



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



In the matter of:)
)
) ISCR Case No. 14-02791
)
Applicant for Security Clearance)

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

12/09/2014

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant refuted the personal conduct security concerns, but he did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On July 16, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E (personal conduct) and F (financial considerations). The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on August 7, 2014, and elected to have the case decided on the written record in lieu of a hearing. On August 29, 2014, Department Counsel requested a hearing before an administrative judge. The case was assigned to me on September 23, 2014. The Defense Office of Hearings and Appeals (DOHA)

issued a notice of hearing on September 30, 2014, scheduling the hearing for October 23, 2014. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through P, which were admitted without objection. The record was held open until November 17, 2014, for Applicant to submit additional information. He submitted documents that were marked AE Q through HH and admitted without objection. DOHA received the hearing transcript (Tr.) on November 3, 2014.

Findings of Fact

Applicant is a 51-year-old employee of a defense contractor. He has worked for his current employer since 2003. He served in the U.S. military from 1982 until he retired in 2003. He attends college in pursuit of a bachelor's degree. His first marriage ended in divorce in 2005. He married his current wife the same year. He has an adult child and three minor stepchildren.¹

The SOR alleges a past-due mortgage loan with a \$129,506 balance (SOR ¶ 1.k), four unpaid judgments (SOR ¶ 1.a - \$1,241; SOR ¶ 1.b - \$14,793; SOR ¶ 1.c - \$9,123; and SOR ¶ 1.p - \$141), the underlying debts of \$12,415 (SOR ¶ 1.l) and \$1,347 (SOR ¶ 1.r) that resulted in two of the judgments, and 25 additional delinquent debts. The judgments and debts were all listed on at least one credit report.

Applicant stated that he was unaware of the extent of his financial problems because his ex-wife and his current wife handled the family's finances. He also indicated that he had additional expenses when some of his in-laws came to live with him and his wife.² The alleged debts are discussed below.

Applicant had a bank credit card that was opened in 2004. He stopped paying the account in 2006. The bank charged off \$1,241 in 2007 (SOR ¶ 1.r). The bank obtained a \$1,241 judgment against Applicant in 2010 (SOR ¶ 1.a.). When he was interviewed for his background investigation in March 2013, Applicant stated he had no knowledge of the debt or the judgment. He stated that he would research the debt, and if it was determined to be his debt, he would pay it by the end of the year. In his response to the SOR, Applicant indicated that the bank agreed to settle the debt for \$741, payable through six automatic monthly debits of \$123, starting on August 25, 2014. Applicant established that he made payments of \$123 on August 25, 2014, and \$101 on October 27, 2014. He did not indicate why there was no September payment.³

Applicant bought a vehicle in 2005 that was financed through a loan. His credit reports indicate the high balance on the loan was \$25,798, with monthly payments of \$529 for 73 months. Applicant stated that it was a used vehicle that developed mechanical problems after the one-year warranty expired. He did not want to pay for a

¹ Tr. at 12-13, 25, 28-33; GE 1, 2.

² Tr. at 25, 28-32, 52-53, 55-56, 67; Applicant's response to SOR; GE 2.

³ Tr. at 46-48; Applicant's response to SOR; GE 2-4; AE C, Q, R.

vehicle with mechanical problems, and he voluntarily returned the vehicle. The finance company charged off \$12,415 in 2008 (SOR ¶ 1.l) and obtained a judgment of \$14,793 against Applicant in 2009 (SOR ¶ 1.b). Applicant stated that he never received notice that there was a deficiency owed or a judgment against him. He indicated that he was in the process of contacting the law firm handling the judgment and he would make arrangements to satisfy the debt.⁴

Applicant took out a loan to buy an above-ground pool at his house. The loan became delinquent, and the creditor obtained a \$9,123 judgment against Applicant in 2009 (SOR ¶ 1.c). Applicant indicated the judgment was paid when he refinanced the mortgage loan on his house. The February 2013 credit report indicated that his mortgage loan was \$27,502 past due with a balance of \$102,693. When he was interviewed for his background investigation in March 2013, Applicant stated that he did not recognize the mortgage loan. His March 2014 credit report indicated a mortgage loan to the same bank that was \$4,752 past due with a balance of \$129,506 (SOR ¶ 1.k).⁵

