



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



In the matter of: )  
)  
) ISCR Case No. 14-03799  
)  
Applicant for Security Clearance )

**Appearances**

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

06/14/2016

**Decision**

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant’s mortgage loan and some other consumer credit accounts became delinquent during his divorce. He is not being held liable for any mortgage debt after his home loan was foreclosed in December 2014, but he owes approximately \$43,608 in credit card debt from his divorce, of which \$25,319 was past due as of September 2015. Applicant has yet to demonstrate a track record of payments toward his delinquent debts. Clearance is denied.

**Statement of the Case**

On May 20, 2015, 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 security clearance eligibility for him. The DOD CAF took the action under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

On June 4, 2015, Applicant answered the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On October 22, 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 him. On November 3, 2015, I scheduled a hearing for December 1, 2015.

I convened the hearing as scheduled. Five Government exhibits (GEs 1-5) and two Applicant exhibits (AEs A-B) were admitted into evidence without objection. Applicant testified on his behalf, as reflected in a transcript (Tr.) received on December 9, 2015. During the hearing, Department Counsel stipulated that Applicant was not legally liable for the credit card debt in SOR ¶ 1.c.

I held the record open until January 4, 2016, for post-hearing submissions from Applicant. No documents were received by the deadline, so the record closed on January 4, 2016.

### **Summary of SOR Allegations**

The SOR alleges under Guideline F that, as of May 20, 2015, Applicant's mortgage loan was \$3,696 past due with a balance of \$202,543 (SOR ¶ 1.a). Additionally, he was delinquent on three consumer credit card accounts with balances of \$12,875 (SOR ¶ 1.b), \$9,673 (SOR ¶ 1.c), and \$18,427 (SOR ¶ 1.e), and he had filed for a Chapter 13 bankruptcy in February 2014 that was dismissed in April 2014 (SOR ¶ 1.d). When he answered the SOR, Applicant admitted the debts and bankruptcy filing. He explained that his home loan had been foreclosed and he planned to refile for bankruptcy to address the credit card debts.

### **Findings of Fact**

After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 53-year-old high school graduate who served in the military from June 1982 until October 2003, when he retired with an honorable discharge. (GE 1; Tr. 18.) His monthly military retirement income is \$900. (Tr. 19.) Applicant has worked for a defense contractor since November 2003, and he has held a secret security clearance throughout his employment. (GEs 1, 4; Tr. 19, 21.) He is paid an hourly rate of approximately \$30. (Tr. 20.)

Applicant and his ex-wife married in September 1998. (GE 1; Tr. 22.) In November 2004, Applicant and his ex-wife bought a home. He took on a 30-year mortgage, to be repaid at \$1,820 per month. (GE 3.) His ex-wife paid the bills during their marriage (Tr. 30), and available credit records show that his debts were paid on time through 2012. (GE 3.)

In October 2012, Applicant's ex-wife filed for divorce. (AE B.) Applicant and his ex-wife formally separated in November 2012, although they continued to cohabit until their

divorce was final in July 2013. (GE 1; Tr. 22.) Applicant was required to pay his ex-wife, who was unemployed, \$200 a week after they separated. (Tr. 23, 25.) They maintained their joint bank account pending their divorce into which Applicant's pay was deposited. According to Applicant, his ex-wife depleted the funds in their account, leaving him with little to pay their bills. After paying utilities and other household expenses, he could not pay his mortgage or some credit card debts. (Tr. 28.)

On May 14, 2013, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86) to renew his security clearance eligibility. In response to inquiries into any delinquencies involving routine accounts, Applicant listed four credit card debts of \$1,573 (SOR ¶ 1.b), \$1,446 (SOR ¶ 1.e), \$7,146 (not alleged in the SOR), and \$280 (not alleged in the SOR). He explained that he was going through a divorce and his finances were very tight. (GE 1.)

As of May 2013, Applicant was reportedly \$10,921 past due on his mortgage loan (SOR ¶ 1.a). His credit card identified in SOR ¶ 1.b was \$1,304 past due. His credit card account in SOR ¶ 1.e had been closed by the credit grantor for nonpayment since December 2012. The account was past due \$1,764 with a reported balance of \$18,427. (GE 3.) Some of the debt on that account was for his ex-wife's divorce attorney. (Tr. 67.) His credit record also included a past-due retail charge account with a balance of \$11,455 (not alleged in the SOR), which was \$1,043 past due. Timely payments were being made on a credit card balance of \$8,942 (SOR ¶ 1.c), on which Applicant was an authorized user; on a joint auto loan; and on two revolving charge accounts. (GE 3.)

