



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



In the matter of:)
)
) ISCR Case No. 10-01673
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

02/29/2012

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On August 8, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 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) implemented by the Department of Defense on September 1, 2006.

In his undated answer to the SOR, Applicant requested a hearing before an administrative judge. The case was assigned to me on October 20, 2011. DOHA issued a notice of hearing on November 15, 2011, scheduling the hearing for December 5, 2011. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 8

were admitted in evidence without objection. Applicant testified, called a witness, and submitted Applicant's Exhibits (AE) A through D, which were admitted without objection. The record was held open until January 8, 2011, for Applicant to submit additional information. Applicant timely submitted documents that were marked AE E through G and admitted without objection. Department Counsel's memorandum forwarding AE E through G is marked Hearing Exhibit (HE) I. After reviewing AE E through G, I conducted a telephone conference with Department Counsel and Applicant on February 13, 2012. I extended the deadline for Applicant to submit additional material until February 21, 2012. I informed Applicant that he could provide proof of payments toward the settlement agreements contained in AE E and F, or any other information that he would like to submit. Applicant timely submitted documents that were marked AE H through J and admitted without objection. Department Counsel's memorandum forwarding those documents is marked HE II. DOHA received the hearing transcript (Tr.) on December 13, 2011.

Findings of Fact

Applicant is a 42-year-old truck driver for a defense contractor. He has worked for his current employer since May 2009. He is applying for a security clearance for the first time. He attended college for a period but did not obtain a degree. He is married with two children, ages 20 and 12, and two stepchildren, ages 26 and 21.¹

Applicant has had financial issues for a number of years. He had federal tax liens filed against him in 2002, 2003, and 2005. Applicant paid his taxes, and the liens were released in 2008. He lost his house to foreclosure in about 2004. Applicant has been steadily employed for about ten years, but he injured his back while working in 2009. He was off work for four to six months. He received workers' compensation, but it was less than his normal income. Applicant's wife lost her job in about 2009. She is still unemployed.²

The SOR alleges 12 delinquent debts with balances totaling about \$18,900. There are multiple credit reports in evidence. All the debts appear on at least one of the credit reports. Several of the debts appear on an early credit report, but do not appear on later reports. Applicant denied owing all the debts. He indicated some of the debts had been paid; some were not incurred by him; and some he felt should not be his responsibility.

Applicant noted a number of delinquent debts on his Questionnaire for National Security Positions (SF 86), which was submitted in October 2009. He discussed his finances and his delinquent debts when he was interviewed for his background investigation in December 2009. Applicant retained a company in about August 2011 to

¹ Tr. at 25, 28-29, 50, 63; GE 1.

² Tr. at 26-30; GE 1, 2, 6, 7. The tax liens and foreclosed house were not alleged in the SOR. Any debts that were not specifically alleged in the SOR will not be used for disqualification purposes. They may be considered when assessing Applicant's financial history, in the application of mitigating conditions, and in analyzing the "whole person."

assist him in disputing items on his credit report. Applicant submitted a TransUnion credit report obtained on October 18, 2011. That report only listed the debts alleged in SOR ¶¶ 1.b, 1.c, and 1.d.³ Individual debts are discussed further below.

SOR ¶ 1.a alleges a \$430 delinquent debt to a collection company on behalf of a telephone services company. When he responded to DOHA interrogatories in April 2011, Applicant wrote that he “will take care of [this debt].” He initially testified that he felt that “someone had used [his] credit” and “took [his] identity.” He later testified that he had an account with the telephone services company, but he paid it. He disputed the debt. It is not listed on his October 2011 TransUnion credit report. It is listed on the Equifax credit report obtained on December 2, 2011, under a different collection company.⁴

SOR ¶ 1.b alleges a \$568 delinquent debt to a collection company on behalf of a utility company. In his response to DOHA interrogatories, Applicant wrote that he “will take care of [this debt] when [he is] able.” Applicant disputed owing this debt and testified that he did not think the debt was his. He testified that he had an account with the utility company several years ago, but he paid the account when he stopped using the company. The debt is listed on the October 2011 TransUnion credit report. Applicant submitted a combined credit report that was obtained on December 1, 2011. The report is two pages long, but Applicant only submitted the first page. This debt is not listed on the page that Applicant submitted. The debt is listed on the Equifax credit report obtained on December 2, 2011.⁵

