f was scheduled to be satisfied in February 2014. (Item 4.)

After considering the Government's FORM, including Applicant's Answer (Item 4), and Applicant's rebuttal (AE A) to the FORM, I make the following findings of fact.

Applicant is a 33-year-old unmarried high school graduate with a six-year-old daughter.¹ He served honorably on active duty in the enlisted ranks of the U.S. military from August 1999 to September 2007, and he has been a part-time reservist since September 2007. In July 2008, Applicant began working full-time in the defense industry, initially as a work control analyst under subcontract to a large defense contractor. Applicant left that job for a more stable position as a test engineer with his current employer in April 2012. Applicant was granted a DOD Secret clearance around July 2000. (Item 5.)

During his active duty service, Applicant opened several consumer credit accounts, including those accounts identified in SOR 1.a and 1.c, which he paid on time. (Item 8.) In June 2007, Applicant opened a credit card account with a \$4,000 credit limit. In July 2007, he opened a credit card account with another lender, which had a credit limit of \$2,200 (SOR 1.d). When he separated from active duty in September 2007, he took out a \$20,000

¹ Applicant's daughter was born in February 2008. Reported address information shows that Applicant has been living at the same address as his daughter's mother since at least November 2013. (Item 6.) Applicant lived there previously from July 2008 to February 2009 and, likely when she was deployed, from June 2010 to February 2011. (Item 5.)

line of credit (SOR 1.b) to cover his living expenses. (Item 6.) High credit on the account reached \$26,425. In October 2007, Applicant opened a credit card account with a \$4,600 credit limit (debt X, not in SOR).² (Item 8.)

Around 2010, the mother of Applicant's daughter deployed with the U.S. military. Applicant assumed the responsibility of caring for his daughter and his daughter's sister.³ Applicant's work hours were reduced by his employer around that same time. With his increased expenses and lower income, Applicant had to prioritize which bills would be paid. In mid-2010, he stopped paying on the accounts in SOR 1.a-1.d. Applicant continued to make timely payments on other accounts, including \$377 per month on a \$14,820 car loan taken out in April 2010 and \$313 per month on a credit card account with a \$15,000 balance (debt Y, not in SOR). (Item 8.)

On April 5, 2013, Applicant completed and certified to the accuracy of an Electronic Questionnaire for Investigations Processing (e-QIP). In response to the financial record inquiries, he reported delinquent debts of approximately \$20,000 (SOR 1.b) and \$8,000 (SOR 1.a and 1.c) from June 2010 because of "reduced hours at work." He indicated that he was working with his creditors to resolve those debts. (Item 5.)

As of April 11, 2013, Applicant's credit record (Item 8) showed some accounts as delinquent and others as current. Applicant owed collection balances of \$6,366 (SOR 1.a), \$24,377 (SOR 1.b), and \$2,847 (SOR 1.c) on the accounts listed on his e-QIP. His credit report showed three other delinquencies not previously reported:

- The credit card account with a \$2,200 limit, which had been opened in July 2007, was in collection with a \$2,629 balance in May 2012 (SOR 1.d). The account had been in dispute.
- A cable provider placed a \$205 balance for collection in July 2012 (SOR 1.f).
- Debt X was reportedly past due 60 days in the amount of \$354 on a balance of \$4,892. The account was reportedly in dispute.

²In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the DOHA Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered, stating:

(a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

(citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). Debt X and another significant debt (debt Y, \$15,796 balance as of January 2014) were not alleged in the SOR. These debts are included in Applicant's debt resolution program, so they are relevant to assessing the extent of his reform.

³ The girls' mother had a daughter from another relationship. She left both girls in Applicant's care. (Item 6.)

Applicant was making payments according to terms on a couple of credit cards, including debt Y, which had a \$15,635 balance. His car loan was also being repaid on time. (Item 8.)

On May 20, 2013, Applicant was interviewed about his delinquent debts by an authorized investigator for the Office of Personnel Management (OPM). Regarding the debts listed on his e-QIP, Applicant indicated that starting in April 2013, he began paying what he could afford toward the \$20,000 line of credit debt (SOR 1.b) He expressed his intent to begin repaying another \$8,000 of past-due debt (SOR 1.a and 1.c) around June 2013. He denied any knowledge of additional delinquencies. He asserted that he had repayment arrangements in place for debt X. He did not recognize the \$2,629 (SOR 1.d) or \$205 (SOR 1.f) balances reportedly in collection. Applicant expressed his intent to research those debts within the next seven days and then arrange to repay them, if valid. Applicant explained that he had fallen behind because he had to care for his daughter and her sister with less income due to reduced work hours. Applicant indicated that he was presently paying child support of \$669 per month to his daughter's mother. (Item 6.)