On June 4, 2013, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM) about his finances. Applicant attributed the past-due balances listed on his SF 86 to his ex-wife's spending all their money after they separated. He added that he was in the process of establishing repayment plans for the debts. When asked about unreported delinquencies that were on his credit record, Applicant acknowledged that he was past due on his mortgage loan and on a retail charge account with an \$11,455 balance. He had contacted a debt resolution firm and was currently reviewing his options for resolving his financial issues. (GE 4.)

Applicant and his ex-wife were granted a divorce in July 2013. Under their divorce settlement Applicant is required to pay \$600 in alimony per week for the next seven years to his ex-wife. Applicant has grounds to modify the alimony agreement if his ex-wife, who has no income, earns more than \$400 per week. His alimony obligation will terminate in seven years unless either Applicant or his ex-wife die in the interim or she cohabits with a male not related to her. Applicant retained possession of his automobile and of the marital home. Applicant was solely responsible for the mortgage, taxes, insurance, and maintenance of the property.<sup>1</sup> His ex-wife was awarded half of his 401(k) and also his pension benefit as valued at the time of their divorce. Applicant retained his military pension free of any claim by his ex-wife. In addition to the mortgage (SOR ¶ 1.a), Applicant

---

<sup>1</sup> Applicant's ex-wife vacated the marital home around September 2013. Applicant covered \$300 of her moving expenses. (Tr. 70.)

assumed sole liability for repaying the debts in SOR ¶ 1.b (reported at \$8,000), SOR ¶ 1.e (reported at \$10,000), and four debts not alleged in the SOR with balances of \$781, \$11,577, \$7,000, and \$374. His spouse was financially liable for the credit card debt (reported at \$8,486) in SOR ¶ 1.c as well as two other credit card debts.<sup>2</sup> (AE B.)

Applicant made no payments on the debt with a claimed \$781 balance, and in June 2013, the account was sold. As of September 2015, the past-due balance was \$2,810. In September 2013, the debt in SOR ¶ 1.b was placed for collection for \$12,875. He stopped paying on the debt in SOR ¶ 1.e in February 2014. (GE 5.)

Sometime in 2013, Applicant borrowed \$25,000 from his 401(k). Some of the loan went toward past-due debts. His ex-wife took half of the 401(k) funds immediately because she had been awarded half of the balance of his 401(k) in their divorce. (Tr. 56.)

On February 17, 2014, Applicant filed a Chapter 13 bankruptcy petition to address his delinquent credit card debt. (Tr. 32, 34.) He paid \$400 to his bankruptcy attorney for the filing. (Tr. 31.) Because of issues involving Applicant's mortgage, the bankruptcy was dismissed in April 2014 before any plan could be confirmed. (GEs 2, 5; Tr. 31, 34.)

As of May 2014, Applicant was past due \$3,696 on his mortgage. (GE 2.) In December 2014, his lender foreclosed on his home for nonpayment since November 2012. (GE 5; Tr. 24.) After losing his home, Applicant began paying a bankruptcy attorney \$50 per month toward a retainer fee of \$3,000 with the intent of refiling for bankruptcy at some future date. (Tr. 32-33.)

By September 2015, Applicant had made no progress toward resolving the credit card debts in SOR ¶ 1.b (\$12,875 in collection) or SOR ¶ 1.e (\$17,364 balance). When asked at his hearing to explain his lack of progress toward addressing his delinquencies, Applicant responded, "I was just maybe being careless." (Tr. 55.) Applicant also reportedly owed past-due balances of \$2,810 (from \$781 on divorce papers) and \$9,502 (from \$7,000 on divorce papers) on accounts not included in the SOR.<sup>3</sup> A \$1,057 credit card delinquency from March 2013 not covered in his divorce had been placed for collection in March 2014. (GE 5.) The account on which he was an authorized user and his ex-wife's responsibility (SOR ¶ 1.c) was charged off for \$9,818 in July 2014. The balance on his home loan was reportedly zero after the foreclosure. (GE 5.) Applicant has received no paperwork from the lender since the foreclosure. (Tr. 26, 64.)

---

<sup>2</sup> The divorce settlement did not include the \$7,146 debt listed on his SF 86. That account was reported as having a zero balance on his May 2013 credit report after the account was transferred. (GEs 2, 3, 5.)

<sup>3</sup> The \$11,455 retail credit card debt included in his divorce paperwork was reported by Equifax as having a zero balance as of March 2014 after being included in a Chapter 13 bankruptcy. It does not appear on his September 2015 credit report, so the lender may have written off the debt. At his hearing, Applicant initially testified that he or his ex-wife "maybe paid that one off." (Tr. 74.) After being shown his credit record, he indicated that the debt had not been satisfied. (Tr. 76-77.) Additionally, Applicant admitted that he had not paid the \$7,000 credit card debt (not alleged in the SOR), which had accrued to \$9,502. (Tr. 79.)

With the intent of rehabilitating his credit, Applicant applied for a \$33,000 loan from his 401(k) on November 28, 2015. (Tr. 35.) Available records show a processing date of December 1, 2015. Repayment term is \$137.56 per week from January 4, 2016, to December 21, 2020. (AE A.) Applicant is still repaying his 2013 loan from his 401(k) at about \$60 a week. He has three more years of payments before that loan is satisfied. (Tr. 60.)

Applicant works about 50 hours a week when overtime is available. His take-home pay increases from \$400 to \$600 a week when he works overtime. (Tr. 45.) Over half of his paycheck is paid in alimony to his ex-wife. To Applicant's knowledge, she is still unemployed. (Tr. 42-43.) Applicant estimated that he has about "a couple hundred" in discretionary funds available after he pays his recurring expenses. It does not include the \$550 in repayment of the 401(k) loan that was yet to be disbursed as of his hearing. (Tr. 61.)

Applicant paid off his car loan in November 2013. (GE 5; Tr. 42, 66.) As of December 2015, Applicant had \$800 on deposit in his checking account. (Tr. 42.) Applicant still owes his divorce attorney "roughly \$2,000" of the attorney's \$3,000 fee. (Tr. 43.) Applicant had not had any financial counseling. He has not opened any new credit cards since 2013. (Tr. 93.)

As of December 2015, Applicant had not yet filed his federal or state income tax returns for tax year 2014 because he could not find his W-2 for his military retirement income. He requested the missing W-2 information in August 2015 and was given an extension to file to October 2015. He does not know whether he owes taxes for 2014. He owes federal taxes of approximately \$1,000 for tax year 2013. Occasionally he sends \$10 or \$20 to the Internal Revenue Service (IRS) for his back taxes. He has sent no payment to the IRS since June or July 2015. (Tr. 47-49.)

## **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 concerns about financial considerations are 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.

Applicant stopped paying his mortgage and some credit cards after he and his ex-wife separated in November 2012. As of May 2013, Applicant was past due on his mortgage and on the credit cards in SOR ¶¶ 1.b and 1.e. The debt in SOR ¶ 1.c was charged off for \$9,818 in July 2014, but Applicant was only an authorized user on the account. His ex-wife was solely legally liable for repayment of that debt after their divorce. Applicant is legally liable for repayment of debt balances beyond those alleged in the SOR. As of May 2013, his revolving charge account with a retailer was \$1,043 past due on a balance of \$11,455. Around June 2013, another retailer charged off a \$2,810 balance. Another credit card debt of \$1,057 was placed for collection in March 2014. Around

October 2013, he stopped paying on a credit card debt that has accrued to \$9,502 as of August 2015. Applicant filed a Chapter 13 bankruptcy petition in February 2014 (SOR ¶ 1.d) to address his delinquent credit card debt, but it was dismissed in April 2014 without a plan being filed.

Applicant reportedly owed nothing on the mortgage after the foreclosure of his home in December 2014. As of September 2015, the \$11,455 revolving charge debt (not alleged in the SOR) was no longer on his credit record. However, Applicant admits that the debt has not been paid. Equifax was reporting past-due balances of \$12,875 on SOR ¶ 1.b, \$17,364 on SOR ¶ 1.e, and \$13,369 on three past-due accounts not included in the SOR. The \$13,369 in additional debt on his credit record and the unpaid \$11,455 retail charge debt that has been dropped from his credit record cannot provide bases for disqualification because they were not alleged.<sup>4</sup> Nevertheless, Applicant's nonpayment of his mortgage loan and of the credit cards in SOR ¶¶ 1.b and 1.e sufficiently establish AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations."

