



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



In the matter of:)
)
) ISCR Case No. 08-08743
)
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro Se*

April 22, 2009

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated the Financial Considerations security concerns. Eligibility for access to classified information is denied.

On December 16, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in an undated response, and requested a hearing before an administrative judge. The case was assigned to me on February 11, 2009. DOHA issued a notice of hearing on February 26, 2009, and the hearing was convened as scheduled on March 18, 2009. The Government offered Exhibits (GE) 1 through 5,

which were received without objection. The Government also offered a demonstrative exhibit which was marked Hearing Exhibit (HE) I. Applicant testified on his own behalf, and submitted Exhibits (AE) A through H, which were received without objection. The record was held open for Applicant to submit additional information. Applicant submitted ten pages of documents, which were marked AE I through K, and admitted without objection. Department Counsel's memorandum is marked HE II. DOHA received the transcript of the hearing (Tr.) on March 27, 2009.

Findings of Fact

Applicant is a 30-year-old employee of a defense contractor. He has worked for his current employer since August 2005. He is a high school graduate and is taking courses on-line. Applicant served in the U.S. Army from 1996 to 2004. He has two Honorable Discharges and received a General Under Honorable Conditions Discharge in 2004. He deployed to Iraq with the Army in 2003. He deployed to Kuwait, Iraq, and Afghanistan with his current employer, in 2005 to 2006, and again in 2007. He was married from December 2001 until his divorce in February 2004. He married again in 2005 and divorced in 2008. He married for a third time in February 2009. He has three stepchildren living with him and his wife.¹

The SOR alleges 27 delinquent debts. In his Answer to the SOR, Applicant admitted to SOR ¶¶ 1.a, 1.f, 1.g, 1.m, 1.p, 1.v, 1.w, 1.y, 1.z, and 1.aa. The total amount owed for those ten debts is \$22,630. He denied the remaining allegations. He also provided additional information to support his request for eligibility for a security clearance.

Applicant indicated that much of his financial problems can be traced to actions by his brother, cousin, and ex-wife. Applicant deployed to Iraq in 2003. He let his brother and cousin live in his apartment while he was deployed. He let them use his debit card and they were supposed to pay his bills and rent. He stated they did not pay the bills, wrote checks on his bank account without his permission which were returned for nonsufficient funds, and were evicted from the apartment for failing to pay the rent. He also stated that they charged items and opened accounts in his name without his permission. Applicant chose not to press charges against his family members. He stated that several of the medical debts were incurred by his ex-wife while he was deployed. He expected her to pay any deductible amount or co-payment and does not know why she did not pay the bills. He has retained a credit resolution company "to work on removing derogatory/inaccurate items off his credit report." The company provides limited credit counseling.²

Applicant admitted to owing the delinquent debt of \$135 to a collection company, as alleged in SOR ¶ 1.a. He testified that he was unsure what the debt was for, but he thought it might be a duplicate of the \$72 debt to a utility company which was alleged in

¹ Tr. at 23-26, 49, 52-53, 57; GE 1; AE D.

² Tr. at 18-22, 27-28, 55-59; Applicant's response to SOR; GE 2; AE E, J.

SOR ¶ 1.g. He denied SOR ¶ 1.b, which alleges a \$229 debt to the same collection agency as that listed in ¶ 1.a. The two debts are listed on the credit report of March 10, 2006, but not the three more recent credit reports in evidence. Applicant has not contacted the creditor to inquire about either debt. The credit resolution company did not dispute these two debts as they were not listed on the most recent credit reports.³

Applicant denied owing the delinquent debt of \$3,810 to a collection company on behalf of a cellular telephone company, as alleged in SOR ¶ 1.c. He testified that he had an account with the company but instead of sending him his monthly \$38 bill, they sent him a bill of \$3,800. He stated he has been disputing the bill with the company ever since. When he called the telephone company, he was told they had no information about the debt. This debt is listed on all the credit reports in evidence. The credit resolution company reported the debt as “[c]urrently in dispute; awaiting resolution.”⁴

SOR ¶ 1.d alleges a debt of \$239 to a collection company. Applicant denied any knowledge of this debt. Applicant submitted a combined credit report dated October 3, 2008, with his response to DOHA interrogatories. That credit report indicates the original debt was to a jewelry store. Applicant admitted to purchasing a necklace from the jewelry store, but believed he completed the payments to store. This debt is listed on the credit reports of March 10, 2006 and September 16, 2008. The combined credit report of October 3, 2008 lists the original debt under the jewelry company, but not under the collection company. The combined credit report of January 29, 2009 only lists the debt under the jewelry store and reports the debt was purchased by another lender, with a zero balance.⁵

Applicant denied any knowledge of the \$927 debt to a collection company, as alleged in SOR ¶ 1.e. This debt is listed on the three most recent credit reports. The credit resolution company reported the debt as “[c]urrently in dispute; awaiting resolution.”⁶

Applicant paid the \$72 debt to a utility company, as alleged in SOR ¶ 1.f. He denied owing a debt of \$156 to the same utility company, as alleged in SOR ¶ 1.h. He stated that he did not realize that there were two debts to the utility company. He has not contacted the utility company to determine the status of the \$156 debt. The \$156 debt is listed on all the credit reports in evidence except the September 16, 2008 report. The credit resolution company reported the debt as “[c]urrently in dispute; awaiting resolution.” Applicant also paid the \$258 debt to a collection company on behalf of a different utility company, as alleged in SOR ¶ 1.j.⁷

³ Tr. at 29-30; Applicant’s response to SOR; GE 2-5; AE G, J.

⁴ Tr. at 30-32; Applicant’s response to SOR; GE 2-5; AE G, J.

⁵ Tr. at 32-35; Applicant’s response to SOR; GE 2-5; AE G.

⁶ Tr. at 35; Applicant’s response to SOR; GE 2-5; AE G, J.

⁷ Tr. at 35-38; Applicant’s response to SOR; GE 2-5; AE G, J.

Applicant admitted to owing the \$370 delinquent debt alleged in SOR ¶ 1.g. He testified that he thought it was a payday loan that he took out before he deployed and then forgot about it. He has not paid the debt. He stated that he did not have the creditor's telephone number but would attempt to obtain it from the credit resolution company. The credit resolution company is attempting to have the debt deleted from his credit report and reported the debt as "[c]urrently in dispute; awaiting resolution."⁸

SOR ¶ 1.i alleges a debt of \$66 for a returned check. Applicant stated that he believed his brother may have written this check while he was deployed. He has not checked with the company to verify that he did not write the check. The debt is listed on all the credit reports in evidence except the September 16, 2008 report. The credit resolution company reported the debt as "[c]urrently in dispute; awaiting resolution."⁹

A debt of \$405 to a collection company, on behalf of a cable television provider is alleged in SOR ¶ 1.k. Applicant stated that this debt was incurred by his brother and cousin without his authorization or permission while he was deployed. He indicated that he spoke with the cable company after he returned from deployment. The company agreed to credit the amount of the bill if he provided the company a copy of his military orders showing that he was in Iraq when the services were provided. He was unable to obtain a copy of the orders. This debt is listed on the credit reports of March 10, 2006 and September 16, 2008, but not the two most recent credit reports.¹⁰

Applicant denied owing the \$412 debt to an apartment landlord, as alleged in SOR ¶ 1.l. He admitted that he lived in the apartment. He stated that he was late on one payment, but does not owe anything. He contacted the landlord after he saw the debt on the credit report. He stated that the landlord admitted that he did not owe anything but did not have an answer as to why the debt was listed as delinquent on his credit report. The debt is listed as a charge off on the credit reports of March 10, 2006 and October 3, 2008, but neither report lists a balance. It is not listed on the other two reports.¹¹

Applicant admitted to owing the \$686 delinquent debt to a collection company on behalf of a cellular telephone services company, as alleged in SOR ¶ 1.m. He has not paid the debt or contacted the creditor.¹²

Applicant denied any knowledge of the \$91 debt alleged in SOR ¶ 1.n, or the \$1,250 debt alleged in SOR ¶ 1.o. These debts appear to be duplicates. The \$91 debt is listed on the credit report of October 3, 2008, with a \$91 balance and a high balance of

⁸ Tr. at 36-37; Applicant's response to SOR; GE 2-5; AE G, J.

⁹ Tr. at 37; Applicant's response to SOR; GE 2-5; AE G, J.

¹⁰ Tr. at 39-41; Applicant's response to SOR; GE 2-5; AE G.

¹¹ Tr. at 41-42; Applicant's response to SOR; GE 2-5; AE G.

¹² Tr. at 42; Applicant's response to SOR.

\$1,250. It also appears on the January 29, 2009 credit report. The \$1,250 debt does not appear on any credit report after March 10, 2006. The credit resolution company reported the \$91 debt as “[c]urrently in dispute; awaiting resolution.”¹³

Applicant admitted to owing the \$5,376 delinquent debt to a company that provides loans to military members, as alleged in SOR ¶ 1.p. He has not paid the debt. He indicated that he will contact the creditor to arrange a payment plan. The credit resolution company is attempting to have the debt deleted from his credit report and reported the debt as “[c]urrently in dispute; awaiting resolution.”¹⁴

SOR ¶ 1.q alleges a \$521 debt to a collection company. The original debt was to a cellular telephone services company. Applicant denied owing this debt. The debt is listed on all the credit reports in evidence except the September 16, 2008 report. The credit resolution company reported the debt as “[c]urrently in dispute; awaiting resolution.”¹⁵

Applicant denied owing the three medical debts totaling \$333, as alleged in SOR ¶¶ 1.r through 1.t. He stated they were medical debts incurred by his ex-wife. The names of the medical providers are not included in the credit reports. Only one debt, for \$84, is listed on the most recent credit report. He denied any knowledge of the \$50 debt alleged in SOR ¶ 1.u. The credit resolution company reported that debt as “[c]urrently in dispute; awaiting resolution.”¹⁶

SOR ¶ 1.v alleges a \$15,295 debt for the deficiency owed on a car loan after Applicant’s car was voluntarily repossessed. Applicant stated that he attempted to start an allotment to make the monthly payments on the loan while he was deployed, but the allotment was never started. His brother was supposed to make the payments, but he did not. Applicant and the creditor agreed to settle the debt for \$7,690. The settlement called for Applicant to make two payments of \$385 each in January 2009, followed by monthly payments of \$200. Applicant made the first three payments totaling \$970, which is what was required by the agreement as of the hearing date.¹⁷

Applicant admitted to owing the \$167 delinquent debt to a collection company on behalf of a utility company, as alleged in SOR ¶ 1.w. He testified that he thought he paid the debt and that he would obtain a receipt from the creditor. He also admitted that he owed the \$134 delinquent debt owed to a different utility company, as alleged in SOR ¶ 1.y. He testified that he paid this debt and would provide a receipt. He did not submit a receipt for either debt. Both debts are listed as delinquent on the three most recent

¹³ Tr. at 42-43; Applicant’s response to SOR; GE 2-5; AE G, J.

¹⁴ Tr. at 43-44; Applicant’s response to SOR; AE J.

¹⁵ Tr. at 44; Applicant’s response to SOR; GE 2-5; AE G, J.

¹⁶ Tr. at 44-45; Applicant’s response to SOR; GE 2-5; AE G, J.

