



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-07041

Appearances

For Government: Tara Karoian, Esq., Department Counsel

For Applicant: *Pro se*

01/28/2016

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant refuted the security concerns under Guideline E, personal conduct, but failed to mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On July 29, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. The action was taken 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.

Applicant answered the SOR on August 11, 2015, and requested a hearing before an administrative judge. The case was assigned to me on December 10, 2015.

The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 15, 2015. I convened the hearing as scheduled by video teleconference on January 11, 2016. The Government offered exhibits (GE) 1 through 8, which were admitted into evidence without objection. In addition, the Government submitted a copy of an exhibit list that was marked as Hearing Exhibit (HE) I. Applicant testified and offered Applicant Exhibits (AE) A through C, which were admitted into evidence without objection. The record was held open until January 20, 2016, to allow Applicant to submit additional documents. He submitted documents that were marked AE D through L and they were admitted into evidence without objection, and the record closed.¹ DOHA received the hearing transcript (Tr.) on January 14, 2016.

Findings of Fact

Applicant admitted all the allegations in the SOR except ¶ 2.a, which he denied. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 53 years old. He is a high school graduate and earned an associate's degree in 2007. He was married for a short period in 1996 and divorced. He has two grown children from previous relationships. He remarried in 2000. He has two stepchildren, ages 24 and 21. The younger stepchild has a part-time job, attends school, and lives at home. The older stepchild lives at home and does not work or contribute to the household expenses. His wife is not employed. Applicant served in the military from 1987 to 2007, retiring in the paygrade E-6.²

Applicant stated that he participated in "financial training" in 2004. He filed Chapter 7 bankruptcy in 2005 and had his debts discharged in June 2006. He could not recall exactly the amount of debts discharged in bankruptcy, but estimated it was about \$12,000 to \$15,000. Applicant stated after the bankruptcy he took several financial courses and learned that he needed to come up with a financial plan and adhere to it.³

Applicant attributed his recent financial problems to his father-in-law's illness and subsequent death in 2013. His father-in-law was diagnosed with cancer in 2005. Applicant stated he took trips to another state to assist him while he was sick. He estimated he visited his father-in-law about once a year.⁴

The judgments and debts alleged in the SOR are supported by credit reports from June 2015, June 2014, June 2013, and court documents.⁵

¹ HE II is Department Counsel's email memorandum.

² Tr. 22-26, 54-56; GE 1.

³ Tr. 26-31.

⁴ GE 8.

⁵ GE 4, 5, 6, 7, and 8.

Applicant admitted the 2013 judgment in SOR ¶ 1.b (\$1,028). The judgment is for rent owed after moving from an apartment. In his answer to the SOR, he stated he was “currently exploring viable methods to contest these charges.” He was hopeful he could negotiate a “buyout.” At this hearing, he stated he had not done anything to resolve this judgment.⁶

Applicant completed a security clearance application (SCA) in May 2013 and was interviewed by a government investigator as part of a background investigation in June 2013. During the interview, Applicant acknowledged all of the delinquent debts in the SOR, except the 2013 judgment in SOR ¶ 1.b. Regarding the 2010 judgment listed in SOR ¶ 1.c (\$7,026), he indicated he was offered a settlement of \$2,000. He was unable to pay the amount. At his hearing, he acknowledged that he has not had contact with the creditor for at least two years and is hopeful he can qualify for a loan to repay this debt. The debt is unresolved.⁷

Applicant testified that he has been making \$50 payments to the creditor in SOR ¶ 1.d (\$697), a collection account from June 2015 for a dental bill. After his hearing, Applicant provided an invoice for the debt dated April 30, 2014, which shows a balance of \$1,396. In a post-hearing letter, Applicant stated the current balance of the debt is \$697, as alleged. If Applicant is making consistent monthly payments of \$50, the current balance from the date of the SOR should be \$300 less. He did not provide documentary proof that he is making the payments and has reduced the balance owed from the amount alleged on the SOR.⁸

