



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



In the matter of:)
)
) ISCR Case No. 08-04286
)
)
for Security Clearance)

Appearances

For Government: Emilio Jaksetic, Esquire, Department Counsel
For Applicant: *Pro Se*

July 23, 2009

Decision

HEINY, Claude R., Administrative Judge:

Applicant had one unpaid judgment, one past due account, two unpaid tax liens, and 14 unpaid accounts placed for collection, which totaled more than \$22,000. His past due student loan is current, he is paying his tax liens, and has paid 13 accounts placed for collection. The judgment and one small additional account remain unpaid. Applicant has successfully mitigated financial considerations and personal conduct security concerns. Clearance is granted.

Statement of the Case

Applicant contests the Defense Department's intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued to

¹ 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 revised adjudicative guidelines (AG)

Applicant a Statement of Reasons (SOR) on October 29, 2008, detailing security concerns under Guideline F, financial considerations, based on a history of financial problems as evidenced by delinquent debts and Guideline E, personal conduct, for falsified material on an Electronic Questionnaires for Investigations Processing (e-QIP).

On November 26, 2008, Applicant answered the SOR, and requested a hearing. On April 2, 2009, I was assigned the case. On April 8, 2009, DOHA issued a notice of hearing scheduling the hearing held on May 6, 2009. The government offered Exhibits (Ex.) 1 through 8, which were admitted into evidence. Applicant testified and the record was kept open to allow him to submit additional matters. On May 12 and May 13, 2009, additional documents were received. There being no objection, the material was admitted into evidence as Ex. A and Ex. B. On May 18, 2009, the transcript (Tr.) was received.

Findings of Fact

In Applicant's Answer to the SOR, he admitted the four debts listed in SOR ¶¶ 1.a, 1.g, 1.h, and 1.r. He denied the remaining SOR debts. Applicant's admissions to the SOR allegations are incorporated herein. After a thorough review of the record, pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 44-year-old electrician who has worked for a defense contractor since 2007, and is seeking to obtain a security clearance. (Tr. 52) Starting in 1982, Applicant served six years on active duty in the U.S. Army. In 1988, Applicant joined the D.C. Air National Guard. In 1998, Applicant, then an E-5, was discharged from the Air National Guard. (Tr. 51, 104, Answer to SOR)

Applicant has been married twice. The date of his first marriage does not appear in the record. His job as an electrician required him to live for various amounts of time at sites in different states away from his home, his wife, and children. In 1998, Applicant left Maryland and lived for a year in South Carolina and Georgia before moving to New Jersey. In 1999, his wife was diagnosed with cancer. (Tr. 107) In 2001, he returned to Maryland because his wife was so sick she was unable to care for their son and daughter, ages 9 and 20. (Tr. 41) During his wife's illness, a number of medical debts and co-payments were incurred, which have now been paid. In 2003, his first wife died of cancer and in May 2004, he remarried. (Tr. 93, Ex. 1)

Unpaid Taxes

In 1999, Applicant was working on a project in New Jersey, rented a room there, and paid New Jersey state income tax. After living there a year, one job ended and he secured another job in the same state for another year. (Tr. 120) Although living, working, and paying income tax in New Jersey, Maryland claimed him as a resident and

approved by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

taxed him as such. This resulted in a Maryland unpaid tax obligation. He was unaware of the tax liens because notices had been sent to his wife, who was living in a different state. Applicant asserts he first learned of the existence of the state income tax liens when interviewed in 2007 as a result of his clearance application, (Tr. 62)

Applicant is attempting to straighten out what is owed New Jersey and what is owed Maryland. (Tr. 121) He asserted the 2002 tax lien (SOR ¶ 1.a, \$2,579) was incorporated into the 2006 tax lien (SOR ¶ 1.r, \$4,131) and only one tax lien now exists. Since November 2008, he has made \$165 monthly payments on the debt. (Tr. 39, 65) At the hearing, Applicant stated he would send proof of payments and proof of the current balance on his state tax lien. (Tr. 92) No documents were received.

