



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 14-01925
)	
)	
Applicant for Security Clearance)	

Appearances

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

04/15/2015

Decision

HOGAN, Erin C., Administrative Judge:

On October 2, 2014, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline F, Financial Considerations. The action was taken 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 for SORs issued after September 1, 2006.

On October 27, 2014, Applicant answered the SOR and requested that his case be decided on the written record. Department Counsel prepared a File of Relevant Material (FORM) on January 26, 2015. The FORM was forwarded to Applicant on February 3, 2015. Applicant received the FORM on February 11, 2015. He had 30 days to submit a response to the FORM. He timely submitted a Response to FORM with additional documents, which are admitted as Item 10. Department Counsel did not object to Applicant's Response to FORM. Department Counsel's response to Applicant's Response to FORM is admitted as Item 11. On March 14, 2015, the FORM was forwarded to the hearing office and was assigned to me on March 31, 2015.

Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Rulings on Evidence

Item 8 of the FORM is a portion of the Report of Investigation (ROI) from the background investigation of Applicant. The ten-page document is a summary of an interview of Applicant on March 6, 2013, in conjunction with his background investigation. DoDD 5220.6, enclosure 2, ¶ E3.1.20 states, “An ROI may be received with an authenticating witness provided it is otherwise admissible under the Federal Rules of Evidence.” (see ISCR Case No. 11-13999 (App. Bd., February 3, 2014).

Although Applicant, who is representing himself, has not raised the issue via an objection, I am raising it *sua sponte*. While it is clear that Department Counsel is acting in good faith, having highlighted the issue in a footnote in the FORM, Item 8 is not authenticated. (See Government’s FORM, p.2, footnote 1) Applicant’s failure to mention this issue in a response to the FORM is not a knowing waiver of the rule. Waiver means “the voluntary relinquishment or abandonment – express or implied – of a legal right or advantage, the party alleged to have waived a right must have had both knowledge of the existing right and the intention of forgoing it. *Black’s Law Dictionary*, 1717 (Bryan A. Garner ed., 9th ed., West 2009).

Applicant was not expressly informed of the requirement in ¶ E3.1.20 of the Directive that an ROI may be received with an authenticating witness. I cannot conclude he expressly waived this rule. He did not mention Item 8 in his response to the FORM. He may not have read the footnote advising him to review Item 8 for accuracy. I cannot conclude that Applicant’s failure to address the accuracy of Item 8 in his Response to the FORM was a knowing waiver of the rules outlined in the Directive, enclosure 2, ¶ E3.1.20. Item 8 is not admissible and will not be considered in this Decision.

Findings of Fact

In his answer to the SOR, Applicant admits to SOR allegations 1.a – 1.u, and denies personal conduct SOR allegation 2.a. (Item 3)

Applicant is a 56-year-old male employed by a Department of Defense contractor, seeking to obtain a security clearance. (Note: The FORM lists this case as an ADP case. However, the SOR and the database lists the case as an ISCR. I conclude that this case is an ISCR case. Regardless, the adjudicative guidelines are the same for both ISCR and ADP cases.) Applicant has been employed with the company since October 2011. Prior to his current employment, he worked in the same position for a different contractor from April 2010 to October 2011. He has a high school diploma. From November 1976 to May 1985, he served on active duty in the U.S. Navy. He received an Honorable Discharge. He married his current wife in October 2011. His second marriage lasted from 1985 to September 2009. His first marriage lasted from

1978 to 1985. He has a daughter from a previous marriage and several adult stepsons. (Item 4)

Applicant completed an electronic questionnaire for investigations processing (e-QIP) on February 10, 2013. (Item 4) In response to section 26 of the e-QIP, Applicant listed a Chapter 13 bankruptcy. He indicated he “pulled out the bankruptcy and agreed to clear my debts with my lenders.” He listed a \$33,240 debt owed to a bank for a recreational vehicle loan and a \$542 disputed telephone charge which he claims was paid. He answered “No” to a question about having debts that were turned over to a collection agency within the past seven years and having accounts or credit cards suspended, or charged off, or cancelled for failing to pay as agreed. (Item 4) A background investigation was initiated. His background investigation revealed 21 delinquent accounts, a total approximate balance of \$96,642.00. (Item 5; Item 7) It is alleged Applicant deliberately failed to list the delinquent accounts alleged in SOR ¶¶ 1.c – 1.u in response to section 26 of his e-QIP, dated February 10, 2013.

The delinquent accounts include a \$6,128 delinquent credit card account placed for collection (SOR ¶ 1.a: Item 5 at 11; Item 7 at 3); a \$33,240 delinquent recreational vehicle loan account placed for collection in November 2012 (SOR ¶ 1.b: Item 5 at 12); a \$315 account placed for collection in February 2013 (SOR ¶ 1.c: Item 5 at 3; Item 7 at 1); a \$6,966 charged-off credit card account (SOR ¶ 1.d: Item 5 at 4; Item 7 at 2; Item 9 at 23); a \$7,466 charged-off credit card account (SOR ¶ 1.e: Item 5 at 3; Item 7 at 3; Item 9 at 23); and a \$6,078 delinquent time share account (SOR ¶ 1.f: Item 5 at 8; Item 9 at 24).

Additional delinquent accounts include a \$473 charged-off account (SOR ¶ 1.g: Item 5 at 8); a \$7,711 charged-off credit card account (SOR ¶ 1.h: Item 5 at 12); a \$12,605 delinquent motorcycle loan (SOR ¶ 1.i: Item 5 at 11; Item 9 at 1, 25); a \$669 collection account owed to a municipality (SOR ¶ 1.j: Item 5 at 4; Item 7 at 1); a \$796 cell phone account turned over for collection (SOR ¶ 1.k: Item 5 at 12; Item 7 at 1); a \$1,181 charged-off department store credit card account (SOR ¶ 1.l: Item 5 at 12; Item 7 at 2; Item 9 at 26); a \$491 telephone account placed for collection (SOR ¶ 1.m: Item 5 at 13); a \$230 account placed for collection (SOR ¶ 1.n: Item 5 at 13), and three parking ticket accounts placed for collection in the amounts of \$1,351, \$93, and \$93 (SOR ¶¶ 1.o, 1.p, and 1.q; Item 5 at 14).

Additional delinquent accounts include a \$480 medical account placed for collection (SOR ¶ 1.r: Item 5 at 11; Item 7 at 3); a \$492 account placed for collection (SOR ¶ 1.s: Item 5 at 12); a \$996 charged-off jewelry store account (SOR ¶ 1.t: Item 5 at 7; Item 7 at 2; Item 9 at 26); and an \$8,788 charged-off credit card account (SOR ¶ 1.u: Item 5 at 14).

In response to the SOR, Applicant indicates he has been working for the Department of Defense his entire adult life. He has held a security clearance since 1976 when he enlisted in the US Navy. He worked for DoD contractors after his separation from active duty service. In May 2009, Applicant was laid off from a military contractor

as a result of a reduction in force. He was unemployed from May 2009 to April 2010. He received unemployment compensation, but it was not sufficient to pay the bills. (Item 3)

Applicant filed for Chapter 13 bankruptcy on February 13, 2009 in an attempt to save his home from foreclosure. He was in the process of divorcing his second wife. Before these events, Applicant states that his credit score was 720. He always paid his bills on time and met his obligations. His home went to foreclosure, despite the bankruptcy. He did not complete the bankruptcy because he said he “was led astray [by] bad information and advice.” (Item 3) Schedules D and F of Applicant’s Chapter 13 bankruptcy listed the debts alleged in SOR ¶¶ 1.d, 1.e, 1.f, 1.i, 1.l, and 1.t. (Item 9) On July 29, 2009, Applicant’s Chapter 13 bankruptcy was dismissed for delinquent payment plan payments. (Item 9 at 74-75; Item 4, section 17)

Applicant says that it has taken him several years to recover from the loss of income. His wife retired last year because of medical issues. Their income was reduced in half. Applicant was recently promoted with a substantial raise in pay. His income is now at a level that will allow him to work with creditors to repay his debts. He did not provide any figures regarding his current income and expenses. (Item 3)

Applicant claims he lives a modest and quiet life within his means. He enjoys his job and wants to continue to serve his country and the customers he works with. He requests that he be allowed to submit a repayment plan and provide quarterly updates of his progress. He said he could take care of the small items quickly and work out the rest through debt counseling. He did not initiate any repayment plans before responding to the SOR. Applicant says that he cannot be influenced by any foreign power to share any information. He understands the importance of holding a level of trust in the Government and how lives can be affected by a breach of trust. (Item 3)

Applicant denies the falsification allegation in SOR ¶ 2.a. He claims he did not intend to conceal or falsify information on his security clearance application. He assumed DOD had this information because he understood credit matters to be a public record and assumed he would discuss them during the interview process. He misunderstood the question. (Item 3)

In response to the FORM, dated March 8, 2015, Applicant claims that he used only one credit report when completing the e-QIP application. He obtained credit reports from all three credit reporting agencies and believes that some of the entries may be fraudulent. He hired a company to help him dispute the delinquent debts listed on his credit report. He and the company are working on cleaning up his credit. He will pay the bills that are verified as his debts. He indicates the process will be slow. (Item 11 at 1, 16 - 17)

He lists several inaccuracies he discovered including possible identity theft. The three parking citations alleged in the SOR (SOR ¶¶ 1.o, 1.p, and 1.q) were for a car he sold, and the new owner had not transferred the title. He claims they have been removed from his credit report. He provided no verification of this claim. He claims the

debts owed in SOR ¶¶ 1.d or 1.e (there are two accounts with the same creditor), and 1.t are resolved. He provided no proof that these accounts were paid or resolved. (Item 11 at 2)

In early December 2014, Applicant sent several dispute letters to several creditors pursuant to the Fair Debt Collection Practices Act. (Items 11 at 5 – 15). The debts disputed include the debts alleged in SOR ¶¶ 1.c, 1.i, and 1.j. Included in his agreement with the company who is helping him resolve his credit situation is a list of other debts that Applicant intends to dispute, including the debts alleged in SOR ¶¶ 1.a, 1.f, 1.h, 1.k, 1.l, and 1.u. (Item 11 at 17) Of the items he is disputing or intends to dispute, the debts alleged in SOR ¶¶ 1.f, 1.i, 1.l, and 1.t were listed as debts by Applicant on his Chapter 13 bankruptcy filed in 2009. (Item 9) The bankruptcy case was dismissed so the debts were not discharged. Applicant had a duty to pay these debts.

Applicant requests that the positive things in his credit record be considered. He takes his responsibilities and his debts seriously. He requests that he be allowed six months to work with the company who is helping him clean up his credit. If he discovers that he owes the money, he will pay the money. (Item 11 at 17)

Applicant's supervisor wrote a letter on Applicant's behalf. Applicant has been working for him for three and one-half years. He is entrusted with taking care of 4,000 computers and users at their location. He received numerous compliments about Applicant's quality of work and professionalism. He follows all security-related and ethical rules and regulations. His supervisor personally appointed Applicant to take care of the high level officials in his organization. He recommends Applicant for a security clearance. (Item 11 at 18)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered when 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 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.” 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 for obtaining 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 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 concern relating to the guideline 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 over-extended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition AG ¶19(a) (an inability or unwillingness to satisfy debts) and AG ¶19(c) (a history of not meeting financial obligations) apply to Applicant's case. Applicant incurred numerous delinquent debts that he has been unable or unwilling to pay over the past five years.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several mitigating conditions potentially apply to Applicant's case.

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) does not apply. Although Applicant maintains that he resolved the debts alleged in SOR ¶¶ 1.d, 1.e, 1.o, 1.p, 1.q, and 1.t, he provided no verification that the debts were resolved. While Applicant is in the process of disputing debts, the outcome of the dispute remains uncertain. The fact that Applicant is disputing debts that he listed in his Chapter 13 bankruptcy as his debts raise questions about his trustworthiness and reliability. His debts were not discharged in bankruptcy because the bankruptcy was dismissed. Applicant was responsible for paying the delinquent debts listed in his bankruptcy. He provided no evidence that he paid them. Applicant's unresolved debt indicates irresponsible behavior and continues to cast doubt on his reliability, trustworthiness, and good judgment.

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) partially applies because Applicant was unemployed between May 2009 and April 2010. He filed for Chapter 13 bankruptcy in February 2009 in hopes of saving his home from foreclosure. This happened before he was laid off. He was in the process of divorcing his second wife at the time. He stopped paying towards the Chapter 13 payment plan once his home underwent foreclosure. His Chapter 13 bankruptcy was dismissed. Applicant has been working full time since April 2010. Yet, he ignored his delinquent debts. Applicant encountered circumstances beyond his control which caused some financial problems. However, I cannot conclude that he acted responsibly under the circumstances because he provided no proof he resolved his delinquent 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) does not apply. There is no evidence Applicant received financial counseling. He might have received financial counseling in conjunction with his Chapter 13 bankruptcy in 2009, but proof of counseling is not in the record. His attempts to resolve his delinquent debts happened at the last minute, likely in response to the SOR and are still pending. I cannot conclude there are clear indications that Applicant's financial problems are being resolved and/or are under control.

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. While Applicant maintains he settled six debts, he did not provide sufficient proof to conclude that any of his delinquent debts were resolved. Applicant failed to demonstrate that he is making a good-faith effort to resolve the delinquent accounts alleged in SOR ¶¶ 1.a – 1.u.

While Applicant is in the process of disputing all of his delinquent accounts, including accounts that he listed as his debts in his Chapter 13 bankruptcy, he initiated these efforts at the last minute. He has not mitigated the concerns raised under financial considerations.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶15:

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.

Personal conduct concerns are raised because Applicant did not list all of his delinquent debts that were either charged off or transferred to a collection agency in response to section 26 of his e-QIP application. This raises the following Personal Conduct Disqualifying Condition:

AG ¶16(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)

For AG ¶16(a) to apply the omission must be intentional. I find Applicant's omissions were not intentional. He understood that his credit was a public record and that they would be discussed during his background investigation interview. He listed his 2009 Chapter 13 bankruptcy in response to section 26 of his e-QIP application. In fact, he mentioned on the e-QIP application that he "... pulled out of Bankruptcy and agreed to clear my debts with my lenders." (Item 4, section 26). This put the Government on notice of Applicant's financial problems. In addition, Applicant was confused about the process of completing the e-QIP application. He had no intent to falsify his e-QIP application. Guideline E is found for Applicant.

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 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.

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 considered Applicant's active-duty service with the U.S. Navy and his honorable discharge. I considered his favorable employment history with defense contractors. I considered the favorable comments of his supervisor. I considered there were circumstances beyond his control which contributed to Applicant's financial problems, including a one-year period of unemployment from 2009 to 2010. However, Applicant was employed full time since April 2010. He had several years to work on resolving his financial problems, but did not attempt to resolve his delinquent debts until the last minute.

The concern under financial considerations is not only about individuals who are prone to engage in illegal acts to generate funds. Another concern is that failure 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 which raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. In other words, if individuals have trouble managing their finances, this can raise doubts about their ability to handle and protect classified information. Applicant's history of financial problems raises doubts about his ability to handle and protect classified information. Mindful of my duty to resolve cases where there is doubt in favor of national security, I find Applicant failed to mitigate the concerns raised under financial considerations.

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
Subparagraphs 1.a – 1.u:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2a:	For Applicant

Conclusion

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

ERIN C. HOGAN
Administrative Judge