



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



In the matter of:)	
)	
)	ISCR Case No. 14-00244
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

07/24/2014

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant defaulted on about \$31,467 in consumer credit obligations for which he was legally liable between late 2007 and early 2008. Another \$765 in consumer credit debt was referred for collection on an account on which he was an authorized user. His financial delinquencies are attributed to the economic downturn, which negatively affected his and his spouse's business. As of June 2014, he had made no payments toward resolving his past-due debt. Clearance is denied.

Statement of the Case

On March 20, 2014, 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 April 9, 2014, and he requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. On May 15, 2014, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for him. On May 27, 2014, I scheduled a hearing for June 18, 2014.

I convened the hearing as scheduled.¹ Five Government exhibits (GEs 1-5) and one Applicant exhibit (AE A) were admitted without objection. Applicant also testified as reflected in a transcript (Tr.) received on June 27, 2014.

Procedural Rulings

When Applicant answered the SOR allegations, he submitted a character reference from February 2007. The issue of its admissibility was not raised at the hearing by Department Counsel or Applicant. At my request, Department Counsel confirmed on July 21, 2014, that he had no objection to its admission. Accordingly, the document was marked and entered into evidence as AE B.

Findings of Fact

The SOR alleges under Guideline F that as of March 20, 2014, Applicant owed \$38,062 on five past-due accounts that had been charged off (SOR 1.a) or placed for collection (SOR 1.b-1.e). When he answered the SOR, he admitted the debts without explanation. His admissions to the delinquencies are accepted and incorporated as findings of fact. After considering the pleadings, exhibits, and transcript, I make the following additional findings of fact.

Applicant is 62-year-old forklift operator, who started his defense contractor employment in November 2002. (GE 1; Tr. 21.) Applicant has held a DOD Secret clearance since October 2004. (GE 1.) He recently accepted an offer to retire effective June 30, 2014. (Tr. 31.)

Applicant has two adult sons from his first marriage. In May 1990, he married his current spouse. They have two teenage sons (ages 15 and 16) living at home. Applicant's spouse has four adult children from her previous marriage. (GE 1; Tr. 21-22.)

Applicant was employed as a laborer and truck driver for his hometown from August 1987 until November 2002, when he began working for his current employer. (GE 2.) In June 2002, Applicant and his spouse bought a home, taking on a conventional 30-year mortgage of \$130,860, with initial monthly payments at \$1,236 per month. (GEs 2, 5.)

Applicant completed and executed his initial application for a DOD Secret clearance on October 16, 2002. Applicant responded "Yes" to whether a lien had been placed against

¹ Before the introduction of any evidence at the hearing, Applicant indicated that he was retiring from his defense contractor employment as of June 30, 2014. Jurisdiction was established because he was still employed by a DOD contractor with an active security clearance as of the date of his hearing. (Tr. 8.)

his property in the last seven years, disclosing a \$2,000 tax lien issued by his town in June 2002. In response to any financial delinquencies over 90 days, Applicant reported a \$1,740 utility debt from June 2001. (GE 2.)

As of August 12, 2003, Applicant had five revolving charge accounts on his credit record which were rated as bad debts. Three individual accounts, with respective balances of \$620, \$1,734, and \$976 had been written off to profit and loss in May 2000. A joint account opened in January 1997 had been written off in the amount of \$1,508 in March 1998. A \$1,602 delinquent balance on an individual account was placed for collection. As of October 2002, Applicant owed a past-due balance of \$1,918. In addition, a dentist had placed a \$439 debt for collection around October 2002 that was unpaid. Applicant's mortgage payment was 60 days past due (\$2,472) on a loan balance of \$130,400. His credit record also showed several tax liens filed against him which had been released, but also a \$1,591 lien from June 1998 with no indication that it had been satisfied. (GE 5.) Despite these outstanding delinquencies, Applicant was apparently granted a Secret clearance in October 2004. (GE 1.)