As of September 27, 2013, Equifax Information Services was reporting three charged-off balances (\$2,847 on SOR 1.a, \$24,337 on SOR 1.b, and \$6,366 on SOR 1.c) and a collection balance (\$2,629 on SOR 1.d) on Applicant's credit record. In addition, Applicant was 90 days past due in the amount of \$1,563 on a \$56,356 mortgage balance (SOR 1.e).⁴ Applicant had been 30 days late paying his auto loan and debt Y around March 2013, but those accounts were current as of August 2013. (Item 7.)

On September 30, 2013, the DOD CAF asked Applicant to provide evidence of any payments or repayment arrangements for his delinquencies. On November 18, 2013, Applicant entered into a debt resolution agreement, enrolling \$31,878 in debt (SOR 1.a, 1.c, 1.d, debt X, and debt Y). Applicant agreed to pay \$554 monthly to the debt resolution firm from December 2013 to around July 2017. He arranged for automatic debit of \$277 every two weeks from his checking account. The debt resolution firm estimated that it would be able to settle Applicant's debts for about \$18,177.55. (Item 6; AE A.)

On November 21, 2013, Applicant provided the DOD CAF with a copy of his debt resolution agreement, confirming that SOR 1.a, 1.c, and 1.d were three of the five debts included in the plan. The \$24,377 line of credit debt (SOR 1.b) was excluded from the initial plan. Applicant indicated that the debt resolution firm was "trying to locate this account." Applicant averred that his mortgage loan (SOR 1.e) was current, although he provided documentation showing that the payment due November 1, 2013, had not been received by the lender on time. (Item 6; AE A.) The loan's repayment history shows that the loan was deferred from September 1, 2013 through October 31, 2013. (AE A.) Applicant admitted that the cable debt (SOR 1.f) had not been satisfied, but a family member was reportedly investigating it. Applicant completed a Personal Financial Statement for the DOD CAF in November 2013 showing he had monthly discretionary income of \$134, after paying his monthly expenses (including \$995 in rent and \$669 in child support) and \$614

⁴ According to his e-QIP, Applicant was living with his daughter's mother at her address when the mortgage was opened. The mortgage loan, which was taken out in October 2009, is on the address where Applicant's older brother resides. (Items 5, 6, 9.)

toward his debts (\$554 to the debt resolution firm and \$60 toward a credit card with a balance of \$2,969). (Item 6.)

On December 13, 2013, the DOD CAF issued a SOR to Applicant, alleging \$37,917 in outstanding delinquent debt. (Item 1.) Applicant asserted in response on January 14, 2014, that he was working through the debt resolution firm to resolve the debts in SOR 1.a-1.d; that he was in the process of turning over the mortgage (SOR 1.e) to his brother; and that the cable debt (SOR 1.f) would be paid on February 1, 2014. (Item 4.)

As of February 2014, Equifax was showing that the balance of the cable debt in collection (SOR 1.f) had been reduced to \$73. The mortgage loan (SOR 1.e) was current, but no progress had been made in reducing the balances of the accounts in the debt resolution program⁵ or of the charged-off line of credit debt in SOR 1.b. Applicant was \$163 behind in his payments on the credit card account that had been current as of November 2013. Debts X and Y were also delinquent in the respective amounts of \$234 and \$1,189. Applicant had paid off his previous auto loan and taken on a new car loan, of \$27,269, in October 2013. He was current in his \$587 monthly payments on that car loan. (Item 9.)

As of March 25, 2014, Applicant had paid \$2,216 into his debt resolution program, \$554 more than his commitment under the plan. The debt management firm was actively negotiating with Applicant's creditors and had not disbursed any funds. Applicant's mortgage payments (SOR 1.e) for November 2013 and December 2013 were more than 30 days late. The payments for January 2014 through March 2014 were late, but within 30 days of the due date. (AE A.) It is unclear whether Applicant or a family member made the mortgage payments. Applicant also provided no evidence showing that he had turned over the loan to his brother.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered in evaluating an applicant's eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall 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.

⁵ Applicant owed \$2,847 on SOR 1.a, \$6,366 on SOR 1.c, and \$2,267 on SOR 1.d. He was \$234 past due on debt X's \$4,914 balance and \$1,189 past due on debt Y's \$15,796 balance as of January 2014.

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 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 that the applicant may deliberately or inadvertently fail to 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 concerns about financial considerations are 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.

Applicant owes \$36,179 in debt on four accounts delinquent since 2010 (SOR 1.a-1.d). In addition, a cable television debt of \$250 was placed for collection in July 2012 (SOR 1.f). In October 2009, Applicant took out a mortgage loan of \$56,500 for his brother. The loan payments have been chronically late since May 2013. As of September 2013, Applicant’s loan was reported by Equifax as 90 days past due in the amount of \$1,563 (SOR 1.e), although apparently the loan was deferred from September 1, 2013 to October 31, 2013. Even so, the payments since then have not been made on time. Disqualifying conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and ¶ 19(c), “a history of not meeting financial obligations,” apply.