Applicant indicated that he refinanced his mortgage loan, but he was unsure what financial institution had the original mortgage loan or who did the refinancing. He wrote in his response to the SOR that the mortgage loan was refinanced in June 2014. In a post-hearing exhibit, he wrote about the judgment: “Yes I did fall behind, but I caught the payments up and continued to make up to date payments until I refinanced my home in 2013.” He testified that the payment for the judgment was reflected on the settlement documents for the refinanced mortgage loan. He did not provide a copy of the settlement documents. He submitted a copy of his mortgage loan account statement dated October 16, 2014. The principal balance of the loan was listed as \$129,506. Applicant stated the refinanced mortgage loan is up to date, but the statement shows no payment in the month since the last statement and \$952 paid year to date.⁶

A judgment of \$141 was obtained against Applicant in 2008 for unpaid dental services. Applicant stated that he was unaware of the debt and the judgment until he was interviewed for his background investigation in March 2013. At that time he stated he would look into the judgment and pay it by the end of the year if it was his debt. He paid the judgment in November 2014.⁷

Applicant paid the \$101 debt alleged in SOR ¶ 1.h in September 2014. He paid the \$65 debt alleged in SOR ¶ 1.ff in August 2014.⁸

⁴ Tr. at 35-39, 51, 67-68; Applicant’s response to SOR; GE 2-4; AE Q.

⁵ Tr. at 52-53; Applicant’s response to SOR; GE 2-4; AE Q.

⁶ Tr. at 42-45, 52-53, 65-66; Applicant’s response to SOR; GE 2-4; AE Q, S.

⁷ Tr. at 72-73; GE 2-4; Applicant’s response to SOR; AE Q, X.

⁸ Tr. at 60; Applicant’s response to SOR; AE E, P, Q, GG.

SOR ¶ 1.q alleges a delinquent debt of \$3,032 owed to a bank. Applicant told the background investigator in March 2013 that he had no knowledge of the debt, but he would research it and pay the debt that year if it was his. Applicant and the bank agreed to settle the debt through six monthly payments. The first payment of \$272 was made in October 2014.⁹

Applicant and his wife have a joint checking account. At least eight of the debts in the SOR were for checks written between 2008 and 2013 that were returned to the creditors for nonsufficient funds (SOR ¶¶ 1.e - \$285 to supermarket; 1.g - \$208 to pharmacy; 1.i - \$145 to hair salon; 1.j - \$73 to hair salon; 1.o - \$40 to school lunch program; 1.cc - \$80 to school lunch program; 1.dd - \$76 to U.S. Postal Service; and 1.ee - \$66 to school lunch program). Some of the checks were written by Applicant's wife. Applicant was questioned about many of the returned checks in March 2013. He stated that he would research them and pay them by the end of the year if they were his debts. He provided documentation that he paid seven of the returned checks in August and September 2014. He stated that the remaining returned check (SOR ¶ 1.g) was paid, but he did not provide any documentation.¹⁰

Applicant denied owing the remaining debts. SOR ¶¶ 1.d (\$600), 1.f (\$1,228), 1.m (\$4,434), and 1.n (\$1,933) allege delinquent debts owed to telecommunications companies and cable television providers. The debts alleged in SOR ¶¶ 1.d and 1.f have been deleted from Applicant's credit report after a dispute. The debts alleged in SOR ¶¶ 1.m, and 1.n are listed on the most recent credit report. There is no evidence that they have been deleted.¹¹ In his SOR response, Applicant wrote about the \$4,434 debt alleged in SOR ¶ 1.m:

Upon contacting [creditor], they stated that this amount was for early termination fees for multiple lines of service. They have agreed to set up a payment plan on the balance. They are sending a proposed arrangement for review to settle the debt.

He later wrote:

I am unaware of this debt. I am checking into this to verify. I currently have [an account with the same company]; they have not indicated to me that I owe anything. [Creditor] states that this debt is for early termination fees, awaiting statement of record from [creditor].¹²

The debts alleged in SOR ¶¶ 1.t, 1.u, 1.x, 1.y, 1.aa, and 1.bb were deleted from Applicant's credit report after a dispute. The debts alleged in SOR ¶¶ 1.s, 1.v, and 1.w

⁹ Tr. at 73-74; GE 2-4; Applicant's response to SOR; AE H, Q, Y.

¹⁰ Tr. at 55-65, 70-71, 74, 77-78; Applicant's response to SOR; GE 2-4; AE D, F, G, M-O, Q, T, V, W, DD-FF, HH.

¹¹ Tr. at 54-55, 58, 68-70; Applicant's response to SOR; GE 3, 4; AE B, Q.

