



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



In the matter of:)	
)	
)	ISCR Case No. 09-06207
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: *Pro se*

April 28, 2011

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

As of June 2010, Applicant owed more than \$38,000 in delinquent consumer debt, including \$13,750 to a credit union for two loans past due since 2004 and 2005. He began repaying a judgment debt in August 2009, and has satisfied some smaller debts, but it is too soon to conclude that his financial problems are behind him. Clearance denied.

Statement of the Case

On June 14, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline F, Financial Considerations, which provided the basis for its preliminary decision to deny him a security clearance. DOHA acted 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 adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR on October 20, 2010, and requested a hearing. On September 2, 2010, the case was assigned to me to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. I scheduled a hearing for October 7, 2010.

I convened the hearing as scheduled. Eight Government exhibits (Ex. 1-8) and five Applicant exhibits (Ex. A-E) were admitted without objection. Applicant testified, as reflected in a transcript (Tr.) received on October 14, 2010.

At Applicant's request, I held the record open until December 1, 2010, for him to submit evidence of debt repayment. Applicant timely forwarded two additional documents, which were entered as exhibits (Ex. F and Ex. G) without objection.

Findings of Fact

The SOR alleges under Guideline F, Financial Considerations, that as of June 14, 2010, Applicant owed \$41,985 in delinquent consumer credit debt (SOR 1.a-1.l). In his Answer, he admitted all the debts except a \$137 wireless telephone debt (SOR 1.k) and a \$3,512 collection debt (SOR 1.l). Applicant's admissions are incorporated as findings of fact. After considering the pleadings, exhibits, and transcript, I make the following additional findings of fact.

Applicant is a 40-year-old security manager responsible for his employer's global security operations. (Ex. 1; Tr. 32.) He has a master's degree in security management, and in May 2008, he earned a law degree. (Ex. 2; Tr. 35.) Applicant has worked for his present employer since October 2004, and he was granted an interim Secret security clearance. (Ex. 1; Tr. 26, 38.) He has never been married, but he is engaged. Applicant and his fiancée have been together about 11 years. (Tr. 36.) She has two daughters, the older of which is in her sophomore year at a private college. (Tr. 31-32, 37.)

Applicant was involved in a cohabitant relationship with his previous girlfriend. He accepted credit card offers received in the mail, and he and his girlfriend bought "stuff" for their apartment. (Tr. 81-83.) Around 1997 or 1998, their relationship ended. She moved out of their apartment, and he became responsible for repaying several credit card debts in his name only. Applicant was employed as a store loss prevention officer at \$12 to \$13 an hour from August 1997 to April 1998. (Ex. 1; Tr. 81.) He was unable to keep up with the payments (Ex. 2; Tr. 55.), despite his full-time employment as a regional security manager from February 1998 to April 2001. He borrowed from a credit union to consolidate debt (SOR 1.i) and for a car (SOR 1.j) in 1998. Around December 2000, Applicant began living with his fiancée (Ex. 2; Tr. 36.), and excepting a brief separation from March 2004 to May 2004, they have had a spousal-like relationship. During this relationship, he opened new accounts that became delinquent, as reflected in the following table.

Debt as alleged in SOR	Delinquency history	Payment status
1.a. \$7,890 judgment debt	Credit card account opened Mar. 2002; \$7,890 judgment Mar. 2007 (Ex. 2; 4-8.); \$9,160.93 balance Aug. 2009. (Ex. A.)	Paying \$100 monthly from Aug. 2009; as of Jul. 2010 balance \$7,960.93. (Ex. 3; A; Tr. 28, 41.)
1.b. \$91 medical debt	Last activity Aug. 2008, \$91 for collection Sep. 2008. (Ex. 5-6.)	Had not contacted creditor as of Oct. 2010 (Tr. 42.); paid in full by Dec. 2010. (Ex. F.)
1.c. \$309 cable television debt	Last activity Jul. 2007, \$309 for collection Oct. 2007. (Ex. 5-6.)	Intended to satisfy debt in Nov. 2010 (Tr. 29, 43.); paid in full by Dec. 2010. (Ex. F.)
1.d. \$1,393 past due credit card debt	Opened Nov. 2006, \$350 credit limit, past due 30 days Sep. 2007 on \$593 balance (Ex. 8.); 30 days past due on \$1,035 balance Feb. 2008 (Ex. 7.); last activity Jan. 2009, balance \$1,190 Sep. 2009 (Ex. 5.)	No payments as of Oct. 2010. (Tr. 46.)
1.e. \$1,648 charged-off credit card debt	Opened May 2000, \$1,610 high credit, last activity Dec. 2003, \$1,401 judgment Jun. 2005 (Ex. 4.); \$1,260 for collection Feb. 2007 (Ex. 7-8.); balance \$1,648 Jul. 2009 (Ex. 6.); balance \$1,689 Dec. 2009. (Ex. 5.)	No recent payments; could not afford to pay both this debt and judgment in SOR 1.a. (Tr. 29, 47.)
1.f. \$6,300 charged-off credit card debt	Opened Nov. 1996, \$6,300 high credit, last activity May 2001, for collection; \$8,288 balance as of Sep. 2007. (Ex. 8.)	No active collection efforts by creditor. (Tr. 48.)
1.g. \$6,163 credit card debt in collection	Opened Aug. 2006, \$5,000 credit limit; \$4,965 balance, \$488 past due Sep. 2007 (Ex. 8.); \$5,178 for collection Jan. 2008, balance \$5,474 Dec. 2009 (Ex. 5.)	No payments. (Tr. 55.)
1.h. \$792 credit card debt in collection	Opened May 2007, \$446 balance late 90 days Sep. 2007 (Ex. 8.), \$438 balance late 30 days Feb. 2008 (Ex. 7); \$703 balance charged off Apr. 2008, \$792 balance in	Responded to collection effort (Tr. 85.); paid \$100 by Dec. 1, 2010, arranged to satisfy debt by Jan. 30, 2011. (Ex. G.)

