



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



In the matter of:)
)
) ISCR Case No. 14-04665
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

11/21/2015

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense's (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. Applicant owes federal income tax, he has had three vehicles repossessed, and his home went to foreclosure. Additionally, he has a number of charged-off, collection, or delinquent accounts, which total approximately \$14,000. He has made payment on some of his delinquent debt, but failed to document any federal tax payments, payment on the debts resulting from his three repossessed vehicles, and on other delinquent obligations. He has failed to mitigate the financial considerations security concerns. Clearance is denied.

History of the Case

On January 14, 2015, acting under the relevant Executive Order and DoD Directive,¹ the DoD issued a Statement of Reason (SOR) detailing financial

¹ Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*

considerations security concerns. DoD adjudicators could not find that it is clearly consistent with the national interest to grant or continue Applicant's security clearance. On March 9, 2015, Applicant answered the SOR and requested a hearing. On May 27, 2015, I was assigned the case. On June 17, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for a hearing to be convened on July 8, 2015.

At the hearing, Government's Exhibits (Ex.) 1 through 4 and Applicant's Exhibits A through D were admitted without objection. Applicant testified at the hearing, as did his wife. On July 17, 2015, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, he admitted his failure to file federal and state income tax returns for four years, filing for bankruptcy protection in 2006, and 19 charged-off or collection accounts. His admissions are incorporated as facts. After a thorough review of the pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 35-year-old assistant systems administrator who has worked for a defense contractor since June 2013, and he seeks to obtain a security clearance. (Tr. 21) His gross annual salary is approximately \$53,000 and his wife's annual income, who works in customer service for a financial company, is \$28,000. (Tr. 30) His wife has only recently obtained her current job after completing schooling. The household income is approximately \$81,000. From February 2000 through May 2000, he honorably served in the U.S. Navy. Kidney infections during the last week of boot camp resulted in him separating from the Navy. (Tr. 28) His medical condition would have prevented him from being assigned aboard ship.

Applicant was unemployed from February 2012 through May 2012 and April 2013 through June 2013. (Tr. 28) In 2013, he had a job with the sheriff's office paying \$41,000 annually. (Tr. 29) A dispute arose when he requested an increase in salary to \$48,000 annually. He was told there were numerous individuals willing to do the job for less than \$30,000. He had a couple of jobs lasting a few months each before securing his current job in 2013. (Tr. 29)

In June 2005, Applicant divorced. He believes he married too young. (Tr. 34) His wife was a financial assistant at a university. He remained a single parent until remarrying in April 2012, and has two children ages four and eight. (Tr. 47) His wife now has her associate's degree. (Tr. 61) His wife believes they can correct their financial problems. (Tr. 59) Applicant receives significant support from his spouse. Applicant is family oriented and attends church. (Tr. 63) He spends much time reading to improve his job performance. (Tr. 64)

(January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

In October 2005, Applicant filed for Chapter 7 bankruptcy protection (SOR 1.c) due to medical expenses incurred by his then wife. (Ex. 3, 4) Additionally, he had rented a house for \$1,000 monthly, which was above his ability to pay. (Tr. 34) In 2008/9 a twitch to the right side of his face resulted in him being in the hospital for several weeks and incurring a \$27,000 hospital debt covered by his medical insurance. (Tr. 21)

Applicant failed to file his Federal and state income tax returns for tax years 2006, 2009, 2010, and 2011. He indicated that as a single parent he did not have sufficient funds to pay his taxes. (Ex. 1) He made a choice not to have taxes withheld from his pay. (Tr. 33) He was paying \$700² for his son's daycare. (Tr. 24) He also incurred expenses related to the custody of his son. For tax year 2006, his income was approximately \$32,000 and he had less than \$600 withheld for federal tax and no state tax withheld. (Ex. A-1) For tax year 2009, his income was approximately \$49,000 and for 2010 it was approximately \$48,700. (Ex. A-2, A-3) He had no state or federal tax withheld from his wages for those two years. No IRS documents were presented as to tax year 2011.

Applicant believes he owes less than \$7,000 in federal income taxes, but provided no documentation supporting this assertion or documents showing payment made to the IRS. He stated that once everything is sorted out with his taxes, he intends to make payment by garnishment. (Tr. 26-27) When he completed his June 2013 Electronic Questionnaires for Investigations Processing (e-QIP), he stated he would be contacting a tax attorney to assist him in addressing his past-due tax obligation. (Ex. 1) There is no evidence he did so. In 2012, Applicant's wages were garnished by the state taxing authority. He believes all his prior state taxes have been paid. (Tr. 48) His current state of residence does not have personal income tax.

On Applicant's e-QIP, he listed three delinquent automobile debts totaling approximately \$18,600, a \$6,800 student loan, four medical bills totaling approximately \$2,000, two delinquent telephone bills totaling more than \$1,000, and three other delinquent accounts totaling more than \$1,000. As of June 2013, he indicated he was more than \$29,000 delinquent on 14 accounts. (Ex. 1)

In July 2006, Applicant purchased a \$10,574 vehicle with \$442 monthly payments. (Ex. 2) Applicant's car was gone one day and never recovered, resulting in a \$9,459 charged-off account (SOR 1.d). (Tr. 35) It may have been stolen or it may have been repossessed because, at the time it went missing, he was behind on his car payments. (Tr. 36) He was unsure if he filed a police report concerning the missing car and provided no documentation of an insurance claim on the missing vehicle. He indicated payment of this debt would have to wait until "a better time." (Tr. 27) He purchased an \$8,000 vehicle that, after a year, he was behind on payments. (Tr. 38) The creditor repossessed the vehicle and sold it for \$1,800. The creditor charged off approximately \$5,000 on the account. Another automobile creditor charged off \$3,188 (SOR 1.i). After purchasing the car and paying on it for a year, the car required \$2,500 in repairs. He stated with he and his first wife were experiencing financial problems, and

² Applicant did not indicate if this was a weekly or monthly amount.

her mother took possession of the car and agreed to make payments on the vehicle. (Tr. 33) However, she wrecked the car, returned it, and made no additional payments on the car.

Applicant asserts his two student loans (SOR 1.f, \$4,708 and SOR 1.g, \$2,870) are being paid by a \$75 monthly automatic allotment. (Ex. D, Tr. 40) He provided a single document showing one \$75 payment was taken from his bank account on June 11, 2015. (Ex. D) He had taken an information technology (IT) course to obtain a certification, but believes he was scammed by a bogus school. (Ex. 1) On his November 2014 credit report, the amounts owed on his student loans were \$4,000 and \$7,558. (Ex. 3) On his April 2015 credit report, the amounts owed had been reduced to \$2,522 and \$4,153, which was a \$5,000 reduction of his student loans. (Ex. 4)

Applicant owes approximately \$2,000 on six medical collection accounts (SOR 1.j, \$857; SOR 1.n, \$544; SOR 1.o, \$344; SOR 1.q, \$142; SOR 1.r, \$83; and SOR 1.s, \$81). He incurred a \$531 debt (SOR 1.u) from cable provider when he failed to return the cable box and router and incurred a \$638 (SOR 1.k) collection debt from a different cable provider. (Tr. 41)

Applicant had a \$599 telephone service collection account (SOR 1.l) and a \$555 telephone service collection debt (SOR 1.v). He incurred a \$590 collection debt (SOR 1.m) for airport parking. He is delinquent on a \$344 electric service collection account (SOR 1.o). (Tr. 43) He asserts he paid a \$241 insurance collection account (SOR 1.p) and settled an \$833 loan collection account for \$400. (Tr. 43) No documentation showing payment was received. He has not recently talked with his creditors. (Tr. 42)

Applicant provided letters indicating that two medical bills were paid in full. (Ex. B) One of the creditors was the delinquent account listed in SOR 1.q (\$142). (Ex. 3) The other medical debt was for \$87 that was not listed in the SOR. (Ex. 3, Ex. C) The letter does not indicate how much was paid. In June 2015, Applicant made six payments totaling approximately \$800. From the bank statement it is not clear which SOR debts are included in the six payments. The payments were made on a delinquent insurance debt (SOR 1.p, \$241), the \$75 student loan monthly payment, and a \$280 payment to the creditor of two other SOR medical debts (SOR 1.r, \$83 and SOR 1.s, \$81). (Ex. C, D, Tr. 55) Additionally, the creditor holding the \$231 medical debt (SOR 1.h) and the \$142 medical debt (SOR 1.q) was paid \$79 and \$126. There is no indication if the payment to this creditor satisfied the delinquent debt or was only a payment on what was owed.

Applicant volunteers at a nonprofit organization that helps children. (Tr. 80) He is making timely payments on his car and on a loan, which has a balance of approximately \$800. (Ex. 4, Tr. 25) Both of his vehicles have transmission problems. (Tr. 45) His credit score has improved from 480 to 580. (Tr. 26) He would like to pay his debts, but is living paycheck to paycheck. (Tr. 26, 49) He does maintain a budget. He believes after paying his monthly bills and expenses, he had \$600 remaining monthly. (Tr. 49) He is attempting to be responsible in paying his debts. (Tr. 27) For a while during the summer

of 2014, he was working his current job from six a.m. until three p.m. and then a second job from four p.m. until midnight. (Tr. 50) When his current job found out about his second job, he had to quit his second job. (Tr. 50)

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 must 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 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 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. Such decisions entail a certain degree of legally permissible extrapolation of 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 of 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

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

Applicant has a history of financial problems. He owes federal income tax, has had three vehicles repossessed, his home went to foreclosure, and had a number of charged-off, collection, or delinquent accounts, which totaled approximately \$14,000. He showed payment on some of his delinquent debt, but failed to document any federal tax payments, payment on the debts resulting from his three repossessed vehicles, and on other delinquent obligations. Disqualifying Conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts,” AG ¶ 19(c), “a history of not meeting financial obligations,” and AG ¶ 19(g), “failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same” apply.

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20 are potentially applicable:

(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;

(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;

(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;

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

(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 provided documentation showing he paid approximately \$1,000 on his delinquent SOR obligations. He asserts he is making payments on his federal income tax debt, but provided no documentation. He showed documentation of a single \$75 payment on his student loan. However, his credit reports indicate that the amount owed on his student loans is decreasing.

Applicant failed to file his Federal and state income tax returns for tax years 2006, 2009, 2010, and 2011. He did so because, as a single parent, he did not have sufficient funds to pay his taxes. He made the decision not to have taxes withheld from his pay. He had less than \$600 withheld for federal tax with income for three of the four tax years combined that totaled approximately \$130,000. He had no state tax withheld.

Applicant believes he owes less than \$7,000 in federal income taxes, but provided no documentation supporting this assertion or documents showing payments made to the IRS. Once everything is sorted out with his taxes, he intends to make payment by garnishment. In June 2013, when he completed his e-QIP, he stated he would be contacting a tax attorney to assist him in addressing his past-due tax obligation. There is no evidence he did so. In 2012, Applicant's wages were garnished by the state taxing authority.

Three delinquent automobile debts totaling approximately \$18,600, a \$6,800 student loan, four medical bills totaling approximately \$2,000, two delinquent telephone bills totaling more than \$1,000, and three other delinquent accounts totaling more than \$1,000 appear on his e-QIP. He was more than \$29,000 delinquent on 14 accounts.

Applicant has been employed since June 2013 with a gross annual salary of approximately \$53,000 and his wife's annual income is \$28,000. It is noted that his wife has only recently obtained her current job after completing schooling. The household income is approximately \$81,000. In June 2015, he made six payments totaling approximately \$800 plus a \$75 student loan payment.

None of the mitigating factors for financial considerations fully extenuate the security concerns. Applicant's financial difficulties are both recent and multiple. He would like to pay his debts and asserted he had a repayment plan to address his Federal tax debts. He made some payments on his debts. He showed payment of only \$875 on his delinquent obligations. By failing to document the payment of delinquent debts he has failed to act responsibly under the circumstances.

Applicant has had sufficient opportunity to address his financial delinquencies. Failing to pay the debts casts doubt on his current reliability, trustworthiness, and good judgment. He has not acted responsibly in addressing his debts. He provided no evidence he has received credit or financial counseling. He has not demonstrated that his financial problems are under control or that he has a plan to bring them under control. The mitigating condition listed in AG ¶ 20(c) does not apply.

Applicant explanation for failing to timely file and pay his state and Federal income taxes was that he was a single parent and did not have the money to pay his taxes. Ten years ago, in June 2005, he divorced. There was also a custody dispute, but Applicant failed to show the financial impact of his divorce and the cost of the custody litigation. The divorce is sufficiently in the past that it would have limited impact on his current finances. There is limited evidence showing factors beyond his control. AG ¶ 20(b) does not apply.

There is no showing of a good-faith effort to satisfy the majority of his delinquent debts or a showing that payments have been made in accord with a repayment agreement. He is paying \$75 monthly on his student loans. He paid six creditors who had delinquent SOR debts totaling approximately \$800. The mitigating conditions listed in AG ¶ 20(d) applies to his student loans, and these five other debts. He provided no documentation showing payment made on any of his other delinquent obligations and he has not recently talked with his creditors. (Tr. 42)

The mitigating condition listed in AG ¶ 20(e) does not apply because Applicant did not dispute the obligations.

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):

(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. Applicant volunteers at a nonprofit organization that helps children. He is making timely payments on his car and on a loan, which has a balance of approximately \$800. His credit score has improved from 480 to 580. He would like to pay his debts, but is living paycheck to paycheck. For a while he was working his current job from six a.m. until three p.m., and then a second job from four p.m. until midnight. During the summer of 2014, he had to quit his second job when his current job found out about his second job. Holding down a part-time job and a full-time job shows a desire to pay one's obligations.

Applicant has failed to document any payment on his delinquent accounts. He believes he owes the IRS approximately \$7,000, but provided no documentation from the IRS supporting this assertion or that he has made any payments to the IRS. Except for his student loans and five other delinquent obligations, he failed to offer evidence of financial counseling, provide documentation regarding his past efforts to address his delinquent debt, had recent communication with his creditors, or established any repayment agreements. He failed to provide such information. He failed to mitigate the security concerns arising from his financial considerations.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to be eligible for a security clearance. The determination of an individual's eligibility and suitability for a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under Applicant's current circumstances, a clearance is not warranted. In the future, if Applicant has paid his delinquent obligations, established compliance with a repayment plan, or otherwise substantially addressed his past-due obligations, he may well demonstrate persuasive evidence of his security worthiness.

The issue is not simply whether all his debts are paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. See AG ¶ 2(a)(1). Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I

conclude Applicant did not mitigate the security concerns arising from his delinquent financial obligations.

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, Financial Considerations: AGAINST APPLICANT

Subparagraphs 1.a – 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i – 1.o:	Against Applicant
Subparagraphs 1.p – 1.s:	For Applicant
Subparagraphs 1.t – 1.v:	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 grant Applicant a security clearance. Eligibility for access to classified information is denied.

CLAUDE R. HEINY II
Administrative Judge