



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



In the matter of:)
)
) ISCR Case No. 14-01532
)
Applicant for Security Clearance)

Appearances

For Government: Stephanie C. Hess, Esq., Department Counsel
For Applicant: *Pro se*

12/21/2015

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant owed \$30,677 on a second mortgage after a foreclosure by his primary lender around September 2010. He has been paying \$300 per month on the defaulted loan since November 2014. As of September 2014, he also owed a \$717 telecommunications debt in collection and a \$70 medical debt, which have been paid. Clearance is granted.

Statement of the Case

On September 5, 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 his security clearance eligibility. 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 answered the SOR allegations on October 2, 2014, and he requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). By letter dated November 3, 2014, Department Counsel provided discovery of the Government's planned exhibits to Applicant. On June 8, 2015, 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 June 29, 2015, I scheduled the hearing for July 30, 2015.

At the hearing, two Government exhibits (GEs 1-2) were admitted into evidence without objection. The discovery letter was incorporated into the record as a hearing exhibit (HE) but was not entered as an evidentiary exhibit. Applicant submitted nine exhibits (AEs A-I), which were received into the record with no objections. Applicant testified, as reflected in a transcript (Tr.) received on August 7, 2015.

At Applicant's request, I held the record open for two weeks for him to submit additional documents. On August 7, 2015, Applicant submitted a statement of account from a local hospital, which along with his forwarding email was marked as AE J. On August 13, 2015, Applicant submitted updated payment information via an email marked on receipt as AE K. The Government filed no objections by the August 28, 2015 deadline for comment, and AEs J and K were accepted into evidence.

Findings of Fact

The SOR alleges that Applicant owed a \$30,677 charged-off mortgage debt (SOR ¶ 1.a), a \$717 collection debt (SOR ¶ 1.b), and a \$70 medical debt in collection (SOR ¶ 1.c) as of September 5, 2014. Applicant admitted the debts when he answered the SOR. His admissions to the debts are accepted and incorporated as factual findings. After considering the pleadings, exhibits, and transcript, I make the following additional findings of fact:

Applicant is a 51-year-old high school graduate with some college credits. He has worked in document control for the same defense contractor since December 1988 and has no record of security violations or infractions during that time. He was granted a secret security clearance around February 1989, and he currently holds a top security clearance. (GE 1; AE A.)

Applicant has had some problems paying all his debts on time over the years (Tr. 67), although he has managed his accounts more responsibly lately. Around 1997, he filed for bankruptcy. (GE 1.) No bankruptcy records were submitted in evidence, and the record does not otherwise show whether he filed under Chapter 7 or under Chapter 13. No information was provided about the extent of his assets and liabilities.

In March 2006, Applicant purchased his family home from his father through a conventional 30-year mortgage of \$195,000. He had lived there since May 1989 and had been paying rent to his father. (Tr. 38-39.) His father was remarried and wanted to sell. (Tr. 39.) He knew that it would be a financial stretch for him, but it was a home that he had built

with his father and uncle. (Tr. 39, 52.) His mortgage payment was “roughly \$1,500” a month. (Tr. 38.)

In January 2007, he opened a second mortgage of \$31,122 with the lender identified in SOR ¶ 1.a. Despite taking on a second job as a baker for a donut shop on the weekends for extra income from December 2006 to March 2011 (GE 1), Applicant was chronically late, up to 90 days, in paying his first mortgage. He was past due 60 days in his payment in October 2008. He had not considered the financial costs associated with heating and repairs when he bought the house. (Tr. 47.) Applicant borrowed from his 401(k) in an effort to avert foreclosure (Tr. 32) and brought his mortgage current through February 2009. He made no payments thereafter on annual income from his defense contractor employment of \$48,000 to \$49,000. (Tr. 61.) He tried unsuccessfully to sell the home. (Tr. 40.) Around September 2010, his primary mortgage lender foreclosed on his home. In October 2010, the lender sold the house at auction, which apparently settled his primary mortgage. (GEs 1, 2; AE I.) Applicant also defaulted on his second mortgage. In May 2010, the lender holding his second mortgage charged off his account for \$31,177. As of September 2013, his account had a balance of \$30,677. Applicant offered to continue to make the payments on his second mortgage, but the lender wanted a lump sum to settle the debt, which he could not afford. (Tr. 32.) Applicant rented a room from a friend from October 2010 to July 2011, when he moved into the home of two of his best friends. (GE 1.)

Available credit reports (GE 2; AEs B, I) reflect that Applicant stopped paying on a telecommunications debt in December 2008 (SOR ¶ 1.b). His account was placed for collection for \$717 in December 2010. A credit card lender obtained a \$1,252 judgment against him in April 2009, which he satisfied in February 2010. Another credit card lender referred \$2,550 for collection. Applicant settled the debt for less than its full balance. As of March 2012, Applicant was 120 days late in his payments on another credit card. The lender (credit lender X) closed his account, although Applicant was making payments according to terms on a balance of \$1,176 as of December 2013. A \$70 medical debt was in collection as of December 2013 (SOR ¶ 1.c). (GE 2.)

On December 2, 2013, Applicant completed and certified to the accuracy of an Electronic Questionnaire for Investigations Processing (e-QIP) to renew his security clearance eligibility. Applicant listed the default of his first and second mortgages, which led to the foreclosure and sale at auction by the primary lender. About the second mortgage, Applicant indicated, “I attempted to continue to make payments on this loan, but they said they need collateral, which I did not have anymore.” Applicant added that the debt was reported as a charge off on his credit record. Applicant also reported that he had fallen behind on a few credit card accounts. He had settled one for less than its full balance and was making payments by automatic withdrawal to credit lender X. The stated reason for his delinquency was “same as others, not making enough with cost of living. Debt got too big.” About the \$717 collection debt, Applicant explained that it was for a landline at his foreclosed home. Applicant also listed a \$142 utility debt for a close friend who had not been able to get service in her name. He expected to resolve the debt in the next few months. Applicant provided the following additional comments:

As I wrote in the financial section, I realize that I have shown horrible judgment. But in no way have I ever put or would I ever put the security of information and data that I am entrusted [sic] with through my security clearance in jeopardy. I take pride in the work I do to protect that information. My plan is to use this as a launching point to get my finances in order and [I] am willing to set dates for developing a plan to do that.

(GE1.) In February 2014, the utility provider referred two debts, of \$275 and \$520 for collection. (AE I.)

As of December 28, 2013, Applicant's credit report showed his first mortgage as paid as of September 2010. His second mortgage was reportedly \$30,677 past due with a date of last activity in December 2012. He also owed a \$717 collection balance on the landline account. Additionally, a \$70 medical debt was listed in collection status. (GE 2.)

On September 5, 2014, the DOD CAF issued an SOR to Applicant because of his delinquent second mortgage, landline, and \$70 medical debts. On September 22, 2014, Applicant obtained his credit report. (AE I.) He then contacted the lender of his second mortgage and learned that his debt had been transferred. He arranged to repay \$150 toward the \$30,677 balance by October 16, 2014, and then \$150 every two weeks starting in November 2014. (Tr. 41.) On September 25, 2014, Applicant agreed to make three payments of \$239 in October 2014 to resolve the \$717 landline debt. As of October 2, 2014, he had no success in identifying the medical creditor owed the \$70 collection debt. (Answer.)

Applicant made the payments to resolve the landline debt. (AE G; Tr. 43.) Applicant continued to investigate the \$70 medical debt and discovered it was for laboratory tests on June 26, 2008. (Tr. 33-34.) A statement of payment accounts from the hospital shows that Applicant incurred charges of \$432, of which insurance paid \$362. (AE J.) On December 1, 2014, Applicant paid \$59.51 to resolve the \$70 medical debt. The hospital gave him an administrative credit to adjust his balance to zero (SOR ¶ 1.c). (AE J; Tr. 45.)

Applicant made his initial payment as promised on the second mortgage, but his subsequent payments have been sporadic because he has focused on paying credit card debts and for a storage unit, which costs him between \$250 and \$300 a month. (Tr. 59.) He testified that he made six or seven \$150 payments (Tr. 42-43) by July 28, 2015, although balance information from the loan servicer supports a total payment of \$750. Under the present repayment terms, Applicant has agreed to pay \$300 a month for the next six months toward a balance of \$29,927. (AE C.) Applicant made a \$200 payment on August 6, 2015. He plans to re-evaluate the debt in January 2016 and possibly negotiate a settlement. (AEs J, K.)

Applicant owns a share of real estate bequeathed to him and his three brothers and one sister on their mother's death in 2001. His sister had tried to buy out her brothers to build on the property but was not able to do so. As of late July 2015, Applicant and his

siblings were attempting to sell the property. (Tr. 32-33, 39.) Applicant plans to put his profit from any sale toward his delinquent second mortgage debt. (Tr. 33.)

As of late July 2015, Applicant was making timely payments on an open credit card account with a balance of \$605 and a credit limit of \$700 (AE D) and on an open credit card account with a balance of \$75 on a credit limit of \$350. (AE E.) He is using the two accounts to rebuild his credit. (Tr. 68.) Since January 2015, he had been paying the monthly minimum (\$33 or \$34) to credit lender X to bring the balance to \$1,071. He arranged for automatic payments of \$50 per month from his account at a credit union starting in August 2015. (AE F.) He owes the utility company approximately \$793 for the collection accounts opened in his name for a close female friend who rented out two units through Air B & B. (AE H; Tr. 48, 70-72.)

Applicant is currently repaying two loans from his 401(k). He had taken out the older loan to address credit card debt and to make payments on his mortgage so that the home would not go to foreclosure. Most of his estimated \$1,000 in federal income tax refund for 2014 went to pay debt. (Tr. 68.) In April 2015, he needed a vehicle, and it was less expensive for him to borrow the funds from his 401(k). He paid \$1,000 for a 2000 model-year sport utility vehicle and spent another \$3,000 to \$4,000 for repairs. Applicant expects the older loan will be satisfied by late 2015. Repayment of the other loan, which was for \$10,000, is going to take some time. The repayments are automatically deducted from his pay. (Tr. 50-51, 54-58.) His gross annual salary is \$52,000. (Tr. 60.) Applicant recently earned \$600 in overtime pay that he plans to put toward his mortgage debt in SOR ¶ 1.a. (Tr. 64-65.) He pays his friends \$500 a month, which includes utilities, for a room in their home near his work. (Tr. 47, 73-74.)

The three credit reporting agencies considered Applicant to be a very high credit risk as of September 2014. Applicant admits that he has not always shown good judgment in handling his personal finances over the past several years. He believes he is in a good position now “to get back on the right track.” (GE 1; AE K.) He has not had any financial counseling, although he intends to look into a program at his bank. (Tr. 69.)

Applicant has not allowed his personal financial issues or his depression over the loss of his family’s home to negatively impact his work. He takes pride in his job and does not want to lose it. (Tr. 53-54.) Applicant’s supervisor in the document control office for the past eight years has no concerns about Applicant maintaining his security clearance eligibility. (AE A.)

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 articulated 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 F concerns are established by Applicant's mortgage delinquency and by the landline debt that went to collection. He bought his family's home from his father in March 2006, knowing that it would be a financial stretch for him. Despite borrowing from his 401(k) and working a second job as a baker for a donut shop on the weekends, Applicant could not keep up with his mortgage payments. His primary mortgage was settled in the foreclosure in 2010. The lender holding his second mortgage had charged off a loan balance of \$31,177 in May 2010, before the foreclosure. Applicant had also struggled to pay his utilities for the home, as evidenced by the telephone landline debt of \$717 from December 2008. The \$70 medical debt in SOR ¶ 1.c for laboratory tests in June 2008 appears to have been overlooked by Applicant and does not raise concerns about his financial judgment. Disqualifying conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations," are implicated because of the debts in SOR ¶¶ 1.a and 1.b.

Applicant's credit reports (GE 2; AE I) document a history of credit problems beyond those alleged in the SOR. While Applicant has satisfied a credit card judgment, settled other debts that had been delinquent, and caught up on some accounts, the utility accounts opened for a close friend were placed in collection for \$275 and \$520 in February 2014. Applicant admits that he has yet to pay the utility debts. Debts not alleged cannot serve as a basis for disqualification, but they are relevant to assessing Applicant's financial judgment generally and the risk of recurrence of financial problems.

The debts in the SOR became delinquent five to seven years ago. Yet, it is difficult to apply AG ¶ 20(a), "the behavior happened so long ago, was so infrequent, or occurred under circumstances that it is unlikely to recur and does not cast doubt on the individual's current, reliability, or good judgment." As of the issuance of the SOR in September 2014, the debts had not been resolved.

Applicant's financial problems stem from a combination of excessive reliance on credit and taking on mortgage debt beyond what he could reasonably afford on his income, given his other expenses. His failure to meet some of his debt obligations on time cannot reasonably be attributed to circumstances contemplated within AG ¶ 20(b).²

Applicant has taken affirmative steps to address the debts in the SOR while making payments to reduce his credit card balances since October 2014. Through three payments

¹The 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).

² AG ¶ 20(b) provides for mitigation where the debts were incurred beyond a person's control:

(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.

of \$293 each in October 2014, he satisfied the landline debt in SOR ¶ 1.b. In December 2014, he paid \$59.51, which was accepted in satisfaction of the medical debt in SOR ¶ 1.c. He arranged to repay the balance of his charged-off second mortgage at \$150 every two weeks from November 2014. He made only about five payments by July 28, 2015, to reduce the balance to \$29,927, however. His failure to make consistent payments causes some concern, but the evidence also shows no evidence of irresponsible expenditure. Applicant focused on addressing outstanding credit card balances. As of July 2015, he had reduced his overall credit card balance to \$1,751. On August 6, 2014, Applicant made a \$200 payment toward his mortgage debt, \$50 more than his present repayment arrangement requires. His debt payments warrant application of AG ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”

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,” applies to the landline and medical debts that have been paid. It would be premature to conclude that there are clear indications that the mortgage debt is under control. He owes more than \$29,500 on the mortgage loan, which amounts to half of his annual income from his defense contractor employment. His payments on the loan have been inconsistent. Moreover, he has not received any financial counseling, even while recognizing that it could benefit him. Applicant did not exercise sound financial judgment when he put utility services in his name for apartment units sublet by a friend.

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 his conduct and all the 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.

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

Applicant is a longtime employee of a defense contractor with a very good work record. He has expressed his intent and ability to continue to make his \$300 monthly payments on the mortgage debt until he can make a larger payment or negotiate a settlement. While Applicant’s record of inconsistent payments on that debt raises some

concerns, he is in a better financial position going forward. He rents a room from friends at \$500 a month, which includes utilities, instead of living in his own apartment at likely much higher rent. When Applicant needed a vehicle in April 2015, he bought a 2000 model-year Jeep instead of taking on a loan that he could not easily afford. While he had to borrow from his 401(k) for the car and repairs, the loan is being repaid through payroll deduction. He has reduced his overall credit card balance to a manageable \$1,071. Applicant's financial problems are not completely behind him, but there is no evidence that he is being pressured by the company holding the charged-off account. The Appeal Board has addressed a key element in the whole-person analysis in financial cases, stating:

[A]n 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 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 and quotation marks omitted).

A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of the evidence to determine if a nexus exists between established facts and a legitimate security concern. Applicant indicated on his November 2013 e-QIP that he planned to use his background investigation as a "launching point to get [his] finances in order." The concrete steps taken in that regard provide assurance that he can be counted on to continue to address his debts. Applicant understands that his security clearance and his employment could be jeopardized should he neglect his financial obligations going forward. The Government can re-validate Applicant's financial status at any time through credit reports, investigation, or interrogatories. Approval of classified access to Applicant now would not bar the Government from revoking it, if required.³ After considering all the evidence, I conclude that it is clearly consistent with the national interest to continue Applicant's security clearance eligibility, which he has held since 1988 with no security infractions or violations.

³ The DOHA Appeal Board has held that the Government has the right to reconsider the security significance of past conduct or circumstances in light of more recent conduct that has negative security significance. See ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012).

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:

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|---------------------------|---------------|
| Paragraph 1, Guideline F: | FOR APPLICANT |
| Subparagraph 1.a: | For Applicant |
| Subparagraph 1.b: | For Applicant |
| Subparagraph 1.c: | For Applicant |

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