Repossessed Vehicle

In 1998, when Applicant moved to South Carolina, he left the family vehicle with his wife. Later that year, it was repossessed and resold leaving a balance due. However, Applicant was unaware of the repossession until years after it occurred (time not identified). The creditor demanded the amount due on the vehicle following the sale. Applicant asked for proof as to the value of the car brought at sale. Applicant offered to settle the debt for \$6,000, but the creditor demanded \$8,000. (Tr. 101) The offer was not accepted.

In January 2003, the creditor filed a court action with notice sent to Applicant's wife's Maryland address. At the time the notice was served, Applicant was living in New Jersey. His wife was sick with cancer and unlikely to pay much attention to the notice. (Tr. 107) She died in 2003. In January 2003, the creditor obtained a judgment and lien. (Ex. 3, Ex. 5) The exact date as to when Applicant became aware of the judgment is not part of the record. In the court action, the creditor claimed the balance owed was \$5,526. To this amount was added \$3,222 interest, \$2,187 attorney's fees and \$20 costs. (Ex. 5)

Applicant asserts he intends to pay the obligation, but does not intend to pay the amount claimed. (Tr. 46) Since the matter has been reduced to judgment, Applicant has no legal justification for paying less than the amount of the judgment nor does the creditor have any reason to compromise on the amount due.

In 2003, Applicant was last contacted by the creditor. (Tr. 102) Applicant disputed the auto repossession debt on his credit bureau report (CBR) and it was removed. Applicant did not provide no documentation or testimony as to why or how the judgment was disputed, the reason it was deleted from his CBR, nor did he identify the date when he disputed this debt. The debt does not appear on either his October 2008 CBR (Ex. 8) or his March 2009 CBR (Ex. 9). Since he disputed the debt, it no longer appeared on his CBR, and he had not been contacted by the creditor since 2003, he did not list it in October 2007 when asked about "unpaid" judgments or repossession on his e-QIP. (Tr. 78, 80, Ex. 1) Question 27.d did not ask about all judgments filed against Applicant

during the seven years before the e-QIP's completion, but asked only about "unpaid" judgments.

On the same e-QIP, Applicant did not list the repossession in response to question 27.b. In response to question 28.a, Applicant indicated he had been more than 180 days delinquent on his debts, but listed only a single debt. In response to question 27.c, he did not list his tax liens because he was unaware of their existence when he completed the questionnaire. (Tr. 79)

In April 2008, Applicant was injured in a serious vehicle accident. (Tr. 53) He received disability payments for the six months following the accident. He now lives on his wife's income, what his daughter pays to stay in their home, and social security (\$980 monthly) his son receives from the death of his mother, Applicant's first wife. (Tr. 54, 86) His wife's gross salary is \$3,900 per month and her take-home pay is \$600 per week. (Tr. 55, 84) Applicant is current on his rent, \$500 monthly car payment, two credit card accounts, and utility bills. (Tr. 56, 83, 91) Currently, he is not receiving letters or calls from creditors demanding money. (Tr. 113)

In June 2008, Applicant responded to written interrogatories. (Ex. 2) Applicant's personal financial statement showed net monthly income of \$6,731, monthly expenses of \$2,645, monthly debt payment of \$766, and net monthly remainder of \$3,320. In June 2008, Applicant applied for a debt consolidation loan, which was later denied. (Tr. 88, Ex. 2)

Applicant pays \$50 monthly on a student loan obligation (SOR ¶ 1.g). (Tr. 45, Applicant's answer to SOR, see letter dated November 12, 2008.) Applicant's March 2009 CBR lists the account as "pays as agreed." (Ex. 9) There was a misunderstanding as to when payments were due, which has been corrected. The loan had been past due or delinquent, but is current for the most recent four months. Applicant offered to provide post-hearing documents showing the current status of this loan. (Tr. 94) No supporting documentation about the student loan was received.

