



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



In the matter of)
)
) ISCR Case No. 08-11526
)
Applicant for Security Clearance)

Appearances

For Government: James Duffy, Esquire, Department Counsel

For Applicant: *Pro se*

May 26, 2011

Remand Decision

O'BRIEN, Rita C., Administrative Judge:

On April 30, 2010, I issued a decision denying Applicant's request for a security clearance because he had not mitigated security concerns raised under the guideline for financial considerations. On February 15, 2011, the Appeal Board remanded the case to me to reopen the record to consider additional evidence that Applicant contends he was unable to submit. I reopened the record, and have considered the additional evidence that Applicant submitted. I conclude that the security concerns raised under the guideline for financial considerations remain unmitigated. Clearance is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (Standard Form 86), signed on June 23, 2008, to request a security clearance required as part of his employment with a defense contractor. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding¹ that it is clearly consistent with the national interest to grant Applicant's request.

On June 15, 2009, DOHA issued to Applicant a Statement of Reasons (SOR) that specified the basis for its decision: security concerns addressed in the Directive under Guideline F (Financial Considerations) of the Adjudicative Guidelines (AG).² Applicant submitted a notarized Answer to the SOR dated January 14, 2010,³ in which he denied 18 allegations and admitted the remaining 5, subparagraphs 1.a., 1.c., 1.j., 1.k., and 1.l. He also requested a hearing before an administrative judge.

Department Counsel was prepared to proceed on February 26, 2010, and the case was assigned to me on March 12, 2010. DOHA issued a Notice of Hearing on March 25, 2010, and I convened the hearing as scheduled on April 8, 2010. During the hearing, I admitted seven government exhibits (GE), identified as GE 1 through 7. Applicant testified, and offered two exhibits, admitted as Applicant's Exhibits (AE) A and B. I held the record open to allow Applicant to submit additional evidence, but he did not submit further documentation. DOHA received the transcript (Tr.) on April 16, 2010.

On April 30, 2010, I issued a decision denying Applicant's request for a security clearance. Applicant appealed, stating that he was unable to provide additional evidence to Department Counsel after the hearing because of mechanical and administrative difficulties. On February 15, 2011, the Appeal Board remanded the case to me to reopen the record to allow Applicant to submit additional documentation. I held a teleconference on March 28, 2011, with Applicant and Chief Department Counsel. On the same day, I emailed both parties outlining the results of our conference. By Order dated March 31, 2011, I required Applicant to submit any further documentation by Friday, April 29, 2011. Applicant timely submitted the following four documents:

AE I - Telephone company bill, dated April 10, 2010;

AE II - Page 2 of Experian credit bureau report, dated February 8, 2010 (duplicate of page 2 of AE B);

AE III - One page of TransUnion credit bureau report dated January 22, 2010;

¹ Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

² Adjudication of this case is controlled by the Adjudicative Guidelines (AG), which were implemented by the Department of Defense on September 1, 2006. The AG supersede the guidelines listed in Enclosure 2 to the Directive.

³ Applicant's earlier answers to the SOR failed to indicate admission or denial of each allegation. See GE 3 and 4.

AE IV - Applicant's statement discussing mitigating conditions under Guideline F

Findings of Fact

After a thorough review of the record evidence, including Applicant's documentation submitted on April 29, 2011, I make the following findings of fact.

Applicant, who is 48 years old, graduated high school and completed some college credits. He is unmarried and has no children. He served in the Air Force from January 1981 to August 1982. Since 1991, he has worked in the information technology field, starting with a job at a federal agency from 1991 to 2003. Since then, he has held a series of temporary and short-term positions. He was unemployed for nine months between 2003 and 2004, and received unemployment compensation for six of those months. He was again unemployed for two-month periods in 2004, 2006, and 2008. He has held secret and top secret clearances in the past, between 1981 and 1989, with no security violations. He has held full-time positions since June 2008. (GE 1; Tr. 25, 27-30)

Applicant attributes his financial problems to the fact that he had only temporary and short-term jobs for five years, 2003 to 2008. As a result, his income has been low, as well as unpredictable. At the same time, he has had a series of medical issues including gout, kidney stones, and diabetes. These conditions have interfered with his ability to work, and in one case caused him to be terminated because of excessive absences. Without full-time employment, he often did not have health insurance coverage for treatment and medications. Five of his debts relate to medical expenses (1.a., 1.n., 1.o., 1.v., and 1.w.). (GE 1; Tr. 16-22, 30, 35)

Applicant was allowed time after the hearing to provide his income, expenses, and budget; however, he did not forward this information. He did testify that his rent is \$750 per month, and his car loan is paid in full. He uses a check card, and does not use credit cards. (Tr. 95)

In 2009, Applicant paid for financial counseling after receiving the DOHA interrogatories. He signed an agreement for six months of counseling beginning March 22, 2009. He met with the counselor three times. According to the counselor's letter, the goal was to help Applicant "develop a step-by-step process to get out of debt and manage his money wisely." Applicant noted in his Answer that he does "not have perfect credit history nor reports. I am willing to clean this up..." However, he did not submit documentation of payment plans, or a budget developed through counseling. On his counselor's advice, he disputed numerous debts on his credit reports and informed the credit reporting agency. His counselor advised him that the agencies would contact the creditors, and any creditor with a legitimate debt would contact Applicant. (GE 2; Tr. 81)

The 23 debts listed in the SOR total approximately \$68,000. The oldest became delinquent in 2002. They appear in Applicant's credit reports of February and September 2008, and April 2009. (GE 5, 6, 7) Applicant intends to pay his legitimate debts. (Tr. 94) However, he disputed the validity of most of the SOR debts with the credit reporting agencies. (GE 2; AE A)

Based on Applicant's challenges, Experian credit agency deleted the following five SOR debts, totaling \$3,936, from Applicant's credit bureau report:

¶¶ 1.a. (\$50); 1.c. (\$1,274); 1.d. (\$1,145); 1.g., (\$1,078); and 1.k. (\$389).

Experian verified the accuracy of the following six challenged SOR debts, totaling \$18,036:

¶¶ 1.f. (\$527); 1.h. (\$1,401); 1.i. (\$74); 1.j. (\$456); 1.n. (\$4,601); and 1.o. (\$10,977). (AE B)

TransUnion also deleted ¶ 1.b. (\$7,410) (as well as ¶¶ 1.k. and 1.g.) It verified an additional allegation: 1.w. (\$2,860) (as well as ¶¶ 1.n; 1.o.). (AE II, III)

The status of Applicant's SOR debts follows.

Medical debts: Allegations 1.a. (\$50), 1.n. (\$4,601), and 1.o. (\$10,977) – DISPUTED. Applicant attempted to pay 1.a., but the creditor had no record of the debt. The credit agency deleted it from Applicant's credit report. Applicant claims that the debts at 1.n. and 1.o. are duplicates, owed to the same hospital for the same surgery. He does not believe he owes them because he had insurance coverage at the time. The credit agency's investigation verified them as valid debts. Applicant's newly submitted TransUnion credit report also shows that the debts at 1.n. and 1.o. have been verified as accurate. (GE 4; AE II, III; Tr. 36-37)

Medical debts: Allegations 1.v. (\$1,204) and 1.w. (\$2,860) – DISPUTED. Applicant stated he disputed the debts at 1.v. and 1.w., because he believes that his health insurance should have covered them. Applicant's newly submitted TransUnion credit report does not list the account number for the debt at allegation 1.v. It also shows that the debt at ¶ 1.w. has been verified. (GE 6; AE III; Tr. 88-89)

Federal tax lien: Allegation 1.b. (\$7,410) – DISPUTED AND DELETED. Applicant owes back income taxes for tax years 1997 through 2000, when he was employed by a federal agency. In 2002, he arranged to have payments taken from his salary. He left that job in 2003. Since then, he has made a few payments, and his federal tax refunds have been applied to the debt. He disputes the amount, which he believes is currently about \$2,800. Applicant's newly submitted TransUnion credit bureau report shows that this lien has been deleted. (GE 3; AE III, Tr. 44-48)

Credit cards: Allegations 1.c. (\$1,274), 1.d. (\$1,145), and 1.s. (\$898) – DISPUTED; 1.c., 1.d. DELETED. Applicant obtained a settlement agreement of \$500 in January 2010 on the debt at 1.c., and testified he has made one \$50 payment since then. He provided no supporting documentation. He disputed this debt with the credit bureau, and it was deleted from his Experian credit report. He admits owing a debt to the creditor at 1.d., but not the stated amount. He testified he talked with the creditor, but did not receive a settlement offer. The debt at allegation 1.d. has been deleted from his Experian credit bureau report. Applicant was unaware of the credit card debt at allegation 1.s. until March 2009 when he received the DOHA interrogatory. He has not contacted the creditor during the past year. (GE 3, 4; AE B, II; Tr. 49-59, 81-85)

Credit cards: Allegations 1.e. (\$773) and 1.k. (\$389) – DISPUTED AND DELETED. Applicant testified that 1.e. and 1.k. are duplicates of the same debt, because the 1.k. debt was bought by the collection agency at 1.e. He testified that he owes the debt, but not the alleged amount of \$773, and that he had not made payments on this debt. The account alleged at 1.k. is shown as “deleted” on the newly submitted TransUnion credit bureau report. (GE 3, 4; AE II, III; Tr. 54-57)