Applicant’s financial problems are too recurrent and recent to apply mitigating condition 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." Applicant knew as of his e-QIP in April 2013 that he had made no payments on three consumer credit accounts (SOR 1.a, 1.b, and 1.c), which had been delinquent since June 2010. When he was interviewed by the OPM investigator in May 2013, Applicant was advised that a cable provider had placed a \$250 balance in collection in July 2012, and a credit card lender had placed a \$2,379 balance for collection in May 2012.

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," is partially implicated. Applicant attributes his financial problems to a reduction in his work hours around the time that he had to assume care for his daughter and his daughter's sister. Applicant did not provide the details of his income loss, or of the costs of the girls' care, so I cannot conclude whether his reliance on consumer credit was reasonable under the circumstances. Nevertheless, the reduced work hours and the deployment of his daughter's mother were factors outside of his control which had a negative impact on his finances. However, AG ¶ 20(b) does not mitigate Applicant's inaction toward his delinquencies after he began working for his current employer in April 2012. One year into his current, more stable job, he had made no payments on three known consumer credit debts totaling around \$28,000 (SOR 1.a, 1.b, and 1.c) and past due since June 2010. In May 2013, Applicant told an OPM investigator that he had started paying what he could afford toward the debt in SOR 1.b. He expressed his intent to begin repaying the \$8,000 in past-due debt (SOR 1.a and 1.c) around June 2013. Yet, the debts were not addressed before mid-November 2013, when he entered into the debt resolution program, which does not include his largest debt (SOR 1.b). Applicant also did not act fully responsibly toward these consumer credit lenders when, in October 2013, he took on a new car loan, to be repaid at \$587 per month. He paid off his previous car loan (balance \$8,364 as of August 2013), which he had been repaying at \$377 per month, but one has to question his financial priorities in taking on a higher monthly car payment when his old debts were not being paid.

The mortgage loan is still on his credit record, so Applicant remains legally responsible for the debt. Mortgage payments have continued to be late, although by less than 30 days, in 2014. Even so, the payments to bring the mortgage current, and to reduce the cable debt balance to \$73, partially implicate mitigating conditions 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," and AG ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Applicant's debt resolution program is considered a good-faith effort, albeit very belated, to resolve his debts under AG ¶ 20(d). In rebuttal to the FORM, Applicant presented evidence showing that he has paid \$2,216 into the program in the last three months, when he has committed to paying \$1,662 within that time frame. These payments certainly weigh in his favor. However, it is too soon to fully mitigate the financial concerns under either AG ¶ 20(c) or AG ¶ 20(d).

As of November 2013, Applicant had \$134 in monthly discretionary income after paying his expenses, the \$554 debt resolution program fee, and \$60 toward a credit card

account. His reported expenses included \$580 in car expenses, which presumably covered his car payment, insurance, and gasoline. According to his February 19, 2014 credit report, his car payment is now \$587 a month. So, his budget may be tighter than his personal financial statement suggests. As of January 2014, Applicant was \$163 behind in his payments on the credit card account that had been current as of November 2013. Debts X and Y were also delinquent in the respective amounts of \$234 and \$1,189. Assuming that the funds for his payments on the three credit card accounts went to pay his debt resolution fees, it is unclear whether he has any funds available to address the \$24,337 debt in SOR 1.b. His total credit card debt exceeds \$50,000. With \$24,377 of his past-due debt excluded from his debt resolution program, and no payments yet to be disbursed to his creditors, it would be premature to conclude that his financial problems are likely to be resolved in the near future.

Whole-Person Concept

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(a).⁶

Applicant's financial situation was negatively affected by reduced hours at his previous employment and by the military deployment of his daughter's mother. He did not provide the details from which I could conclude that his reliance on consumer credit was entirely reasonable under the circumstances. Albeit in response to DOD CAF interrogatories, he has a plan established to address about half of his consumer credit debt.

The DOHA Appeal Board addressed a key element in the whole-person analysis in financial cases stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrates that he has ' . . . established a plan to resolve his financial problems and taken significant actions to implement that plan.' The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his

⁶The factors under AG ¶ 2(a) are as follows:

- (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.

outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ('Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.') There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted). Applicant is not required to satisfy all of his delinquent debts before he can be granted security clearance eligibility. As of late March 2014, the debt resolution firm is still negotiating with his creditors, and apparently trying to determine who holds the debt in SOR 1.b. Applicant cannot control when the debt firm acts on his behalf, but the lack of progress is due in large part to Applicant's delay in addressing his past-due debts. At some future date, Applicant may be a good candidate for a security clearance, but his overall financial picture is not positive for a resolution of his financial problems in the near future. It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990.). Based on the facts before me and the adjudicative guidelines that I am required to consider, I am unable to conclude that it is clearly consistent with the national interest to grant Applicant a security clearance at this time.

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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For 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.

Elizabeth M. Matchinski
Administrative Judge