The debt in SOR ¶ 1.e (\$200, delinquent since March 2012) is a collection account for a rental car. Applicant indicated in his answer to the SOR that he made payments on this debt, but the creditor has not credited them. In his answer, he stated: “I am currently investigating this matter and have made no further payments until I have ascertained why the previous amounts were not credited.” At this hearing, Applicant stated he has done nothing to reduce the balance of the debt and indicated his wife handles the finances. After his hearing, he provided a document that shows on January 18, 2016, he paid \$260 to the creditor. The creditor indicated if the payment cleared the debt would be resolved.⁹

The debts in SOR ¶ 1.f (\$136, delinquent since November 2013) and ¶ 1.g (\$107, delinquent since November 2013) are to the same cable company. Applicant stated that he has been making small payments to resolve the debts, but had not made payments to any creditors since March 2015. After the hearing, he provided a document

⁶ Tr. 43-44; GE 8.

⁷ Tr. 46-48; GE 1, 4, 5; AE D.

⁸ Tr. 44-46; AE C, D and L.

⁹ Tr. 48-49; AE E and L.

to show that on January 15, 2016, he paid \$244 to the creditor, who agreed that if the check was not returned the two debts were considered satisfied.¹⁰

The debt in SOR ¶ 1.h is a collection account for a gas bill (\$539, delinquent since March 2009). After the hearing, Applicant provided copies of documents showing that four \$20 payments were made in 2013. No other information was provided regarding the resolution of this debt.¹¹

The collection account in SOR ¶ 1.i is for a cell phone bill (\$1,469 delinquent since May 2011). After the hearing, Applicant provided documents to show that in 2013 he made four payments of \$20 towards this debt. No other information was provided regarding the resolution of this debt.¹²

The collection account in SOR ¶ 1.j (balance alleged \$1,930, delinquent since December 2010) is for a cell phone bill. After the hearing, Applicant provided a settlement offer from the creditor dated December 10, 2010. In it the creditor reflected the principal balance owed was \$1,930.90 with a collection fee of \$347.57, with the balance due of \$2,278.56. Applicant's post hearing statement said that the original debt was \$2,278 and he currently owed \$1,930, and that he made a payment of \$347. This is inconsistent with the document from the creditor. Applicant provided no proof he has made any payments on this debt.¹³

During his background interview Applicant indicated he was making small monthly payments towards some of the above debts and once he paid other debts he would pursue these more aggressively. At his hearing, Applicant stated that he knows he has paid something on the debts, but does not recall how much. He stated he has not made any payments on any debts since March 2015.¹⁴

Post-hearing, Applicant provided information that he is paying a debt to a creditor with a balance owed of \$1,397 for a car purchase and the debt will be resolved in February 2016.¹⁵ This debt was not alleged in the SOR.

Applicant provided a copy of a budget. The budget includes repayment of the dental debt (SOR ¶ 1.d) and federal and state taxes. Applicant explained his 2009 and 2010 federal and state income tax returns were not filed until 2013. He testified that he was notified by the Internal Revenue Service (IRS) in 2012 of the failure to file the

¹⁰ Tr. 49-51; AE F and L.

¹¹ Tr. 51-53; AE G and L.

¹² Tr. 51-53; AE H and L.

¹³ Tr. 51-53; AG I and L.

¹⁴ Tr. 51-53; GE 8.

¹⁵ Tr. 54; AE J and K.

returns. He stated that he signed the tax returns and believed his wife had timely filed and mailed the tax returns. He delayed filing the returns after he received the IRS notice in 2012 because he was permitted an opportunity to reduce the amount the IRS claimed he owed. Applicant stated he owed several thousand dollars for delinquent taxes and he has been making monthly payments of \$400 to the IRS and \$200 for delinquent state taxes. Applicant attributed the tax problems to his wife. He stated that in the last two months he has taken over handling the finances and that he is in the process of fixing his financial problems.¹⁶

In Applicant's answer to the SOR, he stated:

Within approximately the last six months I have made significant strides to correct my financial difficulties. Within that time I have paid all rents/utilities/expenses owed, have doubled my credit rating, and reduced my previous debts (despite the cost of moving to a new state).¹⁷ At my current rate of payment I will have all debts corrected by June 2017. I implore you to overlook my past financial mistakes, as I am making every effort to rectify them in an honorable way.