	collection Nov. 2008 (Ex. 6); balance \$852 Dec. 2009 (Ex. 5.)	
1.i. \$5,897 charged-off loan debt	\$11,724 debt consolidation loan (Tr. 52.) opened Jul. 1998, last activity Aug. 2004; \$5,897 balance for collection Apr. 2005. (Ex. 5-8.)	No payments. (Tr. 55.)
1.j. \$7,853 charged-off loan debt	\$19,766 auto loan taken out Mar. 1998 for 1995 vehicle (Tr. 51.), chronically late in 2004 and 2005, \$7,853 charged-off balance as of Apr. 2005, for collection. (Ex. 5-8.)	No payments. (Tr. 55.)
1.k. \$137 wireless telephone debt in collection	Last activity Aug. 2001, \$137 for collection Sep. 2001, unpaid as of Jun. 2007. (Ex. 7; 8.)	Paid two or three years ago (Tr. 30.); not listed on credit report as of Aug. 2009. (Ex. 6.)
1.l. \$3,152 collection debt	Reported last activity Jul. 2001, \$3,512 balance in collection Feb. 2008. (Ex. 8.)	Disputed liability with credit agencies as of Oct. 2007 (Ex. 3; 7-8.), account holder has same name but different address. (Tr. 31, 54.)

In April 2001, Applicant's employer ceased operations when the owner relocated. Applicant began working as an operations manager for a large security corporation, but he and his employer mutually agreed that the job was not a good fit for him, and Applicant resigned in October 2001. Applicant was unemployed until sometime in December 2001. (Ex. 1; Tr. 55.) Applicant went to work as an accounts manager and stayed on with a new employer after the contract was bought out in January 2004. In October 2004, he began his current employment at \$55,000 annually. (Ex. 1; Tr. 38.)

In August 2005, Applicant's luggage was stolen from the baggage claim area while he was on a business trip abroad for his employer. Applicant contacted his business credit card lender and was told that he was allowed up to \$1,200 in replacement costs, so Applicant purchased \$1,211 in personal items. He submitted a claim that was denied. While his appeal of the denial was pending, he made no payments on the debt, and his account went to collection. Around January 2007, Applicant was informed that the creditor was liable only in the event the luggage was lost by the airline and not in the case of theft after it had left the airline's possession. Applicant settled the debt for less than its full balance. (Ex. 2; 8.)

On February 27, 2008, Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP). He responded "Yes" to question 27.d, "In the last 7 years, have you had any judgments against you that have not been paid?" He listed the

judgment debt in SOR 1.a. However, he indicated that he was appealing the judgment. In response to the financial delinquency inquiries, Applicant admitted that he had been over 180 days delinquent on debts in the last seven years. Yet, he listed only the business credit card debt (not alleged) that he disputed. (Ex. 1.)

On November 29, 2007, and again on April 9, 2008, Applicant was interviewed by an Office of Personnel Management (OPM) investigator, in part about his delinquent debts. Applicant indicated during his first interview that he had been paying from \$50 to \$100 per month on the credit card debt identified in SOR 1.e, to reduce the balance to around \$500, and that the debt would be satisfied by January 2009. He disputed the debts in SOR 1.f and 1.l as not his debts. He also contested the amount of the judgment award in SOR 1.a because that credit card had only a \$3,000 limit. Applicant indicated that he was working with the credit union to resolve the debts in SOR 1.i and 1.j. When he was re-interviewed, he acknowledged that he had made no payments toward the judgment in SOR 1.a because he had forgotten about it. He added that he had the judgment dismissed in early 2008, and that he was seeking to settle with the creditor. Applicant averred that he was capable of meeting all his financial obligations. (Ex. 2.)

In response to DOHA inquiries about the efforts taken, if any, to resolve his delinquent debts, Applicant indicated in April 2010 that he was paying \$100 per month on the judgment in SOR 1.a. He did not recognize the \$91 medical debt (SOR 1.b), and maintained that the \$309 cable television debt (SOR 1.c) should have been paid by his ex-girlfriend. He did not dispute owing the debts in the SOR, except for the wireless debt in SOR 1.k, which he had paid, and the collection debt in 1.l, which he explained was not his. Applicant indicated that he was beginning to work with a debt management company to deal with his admitted debts. (Ex. 3.)

Applicant contacted a few debt resolution firms, but the proposed payment of \$900 per month was more than he could afford. (Tr. 66.) Applicant intends to satisfy his debts one at a time. (Tr. 33.)

Since about 2000, Applicant has been supplementing his income by refereeing volleyball games, on average six hours per month. (Ex. 2.) As a self-employed, certified referee, he works on weekends, more frequently during the fall. He earns between \$5,000 and \$6,000 a year, depending on his assignments. (Tr. 43-44.) As of October 2010, Applicant was also coaching soccer at a private school. In November 2010, he expected to be paid \$4,000 to \$5,000 for his referring and coaching duties. (Tr. 43-45.) As of October 2010, his annual salary from his primary job with the defense contractor was almost \$61,000. (Tr. 38.) Applicant initially testified that his employer has not given out any raises to employees in the last two years. (Tr. 30.) But he later admitted that he received a "half bonus" in 2009. (Tr. 62.)

Applicant drives a 2005-model year car that he purchased in September 2010 through a loan of \$12,000, after a down payment between \$1,000 and \$1,200 borrowed from his 401(k). (Tr. 58, 64, 66, 80.) His first car payment of \$300 was due within a few days of his October 2010 hearing. Applicant's previous automobile was 14 years old with 190,000 miles on the odometer. (Tr. 80.)

Applicant shares expenses with his fiancée including their mortgage payment, which is almost \$2,600 per month. Applicant and his fiancée each pay half of the monthly mortgage. (Tr. 56.) He pays for the heating oil, which averages \$200 a month on an annual basis (Tr. 57.); their car insurance at \$270 per month (Tr. 59.); and cell and landline phones, cable television, and Internet at \$400 total per month. (Tr. 58.)

Applicant's fiancée pays a larger share of her daughters' expenses (Tr. 56.), and she covers the groceries (Tr. 57.), electricity, and water. (Tr. 61.) He pays for the heating oil and \$270 per month for their car insurance. She covers the groceries. (Tr. 57-59.) His fiancée makes about \$50,000 annually from her employment, another \$10,000 to \$12,000 from her flower shop, and she also receives child support of \$22,000 annually. (Tr. 56, 61.) In 2009, Applicant's fiancée's ex-husband did not meet his obligation to pay college costs for his daughter. So last fall, Applicant put out \$4,000 of his coaching income to keep his fiancée's daughter in college. (Tr. 32, 72-73.)

Applicant financed his law school education through student loans. As of December 2009, he owed about \$85,139 in student loan debt. Repayment was deferred based on economic hardship. (Tr. 60, 68, 71.) The loans were scheduled to come out of deferment in November 2010, although he testified that he could defer them for a longer period if necessary. (Tr. 69.) His total monthly payment on the loans will be around \$773. (Ex. 5; Tr. 69-70.) As of December 2009, one credit bureau reported that Applicant owed an additional \$1,966 in student loan debt from 1989 and 1990 when he pursued his bachelor's degree. The accounts were also deferred. (Ex. 2; 5; Tr. 69.) Applicant has no new personal credit card debt. (Ex. 5; Tr. 60.) In September 2010, he was issued a business credit card for work expenses. The account has a balance around \$100 that had to be paid by October 18, 2010. (Tr. 83-84.) Applicant has no savings but he has around \$4,000 in 401(k) assets. (Tr. 64-65.) Most of his estimated \$500 in monthly discretionary funds has gone to pay for gasoline and eating out. (Tr. 87.)

Applicant has handled his often sensitive and stressful duties as global security manager for his employer with professionalism and dedication. His coworkers have found him to be reliable, trustworthy, and conscientious. (Ex. B-E.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to 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 overarching adjudicative goal is a fair, impartial, and commonsense

decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. 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 applicant 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 that the applicant may deliberately or inadvertently fail to 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 applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern about finances is set out in AG ¶ 18, as follows:

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 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.

As of the June 2010 SOR, Applicant owed more than \$38,000 in delinquent debt, including judgment debts around \$1,400 and \$8,000. His failure to remain current in his financial obligations clearly implicates disqualifying conditions AG ¶ 19(a) and ¶ 19(c).

Mitigating condition 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 current reliability, trustworthiness, or good judgment,” cannot reasonably apply. The credit card debts in SOR 1.e and 1.f have been delinquent for more than seven years. However, according to his available credit record, several of the debts in the SOR became past due while he has worked for his present employer earning at least \$55,000 annually. Furthermore, most of his delinquent debt remains unpaid.

Applicant attributes his financial problems to his breakup with his former girlfriend, when his hourly wage was only \$12 to \$13. However, AG ¶ 20(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,” has only limited applicability to those debts (SOR 1.f and likely 1.e), which became delinquent because of the termination of this personal relationship, and the costs associated with having to maintain a household on his limited income. He borrowed from the credit union to consolidate debt (SOR 1.i) and for a car (SOR 1.j) while he was living on his own, before he began cohabitating with his fiancée in December 2000. But even so, it is difficult to mitigate his total disregard of those loans since early 2005. AG ¶ 20(b) also does not apply to those debts in SOR 1.a-1.d, 1.g-1.h, and 1.k, which were opened and became delinquent while his fiancée was paying a share of their household expenses. Applicant had some unexpected expenses in recent years, most notably the \$1,200 he spent to replace the personal items stolen in his luggage in August 2005, and the \$4,000 he paid to keep his fiancée’s daughter in college in the fall of 2009. But his salary has been at least \$55,000 since October 2004, and he shares household expenses with his fiancée. He has not explained why he could not make even the minimum payment on a \$438 credit card balance in February 2008 (SOR 1.h), for example. Law school expenses were not shown to be a factor, in that his sizeable school loans are still in hardship deferment.

Applicant satisfied the wireless telephone debt (SOR 1.k) two or three years ago. After his hearing, he satisfied the \$91 medical debt (SOR 1.b) and the \$309 cable television debt (SOR 1.c), and he made the first of arranged payments to resolve the debt in SOR 1.h. Weighing more heavily in his favor, he has been paying the judgment creditor in SOR 1.a at \$100 per month since August 2009. Yet, AG ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” is not fully implicated when the payments have been prompted by civil judgment actions, debt collection efforts, or concern for his security clearance. As of October 2010, he had not contacted those creditors identified in SOR 1.d-1.g or the credit union that lent him funds in 1998 for debt consolidation (SOR 1.i) and a car (SOR 1.j). He borrowed from his 401(k) for the down payment for the car he recently financed. He had no accumulated savings to cover unexpected expenses. There is no evidence that he has budgeted for the \$773 in student loan repayment that will be required each month once his law school loans are no longer deferred. 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,” is not yet established. Satisfaction of his delinquent debt is not required for access, and his recent reliance on cash purchases rather than credit cards is some indication of financial responsibility. But a longer track record of debt repayment is required before I can confidently conclude that his financial problems are safely behind him.

AG ¶ 20(d), “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,” applies to the debt alleged in SOR 1.i. Applicant disputed the debt with the credit reporting agencies as of October 2007, on the basis that he had never lived at the address of the person named on the account. AG ¶ 20(d) also applies to the wireless telephone debt in SOR 1.k because the debt had been paid and was no longer past due as of when the SOR was issued.

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 his conduct and all relevant circumstances in light of 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.

Applicant’s job has placed him at times in stressful situations, and by all accounts, he has been conscientious and professional. His ability to remain calm, and to respect the sensitivity and confidentiality of the matters before him, weighs favorably when assessing his current security eligibility. However, Applicant failed to display a similar level of dedication and responsibility in his handling of his personal financial affairs. Applicant has an ongoing obligation to contact his creditors and at least attempt to settle the debts, whether or not 90 percent of his debts went delinquent over ten years ago (see Tr. 96, testimony as to percentage of old debt unsubstantiated in the record) or whether a particular creditor actively pursues collection. His eleventh-hour efforts to address several of the debts in the SOR are not sufficient to overcome the doubts about his judgment raised by about \$38,000 in unresolved delinquent debt.

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:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	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.

Elizabeth M. Matchinski
Administrative Judge