



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



In the matter of:)	
)	
I)	ISCR Case No. 09-03591
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: D. Michael Lyles, Esquire, Department Counsel
For Applicant: *Pro se*

April 13, 2010

Decision

MASON, Paul J., Administrative Judge:

Applicant's payment of four unlisted debts constitutes positive evidence, but his failure to pay 21 of 23 delinquent debts listed in the SOR constitutes the absence of a good-faith effort to resolve his debts. The various medical issues of Applicant and his wife fail to mitigate the financial concerns. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted his Security Clearance Application (SCA) on March 2, 2009. On August 14 and August 27, 2009, Applicant provided interrogatory answers to adjudicators of the Defense Office of Hearings and Appeals (DOHA). On November 23, 2009, DOHA issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F). The action was taken pursuant to 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 adjudicative guidelines (AG) dated December 29, 2005, and made effective within the Department of Defense for SORs issued on or after September 1, 2006.

Applicant submitted his answer to the SOR on December 17, 2009. Department Counsel indicated the case was ready to proceed on January 19, 2010. The case was assigned to me on January 25, 2010. DOHA issued a notice of hearing on January 28, 2010 for a hearing on February 24, 2010. The hearing was held as scheduled. At the hearing, five exhibits (GE I through 5) were admitted in evidence without objection to support the government's case. Applicant testified and submitted three exhibits (AE A through AE C). The record remained open until March 11, 2010, allowing Applicant to submit additional evidence. Applicant submitted AE D through AE H. AE D are Applicant's medical records for 2007, 2008, and 2009. AE E are his wife's medical records for October and November 2007. AE F is the maternity leave policy at Applicant's employer. AE G shows that Applicant paid two medical bills in full on March 10, 2010. One of the medical debts (\$33) is identified in SOR ¶ 1.e. The other medical bill (\$9.90) is unlisted. AE H indicates that a pet-grooming debt of \$57 listed in SOR ¶ 1.t was paid in full on March 10, 2010. DOHA received the transcript (Tr.) on March 11, 2010. The record closed on March 11, 2010.

Findings of Fact

The SOR lists 23 debts totaling \$17,671. In his answer to the SOR, Applicant admitted the delinquent accounts identified in SOR ¶¶ 1.a, 1.b, 1.c, 1.e, 1.f, 1.h, 1.j, 1.k, 1.l, 1.m, 1.q, 1.r, 1.s, 1.t, 1.u, and 1.v. He denied SOR ¶¶ 1.d, 1.g, 1.i, 1.n, 1.o, 1.p, and 1.w. Of the 23 debt delinquent debts, 13 are for medical services. The remaining delinquent accounts represent credit cards, a check issued with insufficient funds, a repossession, car insurance, and a utility account. The 23 accounts became delinquent between October 2003 (SOR ¶ 1.p, telephone) and February 2009. (SOR ¶ 1.s, satellite dish) The other accounts became delinquent between 2005 and February 2009. Considering the entire record in this case, I make the following findings of fact.

Applicant is 27 years old and married. He has two children, ages three and two. The three-year-old was born in July 2006, and the two-year-old was born in July 2007. He also pays \$400 a month in child support for a child from another relationship. (Tr. 40-42) Applicant has a Bachelor's degree in Business Administration and is pursuing his Master's degree in Business Administration. (Tr. 50) He has been employed by a defense contractor since June 2005. He programs radios for one of the branches of the military. (Tr. 39) His wife works for the same employer in a different department. (Tr. 40) Applicant also receives a \$1,800 stipend for coaching basketball in December, January, and early February of every year. (Tr. 44)

In his interview in March 2009 and at the hearing, Applicant stated his financial problems were partially the result of his wife losing her job in 2007, while she was pregnant. (Tr. 19) Applicant explained that his wife had been employed for a year, and was qualified to receive 100% of her pay during her pregnancy leave. (*Id.*) The employer, according to Applicant, claimed her doctor did not give her permission to take

maternity leave. (*Id.*) Applicant provided documentation concerning his employer's family maternity leave policy. (AE F) However, he supplied no documentation in support of his claim that her employer refused to believe she was authorized by her treating doctor to take maternity leave. Applicant also provided medical records of his wife for tests/treatment between October and November 2007 for vision problems/swelling in her right eye, and a lung problem. (AE E)

Applicant testified that he suffered unknown medical problems during his wife's pregnancy in 2007. (Tr. 21). He was having chest pains and blood tests disclosed chemical imbalances in his blood. He went from doctor to doctor and accumulated a large amount of debt. (Tr. 22)

Applicant estimated his undiagnosed medical condition began some time between March and August 2007. (Tr. 29) Applicant estimated that since June 2005, when he began working for his current employer, he missed about three weeks of work due to his undiagnosed illness. (Tr. 29-30) Medical records indicate that Applicant began having symptoms of an unknown origin in June 2007. (AE D) He was hospitalized in December 2007, and received some type of testing/treatment in February, April, May 2008, and May 2009. (*Id.*) It does not appear from the records that a cause for his symptoms could be established. One recommendation (among several recommendations) in the medical records was entered in May 2008 requesting Applicant to stay well hydrated and to see his primary doctor. (*Id.*)

The 13 medical accounts listed in the SOR are: ¶ 1.a (\$259), ¶ 1.c (\$198), ¶ 1.d (\$196), ¶ 1.e (\$33), ¶ 1.g (\$50), ¶ 1.h (\$100), ¶ 1.i (\$251), ¶ 1.j (\$136), ¶ 1.k (\$100), ¶ 1.l (\$100), ¶ 1.m (\$100), ¶ 1.n (\$620), and ¶ 1.v (\$100). Twelve of the medical debts are less than \$300, which together total \$1,623. In his answer to the SOR, Applicant denied the medical accounts listed in SOR ¶ 1.d, ¶ 1.g, ¶ 1.l, and ¶ 1.n. At the hearing, Applicant admitted all the medical debts. He did not pay more of the medical debts because he did not have the money. (Tr. 56) He planned to verify the debts and put them together in a debt consolidation plan. (*Id.*) On March 10, 2010, Applicant provided proof of payment of two delinquent medical debts, one identified in SOR ¶ 1.e. for \$33, and an unlisted medical debt of \$9.90.

SOR ¶ 1.b is an apartment lease that Applicant breached in 2007. Applicant explained that he had worked out an agreement with the former landlord to pay the rent late because his wife was not getting paid during her pregnancy. (AE 5) According to Applicant, the new landlord initially agreed to the informal arrangement Applicant had made with the former landlord. Then, the new landlord changed his mind and told Applicant he would have to pay rent for the month for which he was late, and also the rent for the current month. Applicant was evicted from his apartment on the last month of his lease. (Tr. 49-50) The delinquent debt remains unpaid.

SOR ¶ 1.f is a balance of \$233 owed on an apartment lease that Applicant broke. He acknowledged the debt is unpaid. (Tr. 23)

SOR ¶ 1.o is a delinquent account totaling \$600. Applicant denied the account because he did not recognize it. (Tr. 24, 37-38) He provided no documentation, such as an official dispute with one of the credit agencies, supporting his claim. The delinquent debt remains unpaid.

SOR ¶ 1.p is a telephone account totaling \$237. The last payment activity on this account was October 2003. Applicant disputed the account in his answer to the SOR. He acknowledged the account at the hearing. (Tr. 24) The debt remains unpaid.

SOR ¶ 1.q is a telephone account totaling \$96. This account became delinquent in October 2005. At the hearing, Applicant acknowledged the account indicating it was a home telephone. (Tr. 25) Applicant owes the debt.

SOR ¶ 1.r is an outstanding balance of \$9,627 due on a lease for a vehicle that had been repossessed. In his March 2009 interview and at the hearing, Applicant admitted the delinquent debt, and explained he voluntarily returned the car. (AE 5; Tr. 26) The account is still unpaid.

SOR ¶ 1.s is an \$80 account that Applicant owes for a satellite dish. He acknowledged the debt. (Tr. 26) The account has not been paid.

SOR ¶ 1.t is a delinquent pet grooming bill totaling \$57 that Applicant disputed because he believed he had paid the debt in 2005. (Tr. 35) He provided proof he paid the pet bill on March 10, 2010. (AE H)

SOR ¶ 1.u is a delinquent debt that Applicant owes for writing a check for \$262 in February 2009 that exceeded the available funds in his checking account. The amount remains unpaid.

SOR ¶ 1.w is a car insurance account that Applicant cancelled. (AE 5). At the hearing, he acknowledged the account is unpaid. (Tr. 26)

Applicant testified he has a budget and spoke with a financial counselor a couple weeks before the hearing to assist him in deciding which debts to dispute and which debts to pay. (Tr. 34-35) Applicant indicated he could submit verification that he was receiving financial assistance. (*Id.*) No additional evidence was presented regarding his budget or whether he actually received counseling on how to manage his finances. Applicant estimated he had about \$3,000 in his retirement account. (Tr. 48)

In GE 4 (interrogatory answers), Applicant explained that to restore his student loan accounts (unlisted) to a current status, he had to make nine payments of \$356 to the student loan lender. Then, the student loans would not be in default, and he would have flexibility to pay the other delinquent debts. (*Id.*) Applicant provided evidence of four payments of \$356 and intended to make the next five to restore his student loans to a current status. (*Id.*) On January 29, 2010, the student loan lender informed Applicant by letter that he successfully completed the default loan rehabilitation program. (AE C)

Even though the letter does not specifically indicate he made the remaining five payments, I find he made the required payments totaling \$3,204, thus restoring his loans to a rehabilitated status for continued repayment or to be placed in deferment. (Tr. 43; AE C) Applicant stated in his March 2009 interview that he intended to restore the student loans to a current status so he could place the loans back into deferment. (GE 5)

AE B is an installment loan payment ledger for an automobile. The payment ledger shows Applicant made six monthly payments of approximately \$235 on the automobile loan (not listed in the SOR) between September 2009 and February 2010. (*Id.*)

Between April and June 30, 2009, Applicant provided four payments of \$14 dollars to an unlisted credit card creditor. (GE 4) The fourth payment on the credit card reduced the balance to \$1,061. (*Id.*) Applicant indicated he had paid down the balance on the unlisted credit card to \$300. (Tr. 54) He provided no documentation verifying the balance was \$300.

Character Evidence

Applicant's current property manager since August 2008 indicated in a character statement that Applicant pays his rent on time and takes care of his apartment. (AE A) Applicant's friend of 10 years considers Applicant a dedicated and trustworthy person who is also active with the youth in the community. (*Id.*) Applicant's supervisor for the past four years vouches for Applicant's trustworthiness on the job, and praises his leadership abilities. Another friend of 10 years believes Applicant is a real role model who tries to make a difference. (*Id.*)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). Each guideline lists potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

The administrative judge's ultimate goal is to reach a fair and impartial decision that is based on common sense. The decision should also include a careful, thorough evaluation of a number of variables known as the "whole-person concept." Finally, 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. Reasonable 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 sensible, logical, and based on the evidence

contained in the record. I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.I.14., the government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.I.15., the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

Analysis

Financial Considerations

AG ¶ 18. The Concern. "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. 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."

The two disqualifying conditions that are applicable are:

AG ¶ 19(a) (*inability or unwillingness to satisfy debts*), and

AG ¶ 19(c) (*a history not meeting financial obligations*).

Applicant's history of delinquent debt is established by his credit reports, his interview with the OPM investigator, his interrogatory answers, his answers to the SOR, and his testimony. The record shows that when the SOR was issued, Applicant had 23 delinquent debts totaling \$17,671 that he was unable to pay. Of the 23 delinquent debts, 12 are medical accounts less than \$300 each, which together total \$,1623. AG ¶ 19(a) applies. The fact that Applicant's delinquent debts date to October 2003 supports a conclusion that he has a history of not meeting financial obligations. AG ¶ 19(c) applies.

The five mitigating conditions under the guideline are:

AG ¶ 20(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 reliability, trustworthiness, and good judgment*);

AG ¶ 20(b) (the conditions that resulted in the financial problem were largely beyond the person's control and the individual acted responsibly under the circumstances);

AG ¶ 20(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);

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts); and

AG ¶ 20(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 to resolve the issue).

The credit reports reflect that most of the debts in the SOR became delinquent within 2005 and February 2009. Even though Applicant provided documentation verifying he satisfied three delinquent debts in March 2010, only two are listed in the SOR. Twenty-one accounts totaling approximately \$17,581 remain unpaid. The lack of substantial action in addressing his listed indebtedness indicates his current financial problems are likely to continue in the future. AG ¶ 20(a) does not apply.

AG ¶ 20(b) applies due to Applicant's wife losing her job during her pregnancy in 2007, and his undiagnosed illness that required him to obtain treatment over the last three years. Regarding the wife's job loss during her pregnancy, the application of AG ¶ 20(b) is limited because Applicant provided no documentation proving that his wife had been employed for a year, thereby qualifying her for 100% of her pay while on maternity leave. Also, he furnished no documentation from his wife's treating doctor authorizing her to take maternity leave. The medical records dated in October and November 2007 show that Applicant's wife was treated for vision and lung problems. These medical records offer no insight into why his wife lost her job during her pregnancy. In addition, the records do not indicate whether his wife was employed or unemployed at the time of her treatment in October and November 2007.

Concerning Applicant's medical tests and treatment in the last three years, AG ¶ 20(b) has limited application because he indicated he was absent from work for only three weeks since he first discovered the symptoms of his illness in 2007. In sum, Applicant has not provided a detailed and documented explanation of how his wife's job loss and his illness negatively impacted paying his delinquent debts. AG ¶ 20(b) applies in part because the conditions that contributed to the financial problems were beyond Applicant's control, but by paying off only two of the listed creditors in March 2010, Applicant has not addressed his debts in a financially responsible manner.