¹² AE Q.

were listed on the February 2013 credit report. They were not listed on the March 2014 credit report.¹³

Applicant stated that he is committed to addressing his delinquent debts. He still has a joint checking account with his wife. He is attempting to take control of the family's finances, but he admitted that it was "way overwhelming," and that he did not "have it fully grasped as of yet."¹⁴

Applicant submitted a Questionnaire for National Security Positions (SF 86) in January 2013. Under the financial questions, he listed his repossessed vehicle and a \$350 credit card debt that he stated was delinquent at one point, but had been paid. He did not list any additional delinquent debts.¹⁵

Applicant denied intentionally falsifying the SF 86. He stated that he was unaware of the extent of his financial problems.¹⁶ Having considered all the evidence, I find that he did not intentionally falsify the SF 86.

Policies

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

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

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is

¹³ Tr. at 63, 74-77; Applicant's response to SOR; GE 3, 4; AE B, I-L, Q, Z, AA, BB.

¹⁴ Tr. at 26, 56, 63-64, 81; Applicant's response to SOR; AE A, Q.

¹⁵ GE 1.

¹⁶ Tr. at 79-80; Applicant's response to SOR; GE 2; AE Q.

responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

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

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

Analysis

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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. The following disqualifying condition is 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 did not intentionally provide false information on his SF 86. AG ¶ 16(a) is not applicable. SOR ¶ 2.a is concluded for Applicant.

Guideline F, Financial Considerations

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

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

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable:

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

Applicant accumulated delinquent debts and was unable or unwilling to pay his financial obligations. The above disqualifying conditions are applicable.

The debts alleged in SOR ¶¶ 1.r and 1.l are the underlying debts that resulted in the judgments alleged in SOR ¶¶ 1.a and 1.b. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice). SOR ¶¶ 1.r and 1.l are concluded for Applicant.

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

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's finances have been in disarray for several years. He completely abrogated his financial responsibilities. It is not unusual for one spouse to handle the family's finances, but Applicant's apathetic attitude went far beyond the norm. There were numerous bad checks written, including three to a school lunch program. Applicant was asked about his delinquent debts during his background interview in March 2013. Despite his statement to the investigator that he would research the debts and pay them by the end of the year, minimal action was taken before the SOR was issued in July 2014.

Applicant receives mitigation credit for paying three debts and seven of the returned checks. He was given time to provide documentation that the remaining returned check was paid, but he failed to do so. He has payment plans for two debts, but he only proved that he made one payment for one debt, and he made August and October payments on the other debt. A number of debts were deleted from Applicant's credit report. Because Applicant has no real idea what he owes, I am not convinced those debts were removed because they were not Applicant's responsibility. Nonetheless, I am giving Applicant the benefit of the doubt, and I am resolving the paid debts, deleted debts, debts in payment plans, and the mortgage loan in Applicant's favor.

Judgments for \$14,793 (SOR ¶ 1.b) and \$9,123 (SOR ¶ 1.d) were awarded against Applicant in 2009. Applicant has not made any payments toward the \$14,793 judgment. He stated that the \$9,123 judgment was paid when he refinanced his mortgage loan. He gave inconsistent statements as to when the refinancing occurred: 2013 and June 2014. If the judgment was paid through refinancing, a settlement document would reflect that payment. Applicant did not submit a settlement document. The mortgage statement he submitted does not support his position. The returned check to the pharmacy (SOR ¶ 1.g) and two of the debts owed to telecommunications companies (SOR ¶¶ 1.m and 1.n) are also unresolved.

Applicant has not convinced me that he has taken control of his finances. He still has a joint checking account with his wife. He admitted that his finances were "way overwhelming," and that he did not "have it fully grasped as of yet."

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. Mitigation is only available for the paid debts, deleted debts, debts in payment plans, and the mortgage loan. None of the mitigating conditions are applicable to the remaining debts.

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 E and F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

I considered Applicant's honorable military service and his stable work history. However, Applicant's finances have been in shambles for several years. He has taken some steps toward remedying his financial problems, but he still has far to go. He could not state with certainty who held his mortgage, when it was financed, and who did the refinancing. He also stated debts were paid, but despite being given time to do so, he failed to submit corroborating documents.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant refuted the personal conduct security concerns, but he did not mitigate the financial considerations security concerns.

Formal Findings

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

Paragraph 1, Guideline F:	Against Applicant
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.c:	Against Applicant
Subparagraphs 1.d-1.f:	For Applicant

Subparagraph 1.g:	Against Applicant
Subparagraphs 1.h-1.l:	For Applicant
Subparagraphs 1.m-1.n:	Against Applicant
Subparagraphs 1.o-1.pp:	For Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraph 2.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge