



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



In the matter of:)
)
-----) ISCR Case No. 14-03930
)
Applicant for Security Clearance)

Appearances

For Government: Stephanie Hess, Esquire
For Applicant: *Pro se*

06/27/2016

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On December 3, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing 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 DOD on September 1, 2006.

In a December 12, 2014, response, Applicant denied all allegations and requested a hearing before the Defense Office of Hearings and Appeals (DOHA). The case was designated ready to proceed on September 18, 2015. I was assigned the case on October 28, 2015. The case was scheduled on November 2, 2015, for a December 1, 2015, hearing, which was convened as scheduled.

The Government offered eight documents, which were accepted without objection as exhibits (Exs.) 1-8. Applicant offered testimony and four items, which were accepted without objection as Exs. A-D. The record was held open through December 31, 2-15, in the event the parties wished to submit additional material. The transcript

(Tr.) was received on December 8, 2015. On January 6, 2016, I received a package of seven files from the Applicant through the Government, which noted no objections. The items were accepted as Exs. E-K and the record was closed. After review of the record as a whole, I find that Applicant failed to mitigate financial considerations security concerns.

Findings of Fact

Applicant is a 48-year-old association director who has worked in the same position since April 2013. Raised in a military family, he entered the military after high school. He served on active duty in the United States military for 22 years, retiring honorably at the rank of Chief Warrant Officer 3 in 2008. After his discharge, he earned a Bachelor's degree, then a Master of Arts degree.¹ He is currently working on a second master's degree. Applicant is married. His wife held various part-time jobs during Applicant's tenure in the military, but began earning \$35,000 a year as an elementary school teacher in 2014. Together, they raised three children as he paid child support to the mother of his fourth child. Applicant is highly praised by friends and colleagues for his qualifications, leadership, initiative, integrity, and faith. (Ex. A)

Throughout his time in the military, Applicant struggled financially. (Tr. 19) He attributes this to his multiple relocations, child support payments, and related expenses. He received financial counseling both in the military and when he filed for bankruptcy protection in 2005. As noted in the SOR, there are approximately three Federal and state tax-related debts (\$3,984, \$2,447, and \$4,941, respectively), a charged-off consumer balance (\$10,417), 22 debts that were included in the Chapter 13 bankruptcy filing reflecting nearly \$112,000 in past-due obligations, and issues related to the misuse of a government travel card and a child support wage garnishment.

In 2005, Applicant and his family had just relocated for one of the nine moves they made during his 22 years of military service. By that point, he and his wife felt overwhelmed with bills, mostly related to consumer debt. Applicant filed for bankruptcy protection under Chapter 13. He made payments of about \$400 to \$500 a month on the bankruptcy plan for three or four years before he could no longer meet the payment schedule. Ultimately, the bankruptcy court dismissed his petition.

At issue in the SOR are the following obligations:

The charged-off consumer debt for \$10,417 noted at SOR 1.a related to a vehicle that was originally included in Applicant's bankruptcy petition. (Tr. 26) Applicant provided evidence that he negotiated a repayment plan for the vehicle under which he would pay \$200 a month from November 2013 through February 2016 to satisfy the debt. As of December 2015, however, the balance remaining was shown as \$7,617. (Ex. E at 2).

¹ Applicant's student loans are currently deferred. (Tr. 22; Ex. C) It is his plan to satisfy them by making payments on them for ten years and then have the balance forgiven through work as a teacher.

As of December 2015, the Federal tax balance of \$3,984 at SOR 1.b is in repayment with a current balance of \$2,149. Applicant testified that he is making \$150 monthly payments toward the debt, but provided no evidence that this is the actual sum or that his payments have been regularly made. (Tr. 27-28; Ex. E at 3)

Applicant showed the balance on the state tax obligation of \$2,447 noted at SOR allegation 1c was, as of December 2015, \$690.77. He stressed that he had been making monthly payments of \$150 for an unspecified period of time. There is no evidence, however, of those payments, only the reduced balance. (Tr. 28; Ex. E at 4)

The taxes owed to a second state for approximately \$4,941 at SOR allegation 1.d is now at \$3,525.79. Applicant provided evidence that one payment of \$180 was received in November 2015, he but provided no other evidence reflecting a timely pattern of regular payments on the tax year (TY) 2013 debt. (Tr. 29; Ex. E at 5) He has no other outstanding tax issues. (Tr. 30)

After Applicant's 2005 bankruptcy petition was dismissed, he found it very confusing to keep the various creditors and their successors straight. He testified that he and his wife have settled or satisfied most of the debts at issue, an effort they started in about 2010. (Tr. 32-36, 44) He did not, however, provide evidence of such efforts except with regard to SOR allegations:

1.e(1) for \$7,149 – Applicant testified that he has been paying this creditor \$150 per month for an unspecified time. The balance is now reduced to \$1,154. (Ex. F)

1.e(4) for \$1,416 – Applicant wrote that he called this creditor, but was told it had no record of the account. (Ex. G)

1.e(5-7) for \$4,881, \$4,977, and \$2,643, respectively – Applicant wrote that he contacted this creditor and was told that it no longer had a record of the accounts at issue, possibly due to their age. (Ex. H at 1)

1.e(12) for \$939 – Despite Applicant's showing that he made a payment on this account of \$160 in November 2015, his evidence shows that the balance is now increased to \$1,069. It is unclear whether this is due to fees, interest, or another factor. (Ex. H at 2)

1.e(15) for \$7,918 – In December 2015, Applicant contacted this creditor and was told that he could settle the principal balance of \$5,962 through \$50 monthly payments over the next 12 months, beginning January 2016. As of the time the record closed, no payments had yet been made.

1.e(16) for \$12,081 – Applicant was issued an Internal Revenue Service (IRS) Form 1099C for (Cancellation of Debt) for TY 2013 for this obligation, with the "identifiable event" date noted as having been in December 2005. (Ex. J at 1) Applicant

wrote that he included this account with his TY 2013 tax filing, although he provided no documentary evidence of its inclusion.

1.e(18) for \$5,442 – Applicant provided documentary evidence indicating that this balance is now reduced to \$4,242, with a final payment in November 2015. No other evidence of payment was included. (Ex. J at 2-3)

1.e(21) for \$8,605 – The balance on this account has increased to \$13,857. Applicant stated that he has been in repayment on this account for “a year or so.” His documentary evidence, however, consists of a payment plan for making monthly payments of approximately \$126 from December 2015 through November 2016. (Ex. K) There is no documentary evidence of actual payments.

None of the other creditors at issue are still contacting him. After being interviewed by investigators about his debt before the December 2014 SOR was issued, Applicant considered contacting a law firm specializing in helping individuals with extensive debt issues. (Tr. 36) He thought it could help him better understand the current status of his debts and finances, and help him answer questions posed by the investigators he could not address. As well, he wondered if some of the cited debt could be related to identity theft. To date, there has been no evidence of identity theft.

Eventually, in late 2015, Applicant engaged the law firm. He testified that the firm is disputing an unspecified number of the accounts at issue. (Tr. 55) He presented evidence reflecting that five account entries have been removed from his credit report, although it is unclear as to what prompted this action. (Ex. D) He has also asked it to contact those creditors, verify what sums are owed, and advise him as to how he should proceed. It is also working to increase his credit score by making suggestions to ameliorate his situation. One such suggestion, which Applicant offered without elaboration, was to have him take one of his credit cards and “cut it in half in terms of what [he owes] because they said if you keep it under 50 percent of that you’re allowed, that increases your credit score.” (Tr. 55) To date, he only has received one report from the firm regarding its initial efforts.

Presently, Applicant states that he is doing “very well” financially. (Tr. 38) There is no evidence of new delinquent debt, however, there is also no documentary evidence of his current expenses or obligations. (Tr. 54; Ex. C) His household income includes about \$38,000 in military retirement income, a \$90,000 work income, and his wife’s \$35,000 income. Applicant now feels poised to address his remaining debt aggressively. He maintains a minimal savings account, writing that he prefers to devote any additional income straight to debt liquidation. At present, he is making payments on the debts cited noted from the SOR, as well as \$126 a month on an account of which he believes was part of his bankruptcy under a different name, but he is unsure.

Applicant also testified that he is making payments on other debts that he believes were also part of his 2005 bankruptcy filing, but he can no longer identify because the names of many of the creditors have changed. To those accounts, he is

making payments of \$126 a month and \$150 a month, respectively. (Tr. 39-40) Payments are also being paid on two credit cards held by his spouse, at the rate of \$60 and \$150 a month, respectively. (Tr. 40) He has plans to address a \$4,300 balance owed to a jeweler over the next year-and-a-half, and payments of about \$525 toward Applicant's wife's 2012 or 2013 used BMW vehicle. (Tr. 41) At the end of each month, Applicant wrote that he has a net monthly remainder of about \$1,500 to \$2,000. Some of that surplus goes to his church, while the rest goes to liquidate debt. Applicant believes he currently has about \$20,000 to \$25,000 in outstanding debt, not including his deferred student loans (Tr. 43)

In 2005 or 2006, Applicant used his Government travel card to purchase "gas and groceries and stuff like that." (Tr. 44) His superior at work discussed the matter with him, advising him that he could not use his Government card for personal purchases. By that point, Applicant had timely paid the balance on the card. Applicant stated that it was his only citation for improper on-the-job activity. (Tr. 45)

Applicant denies that he has had his wages garnished for child support. He explained that, unbeknownst to him, a garnishment was put in place automatically when he was sent on an overseas assignment. (Tr. 46). Applicant immediately inquired about the garnished deductions. He was told it was a common practice implemented to assure child support payments were properly made while servicemen were abroad. Because a garnishment had been instituted, he cancelled the automatic child support payment deductions he had instituted a dozen years previously, and let the imposed garnishment process satisfy his obligation. (Tr. 46)

Policies

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 used 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 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 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, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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 the applicant may deliberately or inadvertently fail to safeguard 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).

Analysis

Guideline F, Financial Considerations

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 engaging in illegal acts to generate funds.

Here, there is credible evidence showing Applicant acquired over \$130,000 in delinquent debts, has taxes owed, was subject to a child support garnishment, and was irresponsible with a government travel card. This is sufficient to invoke financial considerations disqualifying conditions:

AG ¶ 19(a): inability or unwillingness to satisfy debts;

AG ¶ 19(c): a history of not meeting financial obligations, and

AG ¶ 19(d): deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust.

Five conditions could mitigate these finance related security concerns:

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;

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;

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;

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

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.

The delinquent debts at issue are multiple in number, with most being many years old. Applicant testified that he is currently living within his means. The evidence indicates that he has not acquired any recent delinquencies. The picture of Applicant's full financial situation, however, remains incomplete. There is also little evidence of any financial reserves beyond the sums he devotes to tithing and delinquent obligations.

Moreover, Applicant concedes that he has struggled financially throughout his career, due in part to nine military relocations during his 22 years of service. Although the military subsidized his moving and living expenses, the sum was insufficient for him to meet his family's needs and his child support obligation, especially since his wife did not start working full-time until 2014. Ultimately, he filed for Chapter 13 bankruptcy protection in 2005, but was unable to continue with its associated payments. His petition was dismissed in 2009. Given these facts, neither AG ¶ 20(a) nor AG ¶ 20(b) applies with regard to Applicant's debts, although he provided sufficient facts to counter allegations that he intentionally misused his Government travel card and neglected his child support obligation. With regard to those allegations, AG ¶ 20(a) applies.

Applicant has received financial counseling. There is also documentary evidence that some of the debts at issue are being addressed, such as those noted at SOR allegations 1.a-d, 1.e(1), 1.e(18), and the IRS 1099 cancellation of debt regarding 1.e(16). Other account balances previously associated with Applicant's dismissed bankruptcy petition have either increased in balance, are not yet in repayment, or the creditor no longer has a record of the accounts (i.e., 1.e(4-7)). There is no documentary evidence indicating that Applicant has disputed them with any of the major credit reporting bureaus. In his favor, Applicant recently enlisted the aid of a law firm to help him address his delinquent debts and improve his credit. To date, however, there is little

documentary evidence of progress. While some overall progress has been made, Applicant's approach has lacked a thoughtful, organized strategy. Hopefully, the law firm will soon give his efforts some cohesion. At this point, while AG ¶ 20(c) only applies in part, I find, at best, there is sufficient documentary evidence to give rise to AG ¶ 20(d). It is premature, however, to conclude whether AG ¶ 20(e) is applicable.

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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). AG ¶ 2(c) requires that the ultimate determination must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Here, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I incorporated my comments under the guideline at issue 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 highly credible, straight-forward, and hard-working man who honorably served this country for many years. He is well educated, happily married, has raised three children, and responsibly supported a fourth child financially. He is active with his church. His professional life is devoid of notable errors, with his alleged misuse of a Government travel card apparently the result of a misunderstanding and an aberrant occurrence, just as the suggestion that his child support was elicited through garnishment due to irresponsibility was based on an apparent misinterpretation.

Throughout his lengthy military career, however, Applicant struggled with finances. He was unable to adhere to the payment schedule associated with his 2005 Chapter 13 bankruptcy petition. It was dismissed in 2009. He was unaware of many of the debts ultimately at issue in the SOR until interviewed by investigators about two years ago. He attempted to sort out his delinquent debts, their current statuses, and identify the successors to obligations once included in his bankruptcy petition, but with little success. It was not until this past year he made some notable strides. Except for one or two debts, he did not start approaching or researching his creditors until late 2015. He only recently felt that he was able to address his delinquent debt in earnest. Consequently, he enlisted the aid of a law firm specializing in helping clients sort out their credit and financial issues.

Applicant credibly testified as to some of his efforts to contact a few of the creditors at issue. He volunteered information about multiple debts not noted on the SOR. He acknowledges he has at least \$20,000 to \$25,000 in delinquent debt outstanding. He showed that he has formally engaged the aforementioned law firm to help him address his financial issues and noted that five adverse entries have been deleted from his credit report. He also provided documented evidence that he has made progress toward those accounts reflected at SOR allegations 1.a-d, 1.e(1), and 1.e(18),

and that he received an IRS 1099 cancellation of debt form regarding 1.e(16). At this point, however, there is much more to be done to bring Applicant's delinquent accounts under control. Questioned or out-of-date accounts and balances yet need to be formally disputed with the credit reporting bureaus. Payment on some contemplated repayment schedules need to be commenced. In addition, other documentary evidence reflecting a proven track record of addressing the delinquent debts alleged needs to be compiled.

This process does not require that an Applicant satisfy, or even address, all of one's delinquent accounts. It does, however, expect that an applicant employ a reasonable, organized plan to address such debts. It then requires documentary evidence showing that the plan was successfully implemented. While Applicant has started acknowledging his financial issues in earnest, he has thus far failed to provide such evidence. At this point it is premature to judge the efficacy of his present strategy. Therefore, under these facts, I find that Applicant has not mitigated financial considerations security concerns.

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.d:	For Applicant
Subparagraph 1.e(1):	For Applicant
Subparagraph 1.e(2)-(15):	Against Applicant
Subparagraph 1.e(16):	For Applicant
Subparagraph 1.e(17):	Against Applicant
Subparagraph 1.e(18):	For Applicant
Subparagraph 1.e(19)-(22):	Against Applicant
Subparagraphs 1.f-1.g:	For Applicant

Conclusion

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

Arthur E. Marshall, Jr.
Administrative Judge