Applicant has received financial counseling from his sister, a former loan officer, who is a training supervisor at a credit union. (Tr. 89, 90)

A summary of Applicant's debts follows:

	Creditor	Amount	Current Status
a	Judgment for state tax lien. (Ex. 4)	\$2,579	Paying.
b	Medical provider	\$296	Paid. (Applicant's answer to SOR.)
c	Medical provider	\$35	Paid. (Ex. 9, Tr. 29)

d	Telephone service provider.	\$799	Paid. (Ex. B)
e	Telephone service provider.	\$399	Paid. (Tr. 30, Ex. 9, Applicant's answer to SOR, see letter dated November 12, 2008.)
f	Collection agency debt. Same collection firm for the debts listed in 1.j, 1.k, 1.l, 1.m, and 1.n.	\$213	Paid. (Tr. 30, Ex. 9, Applicant's answer to SOR, letter of November 14, 2008.)
g	Student loan was 120 days past due.	\$250	Paying as agreed.
h	Vehicle was repossessed in 1998. (Tr. 46)	\$10,956	Unpaid.
i	Debt. Applicant has attempted to locate the holder of his debt. (Tr. 47, 75)	\$159	Unpaid. Applicant is willing to pay this debt.
j	Collection agency debt.	\$36	Paid.
k	Collection agency debt.	\$219	Paid.
l	Collection agency debt.	\$68	Paid.
m	Collection agency debt.	\$95	Paid.
n	Collection agency debt.	\$474	Paid.
o	Telephone provider debt for his daughter's cell phone.	\$382	Paid. (Ex. A)
p	Neurological medical bill.	\$257	Paid.
q	Collection agency debt.	\$1,165	Paid. (Tr. 30-31, Applicant's answer to SOR, see letter dated December 10, 2008.)
r	State tax lien. (Ex. 3, Ex. 6)	\$4,131	Applicant has one state income tax lien, which he is paying.
	Total debt listed in SOR	\$22,513	

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered 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 over-arching 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 avoided drawing 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, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by 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 may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

Revised Adjudicative Guidelines (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 so as to meet his financial obligations.

The record evidence supports a conclusion Applicant has a history of financial problems. Applicant had one unpaid judgment, one past due account, two unpaid tax liens, and 14 unpaid accounts placed for collection, which totaled more than \$22,000. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a) – (e) 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's state income tax problems arose because he was living and working in one state and his wife and children were living in another state. He paid income tax to the state where he worked, but the other state also claimed taxes were owed to it. Two tax liens were entered against Applicant. He currently pays \$165 per month on the state tax lien and is still pursuing recovery for state taxes paid to the other state. A misunderstanding caused the student loan repayment to become 120 days past due. The misunderstanding has been corrected and Applicant is current on the obligation as shown in his CBR, which lists the debt as pays as agreed.

Applicant was involved in a serious motor vehicle accident and has been away from his job for more than one year. Even with his reduced income he was able to pay 13 accounts which had been placed for collection. The two remaining obligations have not been paid. Applicant has been unsuccessful in locating the current holder of the unpaid \$159 account (SOR ¶ 1.i). Having paid the majority of his past due obligations, I believe he will pay this small debt once he locates the holder of the account.

The judgment (SOR ¶ 1.i \$10,956) remains unpaid. Applicant currently disputes the amount owed. However, this matter has been reduced to judgment and Applicant can no longer legally dispute the amount owed. Earlier, he offered to settle the matter for \$6,000, but the creditor demanded \$8,000. Applicant acknowledges he owes the creditor for the repossession vehicle. Applicant paid the majority of the accounts placed for collection; he acknowledges owing this debt, and previously offered \$6,000 to settle it. For these reasons, it is likely Applicant will pay this debt.

The SOR listed 18 unpaid obligations so the behavior cannot be called infrequent under AG ¶ 20(a). However, Applicant's financial problems were contributed to by having to maintain two households. His wife and children lived in one location and his work took him to various other states. Since he no longer maintains two households, this behavior is unlikely to recur. AG ¶ 20(a) applies in part.

Under AG ¶ 20(b) Applicant experienced additional expenses when his job required him to maintain two households due to jobs. His wife contracted cancer. She was no longer able to work or care for their children. Plus, additional medical expenses were incurred. These are factors beyond Applicant's control. Since her death in 2003, Applicant has acted responsibly. He has addressed all but two of the debts of concern listed in the SOR. He is current on his monthly obligations. Creditors are not contacting him concerning unpaid obligations. AG ¶ 20(b) applies.

AG ¶ 20(c) applies. He has received financial counseling from his sister and there are clear indications that the problem is being resolved, or is under control. He is paying his tax lien, student loan obligation, and has paid 13 additional accounts. Applicant has made a good-faith effort to repay overdue creditors or otherwise resolve these 16 debts. AG ¶ 20(d) applies to these 16 debts.

The \$159 debt is so small as to not raise concerns about his current reliability, trustworthiness, or good judgment. Applicant wants to pay the single, large debt that remains. He earlier made an unsuccessful offer to the creditor. Since he has addressed the majority of his debts, I find it is likely he will also pay this debt.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct, which is 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.

The government has shown Applicant's answers to questions 27 and 28 on his October 2007 e-QIP were incorrect, but this does not prove Applicant deliberately failed to disclose information about his finances. He failed to indicate he had tax liens, an unpaid judgment, or was currently 90 days delinquent on any debt. He indicated he had been more than 180 days delinquent on his debts, but listed only one debt.

Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government, when applying for a security clearance, is a security concern. But every inaccurate statement is not a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully. Applicant denies he intentionally falsified his answers on the e-QIP.

Applicant's first wife and children lived in one state and Applicant lived in another. Notices of the tax liens and judgment were sent to his wife's address. Applicant, since he was not living there, did not receive the notices when they were issued. At the time the notices were received by his wife, she was suffering from cancer, and it is unlikely she was focused on the family's finances. It was not until 2007, during his interview in connection with the security process that he first learned of the state tax liens, the other accounts placed for collection, and learned the judgment had not simply gone away. He learned of all these unpaid obligations only after he had completed his e-QIP.

Question 27.d of the e-QIP is limited to "unpaid" judgments. It does not ask Applicant to list all judgment he has received during the seven year period occurring before the e-QIP, but to list only "unpaid" judgments. Applicant had no contact with the creditor following the rejection of his offer on the repossessed vehicle. The creditor was

not actively seeking payment of this debt. Applicant had disputed this debt on his CBR and it no longer appeared on his CBR. These events caused Applicant to incorrectly believe the matter was closed and since he believed the matter was ended, he did not list it when asked on his e-QIP about repossessions or unpaid judgments.

When Applicant completed his questionnaire, he was unaware of the number and extent of his delinquent debts. If he was unaware of the judgment, tax liens, or the length of delinquency on his debts, his incorrect answers were not deliberate falsifications. Having observed Applicant's demeanor and listened to his testimony, I find his answers were not deliberate omissions, concealments, or falsifications. I find for him as to the personal conduct security concerns.

Whole Person Concept

Under the whole person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The debts incurred were not the type that indicates poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. Money was not spent frivolously. The debts set forth in the SOR were not incurred on luxuries, but were for a student loan, medical treatment, taxes, and a vehicle which was repossessed.

Applicant is paying on his tax liens and student loan. He paid 13 additional accounts. Having paid the majority of the SOR debts even though he has been out of work for more than a year, coupled with his statement that he intends to pay the two remaining debts, I find he is likely to address these two remaining debts. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and

suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his financial considerations.

Formal Findings

Formal findings for or against 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:	FOR APPLICANT
Subparagraphs 1.a – 1. r:	For Applicant
Paragraph 2, Personal Conduct:	FOR APPLICANT
Subparagraphs 2.a – 2.d:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant eligibility for a security clearance. Eligibility for access to classified information is granted

CLAUDE R. HEINY II
Administrative Judge