¹⁷ Tr. at 45-47; Applicant’s response to SOR; AE B, K.

credit reports. The credit resolution company reported both debts as “in dispute; awaiting resolution.”¹⁸

Applicant denied any knowledge of the \$510 debt alleged in SOR ¶ 1.x. This debt appears on the three most recent credit reports in evidence. The credit resolution company reported the debt as “[c]urrently in dispute; awaiting resolution.”¹⁹

In his response to the SOR, Applicant admitted to owing the \$109 medical debt alleged in SOR ¶ 1.z. He denied any knowledge of the debt at the hearing. The name of the medical provider is not included in the credit report. The debt is not listed on the most recent credit report.²⁰

SOR ¶ 1.aa alleges a \$286 debt to the U.S. Government. That debt was paid by a seizure of Applicant’s federal income tax refund.²¹

Applicant submitted two letters from his supervisors and a letter from the pastor at his church. He is described as a model employee who has completed all missions with professionalism and good judgment; and “an outstanding citizen and asset to his family, church and community.” He is recommended for a security clearance.²²

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 are to be 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, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge’s over-arching adjudicative goal is a fair, impartial and common sense 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.

¹⁸ Tr. at 47-48; Applicant’s response to SOR; GE 2-5; AE G, J.

¹⁹ Tr. at 47; Applicant’s response to SOR; GE 2-5; AE G, J.

²⁰ Tr. at 48; Applicant’s response to SOR; GE 2-5; AE G.

²¹ Tr. at 48-49; Applicant’s response to SOR; GE 2-5; AE G.

²² AE D.

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion as to obtaining 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 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 adverse 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 *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay his obligations for a period of time. The evidence is sufficient to raise the above disqualifying conditions.

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 still owes a number of the debts alleged in the SOR. His financial issues are ongoing. AG ¶ 20(a) is not applicable. He attributed his financial issues to the actions of his brother and cousin while he was deployed with the Army. He also stated his ex-wife did not pay her medical bills while he was deployed, which ended up on his credit report. These qualify as conditions that were outside his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant did not file police reports or anything else to hold his brother and cousin responsible for their actions. While it is understandable that one would not seek to have his brother arrested, that makes it more difficult to absolve Applicant of responsibility for the debts. There is some mitigation for the debts that became delinquent because of the actions of Applicant's brother and cousin. Their actions provide minimal mitigation for the debts that were purely Applicant's responsibility. He has worked for his current employer since August 2005, and only recently began

addressing his delinquent debts. Applicant did not act responsibly regarding his finances for a long period of time. AG ¶ 20(b) is partially applicable.

Applicant received some credit counseling from the credit resolution company. He paid several of his smaller debts and started payments on a large debt. However, he still has debts to be resolved. The payments appear to be more of a reaction to the impact on his security clearance, rather than a sincere acceptance of his financial responsibilities. There have not been sufficient voluntary payments for Applicant to receive full mitigation under AG ¶ 20(d) as a good-faith effort to repay his overdue creditors. I am also unable to find clear indications that his financial problems are being resolved or are under control. AG ¶¶ 20(c) and 20(d) are partially applicable.

The credit resolution company attempted to remove derogatory/inaccurate items from Applicant's credit report. The company's purpose is to cleanse his credit report, even if he is responsible for the item. The company has disputed items that Applicant clearly stated were his responsibility. Several of the debts have been deleted from his credit report. AG ¶ 20(e) is applicable to those debts.

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 common sense 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 Guideline F in my whole person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant is 30 years old. He served in the Army for eight years. He deployed to Iraq, Kuwait, and Afghanistan with the Army and with his current employer. He is regarded as a model employee. However, I continue to have concerns about his finances. If Applicant's testimony about his brother, cousin, and ex-wife is accepted as true and if all debts that have been disputed are disregarded, Applicant is still left with a large amount of

delinquent debts. He has worked for his current employer since 2005, and only recently began addressing his delinquent debts. His payments are a good start, but are insufficient at this time to mitigate security concerns.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the 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
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b-1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraphs 1.h-1.l:	For Applicant
Subparagraph 1.m:	Against Applicant
Subparagraphs 1.n-1.o:	For Applicant
Subparagraph 1.p:	Against Applicant
Subparagraphs 1.q-1.u:	For Applicant
Subparagraphs 1.v-1.w:	Against Applicant
Subparagraph 1.x:	For Applicant
Subparagraphs 1.y-1.z:	Against Applicant
Subparagraph 1.aa:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge