



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



In the matter of:)	
)	
)	ISCR Case No. 09-06353
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Candace L. Garcia, Esquire, Department Counsel
For Applicant: John F. Adamson, Personal Representative

February 28, 2011

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant stopped paying rent to a former landlord after he had to break his lease. His truck loan, a consumer credit account for electronic equipment, and several medical debts became delinquent due to the seasonal nature of his employment and his eventual layoff in December 2008. As of February 2010, he owed around \$21,436.17 in past due debt. He began repaying his debts in August 2009, and has since paid in full or settled the remaining balances. Clearance granted.

Statement of the Case

On February 26, 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 initially responded to the SOR on March 12, 2010. He requested a hearing but did not admit or deny each of the allegations of the SOR. On April 12, 2010, he submitted an answer in which he admitted the allegations in SOR 1.a, 1.c, 1.h, 1.m, and 1.n. He denied SOR 1.i, and indicated he did not recognize the medical debts alleged in SOR 1.b, 1.d–1.g, and 1.i–1.k. On May 4, 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. On May 17, 2010, I scheduled a hearing for June 9, 2010.

I convened the hearing as scheduled. Applicant was represented by the chief steward of his union. Six Government exhibits (Ex. 1-6.) were entered into evidence. Exhibit 2 was admitted over Applicant's objection. Incorporated in Exhibit 2 is a report of subject interview that contained information concerning alcohol-related incidents that were not alleged in the SOR. Department Counsel asserted that the document was offered solely for the financial information. I admitted the document in full for consideration of the information relevant and material to Applicant's financial situation. Through his union steward, Applicant submitted 11 exhibits (Ex. A-K) that were accepted into the record without objection. Applicant also testified, as reflected in a transcript (Tr.) received on June 18, 2010.

At Applicant's request, I held the record open initially until June 23, 2010, for the receipt of additional financial documentation. Five more exhibits were timely received (Ex. L-P) and entered without objection. On June 23, 2010, I granted Applicant a three-week extension, until July 14, 2010, to submit additional documents. On July 23, 2010, Applicant offered proposed exhibits Q through T, which were entered without objection.

Findings of Fact

The SOR alleged under Guideline F, Financial Considerations, that as of February 26, 2010, Applicant owed \$3,897 to a former landlord (SOR 1.a), \$2,545 in medical debt in collection (SOR 1.b, 1.d–1.f, 1.i–1.k), \$13,527 for a repossessed vehicle (SOR 1.c), \$137 in cable television debt (SOR 1.h), \$1,602 in delinquent credit card debt (SOR 1.i), \$136 for insurance (SOR 1.m), and \$391 in past due telephone charges (SOR 1.n). In his Answer, Applicant admitted the debts for the leased apartment (SOR 1.a), truck (SOR 1.b), cable television (1.1.h), insurance (SOR 1.m) and telephone (SOR 1.n). He denied the credit card delinquency and indicated he did not recognize the medical debts. After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 55-year-old divorced male, who has been employed as a grinder for a defense contractor since April 2009. He had worked for the company previously from January 1975 to May 1980. (Ex. 1.) Applicant held a confidential-level security clearance during 2007 and 2008 while working as a foreman for a gas pipeline company. (Ex. 1.)

Applicant worked for a natural gas pipeline company from November 1999 to December 2008. (Ex. 1.) The work was seasonal in nature, so there were long stretches when he earned no income. He worked full-time hours when he was on the job. (Tr. 32.) In May 2001, Applicant bought a truck for \$38,000, taking out a loan of \$25,194 that he repaid at \$530 per month until December 2002 when he was without work. He subsequently

received two notices requesting payment. He did not respond because he had no earned income. (Tr. 79.) Around May 2003, Applicant stopped paying his rent on an apartment that he shared with his brother. (Ex. 2; Tr. 93.) Around July 2003, Applicant's truck was repossessed and sold at auction. He was left owing a deficiency balance around \$8,998 (Ex. 2; 4; 5; L.), although Applicant thought that he had no further obligation after the truck was sold. (Tr. 33, 68.) In January 2004, the creditor referred a \$9,398 balance for collection (SOR 1.c). (Ex. 4.) In April 2005, Applicant's former landlord placed a \$4,197 balance for back rent and other fees for collection (SOR 1.a). (Ex. 2; 4; 5.)

After nine years working off and on for the natural gas company, Applicant was laid off in December 2008. (Ex. 1; Tr. 62.) In February 2009, he incurred \$333 in medical costs at a local hospital. The charges were satisfied with a final payment applied March 4, 2010 (Ex. J.), but he owed other medical debts incurred when he was out of work in the past. (Ex. 4.)

In April 2009, Applicant started working for his current employer. On June 11, 2009, he completed an Electronic Questionnaire for Investigations Processing (e-QIP) on which he responded affirmatively to questions 26.f, "Have you ever defaulted on any type of loan?," 26.g, "Have you had bills or debts turned over to a collection agency?," and 26.n, "Are you currently over 90 days delinquent on any debt(s)?" (Ex. 1.) Applicant indicated he had paid an \$800 hospital debt in June 2006, and his truck loan had been paid in full after auction in May 2002. He disclosed unpaid medical debt, but indicated that he had made repayment arrangements. (Ex. 1.)

A check of Applicant's credit on June 25, 2009, revealed an unpaid deficiency balance on the truck loan, and some consumer credit debts not listed on his e-QIP. (Ex. 4.) On July 16, 2009, Applicant was interviewed by a government investigator, in part about his finances. He disclosed that he incurred a hospital debt of \$500 around January 2009.¹ Applicant denied he had received any notice of a deficiency balance on his loan for his truck after the vehicle was auctioned, although he did not dispute the reported debt. Concerning the apartment debt, Applicant admitted that he had stopped paying rent, and indicated it was because he had been confined to jail for four months for drunk driving.² He contested the amount of the debt, which he believed was around \$2,000 rather than the reported \$4,197. Applicant did not recognize several of the medical debts in collection. (Ex. 2.)

¹ Available hospital billing records (Ex. J) indicate Applicant incurred medical charges of \$175 in February 2009, and that he paid \$333 to the hospital over the next year. He was refunded \$374 in May 2010. (Ex. F.)

² Applicant indicated on July 16, 2009, that the DUI offense occurred in November 2003, and that he was jailed from January to May (dates not recalled). On July 22, 2009, he clarified that his last DUI was instead in November 2001, and that he was incarcerated from January to May 2002. (Ex. 2.) Yet, in his answer and at his hearing, Applicant indicated that he broke his lease in 2002 because he had to move on short notice for a job assignment. (Tr. 70.) He later testified that he moved just before the DUI charge. Credit reports indicate a last activity date of May 2003 on the debt, but the creditor's records reflect that he owed \$360.85 as of August 2003, and did not pay any of his \$629 monthly rent starting in September 2003. (Ex. L.) Applicant could have been mistaken about the dates of his incarceration, but even if he stopped paying rent because of his imprisonment, his alcohol use was not the primary cause of his financial problems.

Applicant made little effort to resolve his debts before August 2009. He spent about \$3,000 to \$5,000 for his mother's care in a convalescent home and later her funeral between April 2009 and September 2009. (Tr. 72-73.) On receipt of a collection notice, he began repaying the apartment debt (SOR 1.a) in August 2009. (Ex. A; Tr. 75.) Applicant borrowed \$5,000 from his 401(k) account to cover his mother's expenses, the payments on the apartment debt, and the payment on the loan for his current vehicle. (Tr. 94.) As of June 2010, Applicant was repaying his 401(k) loan at \$21 weekly. (Tr. 102-03.) He had repaid about \$1,000 of the 401(k) funds as of early June 2010. (Tr. 103.)

In response to DOHA interrogatories, Applicant indicated on November 6, 2009, that he did not owe a deficiency balance on the truck loan (SOR 1.c) because the vehicle had been repossessed. He acknowledged owing the medical debts in SOR 1.b., 1.d, and 1.e. He also did not dispute the cable television (SOR 1.h) and telephone (SOR 1.n) debts, which he attributed to his relocation for a job with the pipeline. He also did not contest that he owed his former landlord (SOR 1.a). However, he denied any recognition of the debts in SOR 1.f–1.g and 1.i–1.m. (Ex. 3.)

A history of Applicant's delinquencies is set forth in the following table.³

Debt	Delinquency history	Payment history
\$3,897 apartment debt in collection (SOR 1.a)	\$4,196.90 in collection Mar. 2004 (Ex. 4; 5; L.), \$3,897 balance Sep. 2009. (Ex. 5.)	Paid \$600 Aug. 2009, \$300 Sep. 2009, \$200 Oct. 2009, \$100 Mar. 2010, \$100 May 2010, \$100 Jun. 5, 2010. (Ex. A; L.) Paid remaining balance of \$2,796.90 Jun. 12, 2010. (Ex. L.)
\$117 medical debt in collection (SOR 1.b)	\$97 medical debt Jul. 2007, for collection Jan. 2008, \$117 balance Aug. 2009 (Ex. 4; 5.), \$120 balance Mar. 2010. (Ex. 6.)	Paid \$97 Jul. 12, 2010. (Ex. Q.)
\$13,527 truck loan debt in collection (SOR 1.c)	\$25,194 truck loan opened May 2001, last activity Nov. 2002, \$8,998 charged off and placed for collection Jul. 2003, balance \$13,369 as of Jun. 2009 (Ex. 4.), \$13,527 due as of Aug. 2009. (Ex. 5.)	Creditor offered to settle \$13,870.54 balance for \$3,000 due by Jul. 30, 2010; paid \$1,000 Jun. 1, 2010 with his federal income tax refund (Ex. B; M; Tr. 80.) and \$2,000 Jun. 15, 2010. (Ex. M.)
\$579 medical debt in collection (SOR 1.d)	Incurring \$545.40 in medical debt Aug. 2003 (Ex. D.), \$555 for collection Sep. 2008, \$579 balance Mar. 2009. (Ex. 4; 5.)	Paid \$545.40 Jun. 5, 2010 to settle debt. (Ex. D.)

³ Applicant's April 2010 credit report lists a \$400 medical debt for collection incurred in July 2007. It is unclear whether this debt is included in the SOR.

\$173 medical debt in collection (SOR 1.e)	Incurred \$353.01 in medical debt Jul. 2001 (Ex. C.), last activity Nov. 2008; \$170 for collection Dec. 2008, \$173 balance Mar. 2009. (Ex. 4; 5.)	Paid \$353.01 May 2010. (Ex. C.)
\$774 medical debt in collection (SOR 1.f)	Incurred in May 2006 for a broken hand and eye injury (Tr. 83.); for collection Nov. 2006, \$774 balance Jul. 2007. (Ex. 4; 5; 6.)	Paid \$774.05 to satisfy debt May 2010. (Ex. E.)
\$237 medical debt in collection (SOR 1.g)	Opened Mar. 2005, \$237 for collection Jul. 2005; unpaid as of Feb. 2007. (Ex. 4; 5; 6.)	Paid \$126 Jun.18, 2010 (Ex. P), \$100 Jun. 25, 2010, and \$92.59 Jul. 2, 2010. (Ex. R.)
\$137 cable television debt in collection (SOR 1.h)	\$137 for collection Jun. 2003, unpaid as of Oct. 2003. (Ex. 4; 5.)	Paid \$137.63 Apr. 14, 2010. (Ex. G; Tr. 51.)
\$207 medical debt (emergency services) in collection (SOR 1.i)	Opened Mar. 2005, for collection Dec. 2006; \$207 balance May 2009. (Ex. 4; 5; 6.)	Paid \$57 Jun. 25, 2010, \$75 Jul. 2, 2010, and \$75 Jul. 9, 2010. (Ex. S.)
\$207 medical debt (emergency services) in collection (SOR 1.j)	Opened Mar. 2005, for collection Dec. 2006; \$207 balance May 2009. (Ex. 4; 5; 6.)	Paid \$57 Jun. 25, 2010, \$75 Jul. 2, 2010, and \$75 Jul. 9, 2010. (Ex. S.)
\$251 medical debt in collection (SOR 1.k)	Opened Jul. 2004, for collection Mar. 2006; \$251 balance May 2009. (Ex. 4; 5; 6.)	Paid \$163.15 Jun. 18, 2010 (Ex. P.), settled. (Ex. T; Tr. 41.)
\$1,602 consumer credit debt past due 120 days or more (SOR 1.l)	Opened Mar. 2001 for electronic equipment needed by his nephew who is a disc jockey (Tr. 52-53, 108.); \$700 for collection Apr. 2003, \$1,602.30 balance May 2004. (Ex. 4; H.)	Creditor offered to settle for \$750 as of Jun. 2010. (Ex. H.) Paid \$750 by Jun. 15, 2010. (Ex. N.)
\$136 insurance debt in collection (SOR 1.m)	Opened Sep. 2007; \$136 in collection Apr. 2009. (Ex. 4.)	Paid \$136.20 Jun. 14, 2010. (Ex. O.)
\$391 telephone debt in collection (SOR 1.n)	Opened Apr. 2003, last activity Sep. 2003; \$391.14 in collection May 2009. (Ex. 4; I.)	Paid in full as of May 10, 2010. (Ex. I.)

As reflected in the table, Applicant paid \$6,675.84 to resolve his remaining delinquent debt after his hearing, likely with funds borrowed from his family.⁴ Applicant is expected to repay the personal loan at \$200 a month starting immediately. (Tr. 99.)

As of early June 2010, Applicant's hourly wage at his defense contractor employment was \$19.26, which was sufficient to cover his living expenses. He accepts whatever overtime is available, and is paid \$26 an hour for that time. (Tr. 96.) He has medical insurance. Applicant rents a room near his work at \$125 per week, inclusive of utilities and cable television. (Tr. 86-87, 105-06.) He has discretionary funds of about \$100 a month, which were going toward his old debts as of June 2010. (Tr. 63-64, 66.) Applicant is paying \$300 a month for a 2003 model-year economy car that he bought in 2007, using his income tax refunds for a down payment. (Tr. 81.) Applicant owes around \$1,600 to \$1,800 on his current car loan. (Tr. 95.) Applicant does not have a credit card account. (Tr. 87.) He has about \$500 in passbook savings. (Tr. 100.) He has not received any financial counseling, although he has been living according to a budget that he prepared for himself in early 2009. (Tr. 100.)

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.

⁴ Applicant testified that he intended to borrow around \$9,000 from his family. (Tr. 54, 69.)

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 for Financial Considerations 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 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 began to have financial problems in late 2002. He stopped paying on his truck loan and the vehicle was repossessed, leaving him with a debt of \$8,998. Even if he was unaware that he owed a deficiency balance after the truck was sold at an auction, he knew that he had defaulted on the loan. In spring 2003, while he was out of work (Tr. 85.), he ceased paying for about \$700 in electronic equipment that he had purchased to help a nephew, and the debt continued to mount. Between September 2003 and February 2004, he did not pay his rent for an apartment that he shared with his brother. In addition to the \$6,517 in outstanding debt for the rent and electronic equipment, he failed to pay a cable television debt of \$137 and telephone charges of \$391 from 2003. And he continued to incur medical debt that was not covered by insurance. By early 2009, he owed around \$2,617 in delinquent medical expenses. Even if he overlooked the \$136 insurance debt in SOR 1.m, he knew he was seriously in default on several other obligations. AG ¶ 19(a) and ¶ 19(c) are clearly implicated.

The Government's case for application of AG ¶ 19(f), "financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern," is not clearly established. There is conflicting evidence about whether Applicant may have stopped paying his rent because of his incarceration following his third DUI offense.⁵ (Ex. 2.) While Applicant may have spent funds on alcohol before then that could have gone instead to paying his financial obligations, several of the debts in the SOR were incurred after he had stopped drinking. Inconsistent income and lack of medical insurance were the primary causes of his financial problems.

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

Applicant's financial problems are too recent to favorably consider AG ¶ 20(a). As of his June 2009 e-QIP, Applicant had taken no steps to resolve any of his old delinquencies. However, AG ¶ 20(b) applies in that insufficient income due to the seasonal nature of his work and the lack of medical insurance at times contributed to, if not caused, his inability to remain current in his payments. Non-discretionary medical expenses, such as he incurred for treatment of a broken hand in 2006, are not counted against him. Applicant's purchase of electronic equipment for his nephew could be considered an irresponsible expenditure, but it would be less so if he had sufficient income to make the monthly payments when he took on the debt in March 2001. With no evidence of his income and expenses during this period, it is difficult to conclude that he acted responsibly when he took on that debt. He admitted receiving a couple of bills from the creditor, but he was on unemployment at the time. (Tr. 85.) Applicant also had an obligation to determine whether he owed anything on his truck loan after his vehicle was repossessed, and he apparently just assumed that he had no further obligation after it was sold. Applicant failed to act responsibly as well in the handling of his apartment debt. He knew that he had broken the lease, whether it was because he had to move for his job, was incarcerated, or for some other cause such as

⁵ See footnote 2, *supra*.

unemployment. AG ¶ 20(b) does not mitigate his failure to timely notify his creditors of his financial situation.

However, Applicant had a reasonable explanation for the delay in addressing his debts in 2009. He was unemployed from December 2008 until April 2009, and incurred expenses for his mother's care and then her funeral. Since August 2009, he has taken sufficient steps to resolve his debts to qualify for mitigation under AG ¶ 20(c) and ¶ 20(d). Documentation submitted during and after his hearing substantiates that the debts in the SOR have been satisfied or settled under terms acceptable to his creditors, in part with his income tax refunds. Assuming he acted on his stated intent, Applicant borrowed from his family some if not all of the \$6,675.84 in funds that he paid to his creditors after his June 9, 2010, hearing. While he will have to start repaying any funds borrowed from his family immediately, his current financial situation is stable. Applicant lives frugally and takes advantage of overtime opportunities at work, so he is likely to repay the funds lent to him on terms acceptable to his family provided he has stable employment.

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 failed to act proactively in the past to address debts that had become delinquent. Yet once he was in a position to make some payments, he began to clean up his credit. In response to a collection notice from his former landlord, he paid \$1,100 toward that debt before the SOR was issued. He exhibited good faith by continuing to make payments toward his old debts until they were satisfied in full or settled, and he is not continuing to incur new delinquencies. Based on the information before me, I conclude that it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance at this time.

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:

FOR APPLICANT

Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	For Applicant

Conclusion

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

Elizabeth M. Matchinski
Administrative Judge