In February 2005, Applicant's mortgage was paid off. In May 2006, Applicant took on joint liability for a new mortgage of \$208,500, to be repaid at \$1,641 per month. In 2005 or 2006, Applicant started a business with his spouse because she had no success finding work. They bought and sold ornamental weaponry. (Tr. 23.) Around that same time, his spouse was diagnosed with a medical condition requiring ongoing medication management. (Tr. 25, 33, 35.)

The downturn in the economy began to affect Applicant and his spouse's weaponry business around 2007. Applicant opened some consumer credit card accounts to pay bills. (Tr. 23.) Applicant and his spouse stopped paying on those accounts and on their mortgage. They surrendered possession of the property to their mortgage lender around February 2008 and moved into a rented unit at \$1,300 per month, including heat. (GE 1; Tr. 26, 41.) The lender agreed to a short sale of the property to resolve his defaulted mortgage (Tr. 36), but five consumer credit accounts were charged off or placed for collection or both, as set forth in the following table.

Debt	Delinquency history	Payment status
SOR 1.a. \$33,725 charged-off account	Joint line of credit opened Jan. 2007; high credit \$28,804; last activity Jan. 2008; \$28,804 charged off Feb. 2009; \$33,725 balance Sep. 2009. (GEs 1, 4.)	No payments as of mid-June 2014. (Tr. 25.)
SOR 1.b. \$1,157 collection debt	Individual \$300 limit credit card account opened Aug. 2007; \$639 high credit; last activity Dec. 2007; sold to assignee Apr. 2008; \$1,157 collection balance as of Aug. 2013; \$1,244 collection	No payments as of mid-June 2014. (Tr. 25.)

	balance as of Apr. 2014. (GEs 1, 3, 4.)	
SOR 1.c. \$756 collection debt	Credit card account opened as authorized user Feb. 2007; last activity Nov. 2007; \$756 for collection May 2008. (GEs 1, 4.)	No payments as of mid-June 2014. (Tr. 25.)
SOR 1.d. \$1,014 collection debt	Individual credit card account opened Aug. 2007; \$750 credit limit; last activity Oct. 2007; \$1,014 high credit; sold May 2008; \$1,413 for collection Jul. 2011. (GEs 1, 3, 4.)	No payments as of mid-June 2014. (Tr. 25.)
SOR 1.e. \$1,011 collection debt	Individual \$500 limit credit card account opened Jul. 2007; last activity Oct. 2007; \$1,010 past due balance sold Jul. 2011; \$1,011 for collection May 2012. (GEs 1, 3, 4.)	No payments as of mid-June 2014. (Tr. 25.)

After his credit card accounts became seriously delinquent, Applicant sought the assistance of a credit counselor. The credit counselor contacted Applicant's lenders. According to Applicant, the accounts had been charged off, so there was nothing he could do to address them. (Tr. 26, 30.)

Facing a rental increase of almost \$200 a month, Applicant and his family moved to a "basic rat hole" at rent of \$850 a month. Around February 2012, they moved to their current residence at a rent of \$1,100 a month. (GE 1; Tr. 37, 41-42.) Applicant did not notify his old creditors of his new addresses, but he filed change of address forms with the post office on each move. (Tr. 40.) To Applicant's knowledge, he has received no collection letters from his creditors. (Tr. 36.)

On August 2, 2013, Applicant completed and certified to the accuracy of an Electronics Questionnaire for Investigations Processing (e-QIP). Applicant responded "Yes" to delinquencies involving routine accounts in the last seven years. He disclosed his mortgage default; the five debts alleged in the SOR (1.a as \$28,804, 1.b as \$639, 1.c, 1.d as \$1,014, and 1.e as \$435); and a \$758 debt not in the SOR.² Applicant attributed his delinquencies to the economy, and he indicated that the credit card debts had all been charged off. Regarding any efforts to satisfy these past-due accounts, Applicant stated, "CONSUMER CREDIT COUNSELING [location omitted] COULD NOT HELP ALL ITEMS WERE CLOSED OR CHARGED OFF." (GE 1.) A check of Applicant's credit on August 21, 2013, showed no additional delinquencies. (GE 4.)

² On his August 21, 2013 credit report, Applicant is listed as an authorized user on the account in SOR 1.c and on the past-due account not alleged. (GE 4.)

As of May 13, 2014, Equifax Information Services was reporting balances totaling \$3,668 in collection (SOR 1.b, 1.d, and 1.e). The debts in SOR 1.a and 1.c were not on his latest credit record. (GE 3.)

As of mid-June 2014, Applicant had taken no steps to address his known past-due debts because he didn't know what he could do. All of the creditors contacted through the credit counselor around 2008 had indicated they had no information about the accounts because they had been charged off ("So it's kind of like a catch-22 that we were hung out to dry."). (Tr. 26-27.)

Applicant's spouse handles the family's finances. To Applicant's knowledge, they have not been late in paying their rent or utilities in the last two years. (Tr. 27.) Applicant also owes no delinquent state or federal income taxes. He received a federal tax refund for tax year 2013, although he does not recall the amount of his refund or if it was spent. (Tr. 28.) Applicant and his spouse live from week-to-week on his take-home pay of about \$640 a week. (Tr. 37, 43.) His spouse has not worked outside the home since she was diagnosed with a debilitating medical condition around 2005 or 2006. (Tr. 25, 33, 37.) Applicant pays approximately \$100 to \$120 out-of-pocket for his and his spouse's prescriptions each month. (Tr. 35.)

Applicant filed the paperwork to retire at the end of June 2014. His employer offered an incentive of three years of continued insurance coverage or a \$25,000 lump-sum payment subject to taxes. He chose the latter because he was told that with two teens at home, he would qualify for insurance at a lower rate. (Tr. 31-33.) Based on available social security records, Applicant is entitled to a monthly social security retirement benefit of \$1,448 per month beginning July 2014. (AE A.) Applicant testified that his two teenage sons are also eligible for social security benefits at \$724.25 each per month. (Tr. 43.) Applicant testified that he also qualifies for a pension from the defense contractor (Tr. 31), but no information was presented about the amount of his pension.

In February 2007, a department supervisor at work attested to Applicant being a "super hard worker" with a positive attitude. He recommended Applicant for his dedication and prompt service as a fork-lift driver. (AE B.) Applicant has had some minor infractions at work unrelated to security. (GE 1; Tr. 30.)

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.

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.

The SOR alleges \$38,062 of delinquent debt on five accounts which had been charged off or placed for collection or both. Applicant admitted the debts, although as an authorized user only, his legal liability for repaying the \$756 credit card debt (SOR 1.c) was not established. Likely due to interest on unpaid balances totaling \$31,467 (SOR 1.a-1b and 1.d-1.e), Applicant’s delinquent debt accrued to about \$37,393 on the four accounts for which he had legal liability. Disqualifying conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and ¶ 19(c), “a history of not meeting financial obligations,”

apply. The evidence also shows that he and his spouse lost their home in 2008, after they stopped paying their mortgage. While Applicant's mortgage default was resolved through a short sale, the mortgage default shows that his financial problems were more extensive than alleged in the SOR.³

Concerning the mitigating conditions, 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," applies in that the accounts in the SOR were all opened in 2007 and became delinquent shortly thereafter. There is no evidence of any new delinquencies. Even so, it is difficult to conclude that the behavior is not likely to recur. Five accounts were rated as bad debts on his credit record in August 2003. These delinquencies did not prevent him from obtaining his security clearance in October 2004, but they too raise questions about his ability to manage his credit responsibly.

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 the financial difficulties that arose in 2007 to the economic downturn and consequent loss of income from his and his spouse's retail business. Applicant presented little evidence to show that he made sound financial decisions, either to minimize their business losses or to address his legitimate financial obligations. What can be gleaned from the evidentiary record is that Applicant and his spouse opened a joint line of credit in July 2006 of \$19,528, which was paid through a new line of credit in January 2007 (SOR 1.a). After there had been no activity on the new account since January 2008, a \$28,804 balance was charged off in February 2009. He incurred \$639 in charges on the credit card account in SOR 1.b, \$309 over the account's credit limit, between August and December 2007. Similarly, he opened the credit card accounts in SOR 1.d and 1.e during the summer of 2007. In less than one year, he owed collection balances exceeding his \$750 and \$500 credit limits. This account history could be explained by a precipitous loss of business income, although he presented no corroborating documentation. Given he and his spouse lost not only the business but also their home during the economic downturn, Applicant and his spouse may well have overextended themselves financially in an effort to start the business.

Applicant acted responsibly by seeking the assistance of a credit counselor after his consumer credit debts became seriously delinquent. Applicant testified that before he and his spouse "lost everything," they sat with a credit counselor who called all of their creditors. The creditors were unable to provide information because the accounts had been charged off. Applicant testified that there was nothing he could do to resolve the debts.

³ The DOHA Appeal Board has long held that the administrative judge may consider non-alleged conduct to assess an applicant's credibility; to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; to decide whether a particular provision of the Adjudicative Guidelines is applicable; or to provide evidence for a whole person analysis under Section 6.3 of the Directive. See, e.g., ISCR Case No. 03-20327 (App. Bd. Oct. 26, 2006); ISCR Case No. 09-07219 (App. Bd. Sep. 27, 2012). The mortgage and his older delinquencies cannot provide a separate basis for disqualification since they were not alleged in the SOR, but they are relevant to assessing Applicant's financial judgment generally and the risk of recurrence.

Available credit reports show that the credit card debts were placed for collection. (GEs 3, 4.) Applicant understood as of his August 2013 e-QIP that the accounts alleged in the SOR had been “closed or charged off.” To his knowledge, he received no collection notices. However, because his spouse handles the finances, this does not necessarily mean that no collection notices were received. In April 2014, Applicant received the SOR indicating that the debts in SOR 1.b-1.e were reportedly in collection, and that the DOD was concerned about them. Yet he made no effort to investigate the debts. (Tr. 30.) Applicant may have already decided to file for retirement (“This had nothing to do with me retiring because this stuff was started—the filing for retirement—before I got the paperwork.”), but it does not eliminate his obligation to his creditors. AG ¶ 20(b) does not mitigate the security concerns that arise from his inaction toward his past-due debts over the past five years. Had he obtained his credit report, he would have learned that his credit card debts had been transferred or purchased and were held by the creditors identified in the SOR.

Neither 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,” nor AG ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” apply without some recent efforts on his part to address the debts of concern to the DOD. He testified that he would pay his debts if he knew to whom to pay them. (Tr. 38.) A promise to pay is not a substitute for a demonstrated track record of repayment.

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,” applies only to the debt in SOR 1.c. Applicant is listed as an authorized user on that account on his August 2013 credit report, and the debt does not appear on his May 2014 credit report. Equifax dropped the line of credit debt in SOR 1.a from his credit record. The debt has been written off by the creditor, and there is no indication that he is being pursued for the balance. Even so, his handling of that accounts continues to raise concerns of financial irresponsibility. The financial concerns raised by his record of delinquent accounts are not fully mitigated under Guideline F.

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).⁴

⁴The 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.

Applicant and his spouse started a retail business shortly before an economic downturn that brought on financial stress. Applicant and his spouse took on a sizeable line of credit debt, and he opened some consumer credit card accounts in his name to pay bills. He was responsible in seeking the help of a credit counselor, although apparently only after his consumer credit debts had become seriously delinquent. When the credit counselor was unable to obtain any information about the debts, Applicant did not pursue the matter further. Applicant is not required to resolve all of his delinquent debts before he can be granted security clearance eligibility. Even so, the DOHA Appeal Board has required that an applicant demonstrate that he has a realistic plan established to resolve his financial problems and that he has taken significant actions to implement that plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted). Applicant's candor about his debts on his e-QIP weighs in his favor. At the same time, 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.). For the reasons noted above, 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 continue Applicant's security clearance eligibility 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:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Elizabeth M. Matchinski
Administrative Judge