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 in this case. The accounts became delinquent within the last five years, and he has no record of recent payments.

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 implicated in that Applicant's financial struggles largely began because of his divorce. Despite receiving \$200 a week from Applicant during their separation, his ex-wife depleted their joint bank account, which he was required to maintain pending their divorce. Since their divorce in July 2013, he has had an alimony obligation of \$600 per week, which has compromised his ability to address his delinquencies. He has had consistent income from his employment with a defense contractor and from his military retirement pay. Nonetheless, given his alimony obligation, he may not have been able to make other than small payments toward his debts. Under the circumstances, Applicant acted responsibly by filing a Chapter 13 bankruptcy under which his creditors would have received at least a percentage of what he owed. However, Applicant cannot be said to have acted fully responsibly toward his creditors when he made no attempts to arrange affordable repayment terms with his creditors after his bankruptcy was dismissed. When asked at his hearing to explain his lack of progress toward addressing his delinquencies, Applicant responded, "I was just maybe being careless." (Tr. 55.)

---

<sup>4</sup> 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 additional credit card delinquencies are relevant to assessing Applicant's financial judgment generally.

The foreclosure of Applicant's home has apparently resolved his mortgage debt. To the extent that 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, it does not mitigate the credit card delinquencies that were yet to be addressed as of his security clearance hearing. In late November 2015, Applicant applied for a \$33,000 loan from his 401(k), which he intended to use to reduce his delinquent debt. The record was open for additional documents until January 4, 2016, but Applicant forwarded no documents showing payments toward the debts in SOR ¶ 1.b or SOR ¶ 1.e, or the \$13,369 in unalleged debt listed on his recent credit report.

Applicant's application for the 401(k) loan could be considered a good-faith effort to address his credit card delinquencies. Yet, it would be premature to apply either AG ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," or AG ¶ 20(c) without evidence showing disbursement of monies to his creditors. Applicant has no track record of timely payments from which I could reasonably conclude that he will manage his finances responsibly.

AG ¶ 20(e) applies, but only to the debt in SOR ¶ 1.c. Available credit information shows that Applicant was only an authorized user of the account. His divorce paperwork (AE B) confirms that his ex-wife is solely liable for repayment. AG ¶ 20(e) provides:

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

Applicant admits that he incurred at least some of the debt on the credit cards that he is legally liable to repay, and as of the close of the evidentiary record, he had made no payments toward the debts. The financial considerations security concerns are not fully mitigated under the adjudicative guidelines.

### **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).<sup>5</sup> The analysis under Guideline F is incorporated in my whole-

---

<sup>5</sup> The 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.

person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant's finances continue to be impacted by a significant alimony obligation that was assessed based on his income from his employment and military retirement income. Concerning Applicant's financial situation as a whole, he has a significant financial burden even with the resolution of his mortgage. In addition to the credit card debts discussed above, he owes the IRS approximately \$1,000 for tax year 2013. He has made only sporadic payments toward his delinquent taxes and none since June or July 2015. He also still owes his divorce attorney approximately \$2,000. The DOHA Appeal Board has held that an applicant is not required to establish that he has paid each debt in the SOR, or even that the first debts paid be those in the SOR. However, an applicant needs to show that he has a plan to resolve his debts and that he has taken significant steps to implement his plan. See ISCR 07-06482 (App. Bd. May 21, 2008). Even if his loan from his 401(k) is processed as requested and he puts the entire \$33,000 toward his delinquent debt, he will have \$550 a month in loan payments for the next five years, and it is not clear that he can afford those payments. As of his hearing in December 2015, Applicant had not filed his federal or state income tax returns for tax year 2014. He was apparently missing his W-2 for his military retirement pay, but he also did not request it until August 2015. It is unclear whether he owes any delinquent taxes for 2014.

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 (9<sup>th</sup> Cir. 1990). 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 has not shown the good judgment that is demanded of persons with access to classified information. While his financial situation was not completely of his own making, he has not been proactive about resolving debts that he is legally liable to repay. After considering all the facts and circumstances, it is not clearly consistent with the national interest to continue his 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:	For 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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

---

Elizabeth M. Matchinski  
Administrative Judge