Although Applicant testified that he was consulting a financial counselor to assist him in identifying which delinquent debts to dispute and which delinquent debts to pay,

he provided no documentation from the counselor. Applicant stated he had a budget, but supplied no documentation confirming the budget. Having paid only two of the listed debts in the SOR, there is no clear indication Applicant's financial indebtedness is being resolved or is under control. AG ¶ 20(c) does not apply.

Applicant receives limited mitigation under AG ¶ 20(d) for satisfying a medical debt (SOR ¶ 1.e) and the pet grooming debt (SOR ¶ 1.t). Applicant also receives credit for making the nine payments to bring his unlisted student loan out of a default status. The mitigation extends to his payments on the credit card and his six payments on his car loan between September 2009 and February 2010. The mitigation is reduced because Applicant has provided no indication of how he intends to address the remaining 21 debts. It is also important to note that Applicant did not pay the three debts (two listed and one unlisted) until after the hearing in March 2010.

AG ¶ 20(e) sets forth two steps necessary to dispute delinquent debts. Applicant identified SOR ¶ 1.o as the only debt he disputed. He testified that he was consulting with a financial counselor to help him determine which debts to dispute. However, Applicant provided no evidence demonstrating that he has (1) a "reasonable basis to dispute the legitimacy of the past-due debt," and (2) "documented proof to substantiate the basis of the dispute." Applicant has satisfied neither prong of AG ¶ 20(e).

The statements from Applicant's supervisor, coworkers, and friends, regarding his job performance and reputation in the community, weigh in his favor. However, the character evidence and limited mitigation presented under ¶ AG 20(b) and ¶ 20(d) are insufficient to overcome Applicant's history of not meeting financial obligations. The financial guideline is resolved against Applicant.

Whole-Person Concept

I have examined the evidence with the disqualifying and mitigating conditions in my ultimate finding against Applicant under the financial considerations guideline. I have also weighed the circumstances within the context of nine variables known as the whole-person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors:

¶ 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 the participation was 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.

Applicant began working for his current employer since June 2005. In 2007, his wife lost her job while she was pregnant. Applicant has not provided sufficient evidence

to establish that his wife had been employed the necessary amount of time to qualify for 100% of her pay during her pregnancy. Further, Applicant has not established that she was authorized for pregnancy leave by her doctor. Having missed only three weeks of work since the onset of his illness in 2007, Applicant has not provided persuasive evidence to establish why he has not been more proactive in paying off the debts listed in the SOR.

I have considered Applicant's documented evidence indicating he paid \$3,204 to return his student loan accounts (not listed in the SOR) to a current status in January 2010. In August 2009, Applicant told the OPM investigator that shortly after he returned the student loans to a current status, he would start paying off the other debts. I have considered his credit card payments on an unlisted credit account. I have considered his six monthly car payments (not listed in the SOR) totaling approximately \$1,410 between September 2009 and February 2010. I have also considered Applicant's payment in full of an unlisted medical debt of \$9.90 in March 2010. Lastly, I have considered Applicant's favorable character evidence at work and in the community. While Applicant's documented evidence concerning the unlisted debts weighs in his favor, it is not sufficient to show why he has not handled the listed debts in a responsible manner.

In March 2009, Applicant filled out an SCA in which he was asked about his delinquent debts. On two occasions (interrogatory answers) in August 2009, Applicant was put on notice that his delinquent debts were a concern to the government. In November 2009, the SOR was mailed to Applicant. Even though 12 of the medical debts are under \$300 each, Applicant did not pay two of the smaller medical debts (one debt is listed and one debt is unlisted) until March 2010. The timing of these payments raises questions about Applicant's commitment to pay off the remaining delinquent accounts in a financially responsible manner. An applicant is not required to be free of all debt, or prove that he has paid all his delinquent debt. However, he must demonstrate he has a plan to resolve his debts and has taken credible steps to follow through with the plan. Lacking a clear plan for payment of the listed debts, it is likely that Applicant's current financial problems will persist in the future. See AG ¶ 2(a)(9). With no financial counseling, and payment of only two of the delinquent debts listed in the SOR, Applicant has not mitigated the security concerns under the financial considerations guideline.

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.e, 1.t:	For Applicant
Subparagraphs 1.a through 1.d:	Against Applicant
Subparagraphs 1.f through 1.s:	Against Applicant
Subparagraphs 1.u through 1.w	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Paul J. Mason
Administrative Judge