This statement contradicts Applicant's hearing testimony that he has not made payments on any debts since March 2015.

Applicant retired from the military in October 2007 and was unemployed until March 2008. Otherwise he was employed full-time except from November 2008 to March 2009; February 2010 until March 2011; and June to September 2011. Applicant worked for a federal contractor, Company A, from March 2013 until his termination for cause in March 2015. He was accused of violating company policies regarding proprietary and confidential information and conflict of interest matters. He has been employed since March 2015 by a federal contractor.¹⁸

The termination of employment caused Applicant to forfeit a retention bonus of \$7,000. Applicant provided a letter from his immediate supervisor at Company A certifying that Applicant did not violate company policies, but rather was completing an assignment to prevent inconvenience to a customer of Company A. He had permission from Company A to complete the assignment at home and was authorized, as he had been in the past, to email himself certain files. The files were not proprietary or confidential. His former supervisor's letter indicated that at that time Applicant had received employment offers from other companies and was offered a retention bonus for his services from Company A. Applicant continued employment with Company A.

¹⁶ Tr. 26, 35-43, 49, 54; AE C. I have not considered Applicant's failure to timely file his 2009 and 2010 federal and state tax returns for disqualifying purposes, but will consider the information when analyzing the whole-person and his credibility.

¹⁷ Applicant testified that he moved to a new state in March 2015.

¹⁸ Tr. 56-68; GE 2.

After he completed the task for the customer, which required working the weekend and off-duty hours, a week passed, then 30 minutes after all backup procedures were completed, Applicant was notified that he would be terminated by Company A and not receive the bonus.¹⁹

The facility security officer for Applicant's current employer provided a letter explaining that Company A lost a federal contract to his employer, Company B. He explained that the accusations levied against Applicant by Company A are consistent with how Company A has handled the contract transition. He stated Company A has made it as difficult as possible for his company, Company B, and the employees that were leaving Company A to work for Company B.²⁰

The vice president of operations (VPO) for where Applicant is now employed testified on his behalf. The VPO explained their company is a subcontractor of Company B. He confirmed that he sought to hire employees from Company A so they could use their experience from having already worked on the contract. He confirmed that Company A has done everything possible to make the transition difficult, including suing Company B three times and his company once and also suing individuals who were formerly employed by Company A. He believes the termination allegations against Applicant are consistent with Company A's practice.²¹

The VPO stated that Applicant is a valued employee and works hard to take care of their customers. He valued Applicant's work ethic and pride in his work. He did not have first-hand knowledge about Applicant's finances, but believes he is frugal and tries to save money. He trusts Applicant to handle classified information.²²

Applicant testified that the government has benefited from his skills, and he has always been conscientious regarding security procedures.

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

¹⁹ Tr. 26, 56-68, 73-76; AE A.

²⁰ AE B.

²¹ Tr. 74-76.

²² Tr. 74-76.

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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

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. 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 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 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

overextended is at risk of having to engage in illegal acts to generate funds.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.²³

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and the following two are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant had debts discharged through bankruptcy in 2006. He has two judgments that are unpaid and delinquent debts that were unpaid or unresolved. His delinquencies began in 2009. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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

