



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



In the matter of:)
)
) ISCR Case No. 14-00879
)
Applicant for Security Clearance)

Appearances

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

09/29/2014

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant began to struggle financially after he and his ex-wife separated in September 2010, and he was ordered to pay child support for their three children in March 2011. His home was taken in foreclosure around March 2012 in settlement of his mortgage default, but Applicant owed delinquent debt of \$8,325 as of April 2014. Those debts have been paid, and his financial situation is now stable. Clearance is granted.

Statement of the Case

On April 25, 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 it clearly consistent with the national interest to grant or continue a security clearance for him. The DOD CAF took the action under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (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.

Applicant responded to the SOR allegations on May 22, 2014, and he requested a decision on the written record without a hearing. The Government requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge, and on June 27, 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 Applicant. On August 1, 2014, I scheduled a hearing for August 19, 2014.

I convened the hearing as scheduled. Three Government exhibits (GEs 1-3) and one Applicant exhibit (AE A) were admitted into evidence without objection. Applicant testified, as reflected in a transcript (Tr.) received on August 29, 2014. At Applicant's request and with no objection from the Government, the record was held open for two weeks for post-hearing exhibits. On September 2, 2014, at Applicant's request and without objection from the Government, I extended the deadline to September 9, 2014, for post-hearing submissions.

On September 9, 2014, Applicant timely submitted six exhibits (AEs B-G). On September 10, 2014, I re-opened the record to consider the admission of an additional exhibit (AE H) forwarded by Applicant, which was not available to him by the deadline. Department Counsel filed no objections to AEs B-H by the September 19, 2014 deadline for comment. The documents were accepted into evidence, and the record closed on September 19, 2014.

Summary of SOR Allegations

The SOR alleges under Guideline F that as of April 25, 2014, Applicant owed \$10,349 in delinquent credit card debt (SOR 1.a, 1.b, 1.e, 1.f, and 1.h); \$51 in medical debt in collection (SOR 1.c); and \$486 for satellite television services in collection (SOR 1.d). In addition, Applicant's mortgage loan went to foreclosure on a balance of \$135,539 with \$17,482 past due (SOR 1.g). In his Answer to the SOR allegations, Applicant admitted the debts, which he attributed to his divorce and child support obligation of \$269 per week. Applicant expressed his intent to use funds from his 401(k) to satisfy the delinquent balances by May 30, 2014.

Findings of Fact

Applicant's 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 a 30-year-old high school graduate, who has worked for a defense contractor since August 2003. He graduated from the company's apprenticeship program as a pipefitter in 2007 and was recognized by the state for excellence in the classroom (highest overall grade point average among all trades). (Tr. 56-58.) In February 2014, Applicant was promoted to the salaried position of operations supervisor with an increase in his annual income from \$56,000 to \$81,000. (GE 1; Tr. 23-24.) He is responsible for

approximately 15 pipefitters. (Tr. 59.) Applicant seeks to retain the secret-level security clearance, which he has held since November 2003. (GE 1.)

Applicant and his ex-wife were married from September 2008 to June 2011. They had two children together (born in 2004 and 2007) before they married. Their third child was born in 2009. In June 2007, Applicant bought a home for himself and his family with a \$139,806 mortgage. Around September 2010, Applicant and his ex-wife separated. Applicant continued to provide financial support for his ex-wife and children after they moved out of the house. (Tr. 27-28.) Around March 2011, his ex-wife filed for divorce, and Applicant began paying child support at \$269 per week. (GE 3; Tr. 21, 24-26.) He could no longer afford his mortgage, and he stopped making his monthly loan payments of \$1,061. (AE B; Tr. 26-28.) In September 2011, Applicant returned from three months of temporary duty (TDY) out of state to discover that his lender was initiating foreclosure of his home. His mortgage was \$17,482 past due on a \$135,539 balance (SOR 1.g). Two weeks later, Applicant left the area for 11 months of additional TDY for his employer. (Tr. 29.) In February 2012, Applicant's mortgage lender reclaimed the house in foreclosure to settle his mortgage default. (GEs 1-3; AEs B, H.) Applicant did not contact the mortgage company during the foreclosure process, so he was unaware if he owed a deficiency balance on his loan. (Tr. 29-30.) When Applicant vacated his home, he owed a satellite television company for rented equipment. The company placed a \$486 balance for collection in August 2013. (GE 2.)

Applicant's financial problems went beyond his mortgage. In March 2011, Applicant notified his then auto loan lender that he could no longer afford his \$231 monthly payments on his \$13,607 loan balance. In September 2011, his vehicle was involuntarily repossessed and then sold to settle his loan. Applicant indicates that he was refunded \$1,200 after the sale. A \$1,800 credit card debt was placed for collection in May 2011 (SOR 1.e, duplicated in SOR 1.b). As of March 2012, the unpaid balance was \$2,561.¹ By the time the debt was placed with the assignee in SOR 1.b, the balance had increased to \$2,816. Additionally, Applicant made no payments on the credit card accounts in SOR 1.a and 1.h after July 2011, and respective balances of \$3,534 and \$1,057 were charged off and placed for collection. Around August 2011, Applicant stopped paying on the \$381 retail charge balance identified in SOR 1.f. In February 2012, the debt was charged off to profit and loss. Applicant had used the credit card accounts in SOR 1.a, 1.e, 1.f, and 1.h for household goods, heating oil, or gasoline. (GEs 1-3.)

When Applicant returned from TDY around August 2012, he rented a room from a friend. In June 2013, he was again sent out of state by his employer. On his return from that assignment in September 2013, Applicant moved in with his ex-wife and children in an attempt to reconcile. (GE 3; Tr. 34.)

¹ Applicant expressed his belief that the \$3,534 debt in SOR 1.a was the same debt as SOR 1.b. (Tr. 36.) However, available credit reports (GE 2; AE B) indicate that the account (169601-xxxxxxxx) identified in SOR 1.e, which was opened with an electronics retailer in November 2008, was placed for collection with the assignee in SOR 1.b in February 2013. SOR 1.a was a separate MasterCard account opened in December 2006. (GE 2; AE B.)

On October 30, 2013, Applicant completed and certified to the accuracy of an Electronic Questionnaire for Investigations Processing (e-QIP) to update his security clearance eligibility. He responded affirmatively to any delinquency involving routine accounts in the last seven years. He listed his mortgage foreclosure; his vehicle repossession; and approximate credit card balances of \$1,700 (SOR 1.a), \$3,000 (SOR 1.e, duplicated in SOR 1.b), \$200 (SOR 1.f), and \$700 (SOR 1.h) that were unpaid. Applicant indicated that he was “currently making payment arrangements” on the credit card balances. (GE 1.)

As of December 3, 2013, Applicant had made no progress toward resolving his delinquent credit card debts. He owed \$3,534 on SOR 1.a, \$486 on SOR 1.d, \$2,816 on SOR 1.e (duplicated in SOR 1.b), \$381 on SOR 1.f, \$1,057 on SOR 1.h, and \$51 on a previously undisclosed medical debt in collection (SOR 1.c). The credit bureaus were discrepantly reporting an outstanding balance of \$135,529 on his defaulted mortgage, but also that the account had been “closed foreclosure redeemed.” Applicant was making timely payments of \$206 per month on a \$6,294 automobile loan taken out in January 2013, which had a \$5,111 balance. (GE 2; AE B.)

On December 18, 2013, Applicant was interviewed about his delinquent debts by an authorized investigator for the Office of Personnel Management (OPM). Applicant indicated that his mortgage debt had been resolved through the foreclosure and sale of his home. (GE 3.) As of August 2014, the mortgage lender was reporting that the property had been conveyed to the Department of Housing and Urban Development (HUD) in March 2012, so the principal balance on the loan was zero. (AE H.) During his interview with the OPM investigator, Applicant did not contest the balances shown on his credit report. He explained that he had failed to consider interest and late fees when he listed the debts on his e-QIP. Applicant added that he had contacted the credit lender identified in SOR 1.h in December 2013 to arrange for monthly payments on the debt. He was awaiting a response from the creditor. He had not yet responded to correspondence received in November 2013 from the creditor collecting the debt in SOR 1.a. Applicant admitted that he had not contacted the creditors identified in SOR 1.d, 1.e, and 1.f. He did not recognize the medical debt in collection (SOR 1.c), but he expressed an intent to pay the debt if it was legitimate. Applicant explained that the debts became delinquent because of his marital separation and divorce, the loss of his ex-wife’s income, and him having to pay child support. Applicant added that he was considering taking a loan against his retirement account to pay his debts. (GE 3.)