Credit cards: Allegations 1.f. (\$527) and 1.j. (\$456) – DISPUTED. Applicant believes that 1.f. and 1.j. are duplicates. He had not taken steps to pay this credit card at the time of the hearing, as his plan was to start with creditors that were more likely to be willing to negotiate. In Applicant's newly submitted TransUnion credit report, the account alleged at 1.j. is shown as “new information below.” However, AE III consists of only one page of the credit bureau report and does not show the “new information.” However, both of these debts were verified by the Experian investigation. (GE 3, 4; AE B, III; Tr. 54-57)

Unrecognized debt – Allegation 1.g. (\$1,078) - DISPUTED AND DELETED. Applicant does not recognize the creditor and has no knowledge of this debt. He notified the credit reporting agencies, and Experian has deleted the account from Applicant's credit bureau report. The account alleged at 1.g. is shown as “deleted” on the newly submitted TransUnion credit bureau report. (GE 3, 4; AE B, II, III; Tr. 59-60)

Communications: Allegations 1.h. (\$1,401) and 1.i. (\$74) – DISPUTED. Applicant had service from the phone company listed at allegations 1.h. and 1.i. He received poor service, and cancelled the account. He testified that he had documentation to support the dispute, but did not provide it after the hearing or with his newly submitted documents. The company prorated the amount to be paid, but he disputes owing it. His exhibit B described the account as “verified and updated on January 2010.” He testified he would provide documentation of his complaint to the Federal Communications Commission, but did not provide it after the hearing. In Applicant's newly submitted TransUnion credit report, the

account alleged at 1.h. is shown as “new information below.” However, AE III consists of only one page of the credit bureau report and does not show the “new information” for this account. Therefore, the evidence is insufficient to establish if its status has changed since it was verified in January 2010. (GE 2, 3, 4; AE B, II, III; Tr. 60-63)

Communications: Allegations 1.q. (\$1,489) and 1.r. (\$276) – DISPUTED. Applicant testified that he contacted the communications company at allegation 1.q. and it had no record of the debt. He currently has service from the company. His newly submitted information includes a bill from the same communications company that does not show an outstanding balance. Applicant denies any knowledge of the communications company listed at allegation 1.r. He disputed this debt in his letter to the credit reporting agencies. The single page that Applicant submitted from January 2010 credit bureau report includes no information on this debt. (GE 2, 3, 4; AE I, IV; Tr. 77-80)

Insufficient funds: Allegation 1.i. (\$467) – UNPAID. In 2004, Applicant deposited a bad check that he received from another person, which left his account with a negative balance. He noted in his statements of July and September 2009 that he had made payments on this debt, but at the hearing, he testified the debt is not paid. (GE 2, 3; Tr. 65-66)

Judgment: Allegation 1.m. (\$782) – Applicant testified that the creditor sought a judgment against him in 2002, but failed to provide adequate notice. The company garnished Applicant's pay in the amount of \$667. Subsequently, the judgment was vacated for inadequate service of process. The creditor accepted the garnished amount as full payment. Applicant did not provide documentation after the hearing to support his statements. (GE 3, 4; Tr. 66-68)

Auto loan: Allegation 1.p. (\$28,683) – UNPAID. Applicant purchased an automobile in 2001, and in 2002 requested a voluntary repossession. It was sold, and a deficiency was not requested. The alleged amount is the full loan amount. Applicant contacted the creditor in late 2009, and later, contacted the attorney who currently holds the debt. They could not agree on a settlement amount. Nothing further has occurred and he has no documentation regarding these contacts. (GE 3, 4; Tr. 71-76)

Storage - Allegation 1.t. (\$562) - UNPAID. Applicant stored goods from August to October 2004. In his July and September 2009 statements, he said he would settle the debt. As of the hearing date, he had not contacted the creditor or resolved the debt. (GE 3; 4; Tr. 85-86)

Insurance – Allegation 1.u. (\$694) - DISPUTED. Applicant paid for month-to-month insurance until he was dropped for non-payment. He denies owing the debt. He testified that he complained about the error by telephone in 2006. He provided no supporting documentation. (Tr. 86-88)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.⁴ Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the Guidelines, commonly referred to as the “whole-person” concept.

The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guideline F (Financial Considerations) at AG ¶ 18.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁵ for an applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the government’s case.

Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.⁶ A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each applicant possesses the judgment, reliability and trustworthiness to protect the national interests as his or his own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the government.⁷

Analysis

⁴ Directive 6.3

⁵ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁶ See *Egan*, 484 U.S. at 528, 531.

⁷ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern about financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

Of the nine disqualifying conditions listed under Guideline F, the evidence supports application of two: AG ¶19 (a) (*inability or unwillingness to satisfy debts*) and AG ¶19 (c) (*a history of not meeting financial obligations*). The SOR alleges more than \$60,000 in debts, which started to become delinquent in 2002. Most of Applicant's debts remain unpaid, demonstrating a history of failure to meet financial obligations.

Under AG ¶ 20, the following potentially mitigating factors are relevant:

- (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.

Although Applicant's debts have been accruing for several years, they are not in the distant past, as many remain unpaid. This fact, along with the lack of action taken by Applicant, indicates that they may remain unpaid in the future. His failure to make

consistent attempts to resolve his debts raises questions about his reliability and judgment. AG ¶ 20(a) does not apply.

AG ¶ 20(b) applies in part because events occurred that affected Applicant's finances, and which he could not control or foresee. He has serious medical issues that affect his financial status and are beyond his control. Although Applicant was not steadily employed for several years, the specific reasons why he did not obtain permanent employment and how much control he had over this situation are unclear. He has been employed full-time since 2008, but has not acted responsibly to resolve his substantial delinquent debt load. AG ¶ 20(b) applies in part because of his medical issues.

Applicant sought financial counselling and AG ¶ 20(c) applies in part. However, he did not seek it until March 2009, years after his financial problems arose. He sought this help only after he received the DOHA interrogatories, indicating this action was primarily a response to the security clearance process. The counselling was beneficial in informing him how to dispute inaccurate credit bureau report entries, and he has acted on that information. However, the purpose of counseling is to develop a plan to pay his debts and to implement it. He has done neither.

To be applicable, AG ¶ 20(d) requires a good-faith effort to resolve debts. Applicant was on notice that delinquent debts were a security concern after he completed his security clearance application in June 2008, yet he has accomplished little to deal with his financial obligations. Without evidence of a plan to resolve his indebtedness, and steps taken to implement it, a good-faith effort to resolve debts cannot be substantiated. AG ¶ 20(d) does not apply.

Applicant disputes most of the SOR debts, either as to the debt itself, or the amount alleged. He provided documentation showing that he informed the credit reporting agencies of his disputes. As a result, six debts were deleted from his credit report. I find for the Applicant on those debts that the credit reporting agency deleted following its investigation. The credit agency also verified that other disputed debts were valid. AG ¶ 20(e) applies.

In all, the mitigation available to Applicant is insufficient to outweigh the fact that a substantial debt load remains, and Applicant has taken little action over many years to pay his debts or to establish a plan to resolve them.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the relevant circumstances. I have evaluated the facts presented and have applied the appropriate adjudicative factors under the cited guideline. I have also reviewed the record before me in the context of the whole-person factors listed in 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept. Under the appropriate guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant has accumulated substantial delinquencies over the past eight years. He has justifiably sought to correct the erroneous entries on his credit report. With help from his counselor, he filed disputes with the credit reporting agencies, which resulted in an investigation and deletion of debts totaling \$11,346. It also verified the accuracy of several challenged debts that total \$20,896.

However, the primary goal of financial counseling is to establish a plan of attack to deal with delinquencies. Even with the deletions from his credit report, Applicant still carries more than \$50,000 in delinquent debt. He has not established a payment plan to show how he will pay down this debt. An applicant is not required to be debt-free, or establish that he paid every debt. But he must demonstrate that he has established a plan to resolve his debts and has taken action to implement that plan. The evidence Applicant recently submitted provided information about his disputes, but again, no evidence of efforts to establish or implement a plan to deal with his significant debt load.

A fair and commonsense assessment of the available information bearing on Applicant's suitability for a security clearance shows he has not satisfied the doubts currently raised about his suitability for a security clearance. For these reasons, I conclude Applicant has not mitigated the security concerns arising from the cited adjudicative guideline.

Formal Findings

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a. – 1.d.	For Applicant
Subparagraphs 1.e. -1.f.	Against Applicant
Subparagraphs 1.g.	For Applicant

Subparagraphs 1.h. – 1.j.	Against Applicant
Subparagraph 1.k.	For Applicant
Subparagraphs 1.l. – 1.p.	Against Applicant
Subparagraph 1.q.	For Applicant
Subparagraphs 1.r. – 1.w.	Against Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest to allow applicant access to classified information. Applicant's request for a security clearance is denied.

RITA C. O'BRIEN
Administrative Judge