²³ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

(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 had delinquent debts discharged in bankruptcy in 2006. He accumulated new delinquent debts beginning in 2009. Although he had been on notice of the security concerns arising from his debts since receiving the SOR in July 2015, he only paid the debts in SOR ¶¶ 1.e, 1.f, and 1.g after his hearing. He failed to provide sufficient evidence that he is currently resolving the remaining judgments and delinquent debts. Applicant's conduct is recent and there is insufficient evidence to conclude that it is unlikely to recur. His failure to address his delinquent debts casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Although not specifically raised, it appears some of Applicant's financial problems were due to periods of unemployment. He also attributed his financial problems to expenses related to visiting his father-in-law while he was ill. His father-in-law passed away in 2013. These were conditions beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant failed to provide sufficient evidence of actions he took to resolve his delinquent debts since 2013 when his father-in-law passed away and since he has been employed full time. In his 2013 interview, he stated he made some small payments towards some debts. He later provided documents to show the 2013 payments. At his hearing, he admitted he had not made payments on any debts since March 2015. He indicated he was making payments on the debt in SOR ¶ 1.d, but the document he provided does not show he has made payments toward the debt. In his post-hearing submission, he indicated the balance owed was the amount alleged in the SOR, which is incorrect if he had been making payments. He indicated he made a payment of \$347 on the debt in SOR ¶ 1.j, which is inconsistent with the information on the document he provided. After his hearing he paid three debts. Applicant has not provided sufficient evidence that he has acted responsibly regarding resolving his financial problems. AG ¶ 20(b) partially applies.

Applicant resolved the delinquent debts in SOR ¶¶ 1.e, 1.f, and 1g after his hearing. The others delinquent debts remain unpaid and unresolved. He indicated that before and after his bankruptcy he received financial counseling. He has a budget, but indicated that only in the last two months did he take over handling the finances from his wife, to whom he attributed the problem. He stated he was making payments on the debt in SOR ¶ 1.d, but the document provided does not support his statement. He claimed he made a \$347 payment toward the debt in SOR ¶ 1.j, but the document does not support his statement. None of the remaining alleged debts are resolved. Applicant did not provide a reasonable plan for resolving his delinquent debts. AG ¶ 20(c) partially applies to the extent that he sought some financial counseling, but there is insufficient evidence to conclude his financial problems are under control or are being resolved.

Applicant paid the delinquent debts in SOR ¶¶ 1.e, 1.f, and 1.g. Because those debts are resolved, I find for him regarding these debts, but do not find he initiated a good-faith effort to repay the overdue creditors because he did not pay them until after his hearing. He made some small payments on some of the debts in 2013, but failed to provide evidence of what current actions he is taking to resolve the remaining delinquent debts. AG ¶ 20(d) applies to SOR ¶¶ 1.e, 1.f and 1.g. It does not apply to the other remaining delinquent debts. Applicant indicated he was looking for a way to contest the judgment in SOR ¶ 1.b but did not dispute any other evidence. AG ¶ 20(e) has not been raised.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct;

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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following potentially applicable:

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but it is not limited to consideration of: (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information.

Applicant was terminated by a former employer that claimed he violated company policy regarding proprietary and confidential information. Applicant's immediate supervisor, who directed him to complete the specific assignment confirmed Applicant did not violate company policy, but rather completed the task as directed and there was no proprietary information used. Company A terminated Applicant after it lost a government contract to another company and then denied Applicant a bonus he earned. The evidence does not support that Applicant violated company policy regarding proprietary or confidential information. The above disqualifying condition does not apply. Applicant successfully refuted the personal conduct allegation.

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. I have incorporated my comments under Guidelines F and E 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 53 years old. He retired from the military after 20 years of service. The VPO of his company believes he is a hard worker and can be trusted with a security clearance. Applicant had his debts discharged in bankruptcy in 2006. Applicant has numerous delinquent debts that are not paid or resolved. He admitted during his hearing that he had not made payments on any of the alleged debts, except one, since March 2015. The delinquencies date back to 2009. He paid several debts after his hearing. Although he experienced periods of unemployment and an illness in the family, he failed to provide evidence that he has a realistic plan for resolving the debts. Applicant did not provide sufficient evidence to show he has an established track record of being fiscally responsible. 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 failed to mitigate the security concerns arising under the financial considerations. Applicant successfully refuted the personal conduct allegations.

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:	Against Applicant
Subparagraphs 1.e-1.g:	For Applicant
Subparagraphs 1.h-1.j:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	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.

Carol G. Ricciardello
Administrative Judge