Applicant was again on TDY in another state from mid-April 2014 to mid-August 2014. (Tr. 40, 51.) For being off-site, he was paid 15% above his base pay for 80 hours. (Tr. 51.) He borrowed \$30,000 from his 401(k), which was deposited into his checking account in July 2014. Applicant had two outstanding loans, and the delay in obtaining the \$30,000 loan was because he had to pay off one of them before he could obtain a new loan. (AE A; Tr. 44, 48.) Applicant borrowed enough to cover all of the debts in the SOR. He was not sure whether he had a deficiency balance on his mortgage loan. (Tr. 44.) On July 11, 2014, he paid \$3,534.02 by check to satisfy the debt in SOR 1.a. (AEs A, C.) On July 14, 2014, he paid \$2,738.06 by check to satisfy the debt in SOR 1.e (duplicated in

SOR 1.b), \$381 to satisfy the debt in SOR 1.f, and \$486.38 by credit card to resolve his past-due satellite television debt in 1.d. (AEs A, B, E, G; Tr. 38, 43.) On July 15, 2014, Applicant paid \$1,057.44 by pre-authorized debit to satisfy the debt in SOR 1.h. (AEs A, D; Tr. 43-44.) On August 18, 2014, Applicant paid \$51.50 by credit card to satisfy the medical debt in SOR 1.c. He contacted the collection agency around April or May 2014 and was informed that the debt had been transferred back to the medical provider. (AE F; Tr. 37, 39-40.) On September 10, 2014, he received confirmation that he owed nothing on the mortgage after the foreclosure. (AE H.)

As of August 2014, Applicant has made timely payments on his January 2013 car loan, which has a balance of \$3,560. (AE B; Tr. 21.) Applicant is also paying his \$269 weekly child support obligation on time through automatic withdrawals from his paycheck. (Tr. 21.) On his return in mid-August 2014 from yet another lengthy temporary duty assignment for his employer, Applicant and his ex-wife decided against reconciliation. Applicant is currently staying with a friend, although he intends to rent a separate residence. Applicant and his ex-wife have joint custody of their three children. Applicant covers half of his children's medical insurance costs. He also pays \$100 a week for daycare for his youngest son. (Tr. 31-33.) Applicant's ex-wife has a new job about which Applicant knows little. He does not support her financially apart from the funds provided for the care of his children. (Tr. 35.)

Applicant is repaying his 401(k) loan at \$209 every two weeks. Applicant cannot accelerate repayment of his loan, although he can pay the balance in a lump sum. (Tr. 45, 53-54.) Applicant holds a salaried position, but he is paid overtime wages when appropriate. He expects to gross at least \$120,000 in annual wages in 2014. (Tr. 46-47.) Applicant does not foresee any problems covering his own living costs, including rent. (Tr. 54.)

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

Analysis

Guideline F, Financial Considerations

The security concern about financial considerations is set forth 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 eight delinquencies totaling \$28,368 as of April 25, 2014. The evidence establishes that Applicant owed about \$8,325 on six accounts as of the date of the SOR. His 2011 mortgage default (SOR 1.f) was resolved in 2012 when his home was taken in foreclosure by HUD to settle the \$135,539 principal balance. No evidence was presented showing that he was ever pursued for any deficiency balance on the loan. He does not dispute that his mortgage had been \$17,842 past due. Available documentation further shows that the \$2,561 charge account debt in SOR 1.e was eventually referred for collection to the assignee in SOR 1.b, so SOR 1.e does not represent an additional balance. 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,” has limited applicability in this case only to that debt. Applicant’s undisputed record of delinquency establishes both AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.” Applicant’s financial problems were more extensive than shown in the SOR. His previous car was involuntarily repossessed in 2012 due to nonpayment of his loan.²

The reports of Applicant’s credit (GE 2; AE B) show that he stopped paying on most of the accounts in the SOR in 2011, after he and his ex-wife separated. With the exception of this home loan, which was resolved by foreclosure sale, his delinquencies were still outstanding as of April 2014. 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,” cannot reasonably apply under the circumstances.

Applicant’s financial problems coincide with his marital separation in September 2010 and divorce. The record before me does not include information about his ex-wife’s financial contributions to the household. However, Applicant’s un rebutted testimony is that he continued to provide financial assistance to his ex-wife and children after they moved out of his home in September 2010. Starting around March 2011, Applicant was required to pay child support of \$269 per week, which strained his finances to where he stopped paying on his mortgage and some credit card accounts. Divorce is a circumstance contemplated within AG ¶ 20(b):

(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.

Yet, Applicant should have been more proactive in dealing with his delinquencies, notwithstanding his repeated TDY assignments. Applicant did not contest the divorce, which was final in June 2011. He went on TDY out of the area for his employer from June 2011 to September 2011, and he stopped paying on some of his consumer credit accounts that summer. He came home for two weeks in September 2011 to discover that foreclosure had been initiated on his home. Applicant made no effort to contact his mortgage lender or his other creditors while he was on TDY from September 2011 to August 2012. He earned 15% over his usual wages during his latest TDY, so presumably he would have been compensated during his earlier TDY as well, whether by an increase in pay or by per diem or both. Applicant likely had some expenses associated with TDY, so he may not have had discretionary income to make payments on his old debts. However, at a minimum, he had

² 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).

an obligation to contact his creditors and attempt to arrange repayment terms. After he returned from TDY around August 2012, he rented a room from a friend. Available information does not include an accounting of his expenses at that time. He was on TDY again from June 2013 to September 2013. When he returned from that assignment, Applicant cohabited with his ex-wife in an effort to reconcile. He had to pay child support, but he also did not have the costs of maintaining a separate residence.

Applicant knew about most of his delinquencies when he completed his e-QIP in October 2013. In December 2013, he told an OPM investigator that he intended to contact the creditors in SOR 1.f and 1.h in December 2013 and arrange for repayment. He presented no evidence of attempts to resolve his debts before the spring of 2014, when he inquired about borrowing from his retirement fund at work. AG ¶ 20(b) applies in that it explains the incurring of the delinquency. It does not fully mitigate Applicant's delay in addressing his past-due debt obligations.

Applicant had two outstanding loans, and he had to pay off one of them before he could again borrow from his 401(k). In July 2014, with a loan of \$30,000 from his 401(k) deposited into his bank account, Applicant satisfied the debts in SOR 1.a, 1.e (duplicated in SOR 1.b), and 1.h over the next few days by check or authorized debit. He paid the satellite television debt in SOR 1.d by credit card. His latest credit report of September 2014 (AE B) shows that the retail charge account in SOR 1.h was also satisfied in July 2014. He did not pay the \$51 medical debt until August 2014 because the debt had been transferred back to the medical provider. Although belated, Applicant's resolution of his debts implicates 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."

Resolution of his past-due accounts does not end the inquiry in that there must be adequate assurances that Applicant's financial situation is sufficiently under control to where it does not pose an unacceptable security risk. To that end, Applicant has no new delinquent accounts. He has made timely payments on his car loan opened in January 2013 and his child support obligation. His repayment of his 401(k) loan at \$209 every other week is affordable and automatic. Applicant and his ex-wife have recently decided against reconciliation, so he will be incurring the expenses of a separate household going forward. However, given Applicant's increase in his base salary from \$52,000 to \$81,000 annually since his promotion in February 2014, Applicant has the financial means to remain current in paying his debt obligations, whether or not overtime or TDY opportunities continue. The financial considerations concerns are sufficiently mitigated.

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).³

³ The factors under AG ¶ 2(a) are as follows:

Applicant paid his debts on time before he and his ex-wife separated around September 2010. After he was required to pay child support at \$269 per week for their three children, he stopped paying his mortgage and other consumer credit debts. While on repeated TDY, Applicant was not prevented from addressing his known debts, and he showed poor financial judgment in 2012 when he walked away from his home and car loans. However, his financial situation is now stable. Applicant satisfied most of his debts in July 2014 during his latest TDY. He has not opened new retail consumer credit accounts since the car loan in January 2013, and he has made those loan payments on time. The decrease in his overall debt balance reflects responsible credit management. Applicant is not likely to jeopardize the employment that he needs to meet his present financial obligations by allowing accounts to become seriously delinquent in the future. After reviewing the facts and circumstances before me, I 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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant

(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.

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Elizabeth M. Matchinski
Administrative Judge