Applicant cosigned a car loan for his wife in about 2007. In 2008, the car developed transmission problems. Applicant took the car to various mechanics who all stated the car needed a new transmission. Estimates for the repair were between \$7,000 and \$14,000. Applicant left the car at the mechanic’s shop. He called the finance company and told them he was leaving the car at the shop, and they could pick it up as a voluntary repossession. The finance company lists the amount owed on the loan as \$7,590. This debt is alleged in SOR ¶ 1.c. Applicant told the OPM investigator in December 2009 that he did not intend to pay the debt. He initially testified that he did not believe he was responsible for the debt. He later indicated that he planned to pay the debt when he has a reasonable settlement.⁶

Applicant and the collection company handling the SOR ¶ 1.c debt entered into a settlement agreement on December 12, 2012. The company agreed to accept \$5,400 in settlement of the \$7,589 debt. The agreement called for a \$3,000 payment by January 31, 2012, followed by monthly \$200 payments until the \$5,400 settlement amount was paid. The first payment was due after the record originally closed. The record was

³ Tr. at 15, 52; GE 1, 6; AE B-D.

⁴ Tr. at 30-33; GE 7, 8; AE D.

⁵ Tr. at 24-25, 51-52, 57; GE 7, 8; AE D, G.

⁶ Tr. at 19-24, 52; GE 6.

reopened on February 13, 2012, and Applicant was given the opportunity to submit proof that he made the \$3,000 payment. Applicant submitted an e-mail from the collection company dated February 13, 2012, which appears to be a “thank you” from the collection company for Applicant’s \$3,000 payment.⁷

Applicant’s truck was stolen in 2009. His insurance did not pay enough on the claim to satisfy the loan on the truck. The credit reports list the amount owed on the loan as \$5,869. This debt is alleged in SOR ¶ 1.d. Applicant told the OPM investigator in December 2009 that he did not intend to pay the debt. He testified that he did not believe he was responsible for the debt because the insurance company should have paid the loan off. He later indicated that he planned to pay the debt when he has a reasonable settlement.⁸

Applicant and the creditor holding the note for Applicant’s stolen truck entered into a settlement agreement on December 12, 2012. The company agreed to accept \$4,174 in settlement, payable in 18 payments of \$231. The settlement agreement was memorialized in an e-mail on December 13, 2011. The e-mail did not state when the first payment was due. The record was reopened on February 13, 2012, and Applicant was given the opportunity to submit proof that he made any of the \$231 payments. Applicant submitted an e-mail from the collection company that appears to be dated February 14, 2012, which appears to be a confirmation of a settlement agreement. He did not submit proof of any payments toward the settlement agreement.⁹

Applicant cosigned a lease for a friend’s apartment in about 2003. The friend moved out of the apartment before the end of the lease. The landlord obtained a \$400 judgment against Applicant in 2003. SOR ¶ 1.e alleges the \$400 judgment. SOR ¶ 1.h alleges a \$1,728 debt to a collection company on behalf of the apartment landlord. Applicant listed the debts on his SF 86. Applicant acknowledged responsibility for the \$400 judgment during his background interview. He stated that he planned on contacting the creditor within the next 6 to 12 months and set up a payment plan. Applicant denied owing this debt in his response to the SOR. He testified that the judgment is not listed on his current credit report and, as far as he knows, he does not have a judgment against him. He stated that he told the friend about the judgment, and he assumes the friend paid the judgment.¹⁰

Applicant denied owing the medical debts alleged in SOR ¶¶ 1.f (\$263), 1.i (\$257), and 1.l (\$248). He also denied \$206 debt to an insurance company, as alleged in SOR ¶ 1.k. None of the debts appear on the most recent credit reports.¹¹

⁷ AE E, I.

⁸ Tr. at 15-19, 52; GE 6.

⁹ AE F, J.

¹⁰ Tr. at 34-38, 53; GE 1, 6.

¹¹ Tr. at 37-39, 42-44; GE 8; AE D.

SOR ¶ 1.g alleges a \$71 delinquent debt to an automobile club. Applicant listed this debt on his SF 86. He wrote that he was “not able to make payments now.” During his background interview, he stated that he planned to contact the creditor and pay the account within the next six months. He testified that he paid the debt. The debt is not listed on the most recent credit reports.¹²

Applicant listed a \$1,358 delinquent debt to a telephone services company on his SF 86. He wrote that he was “not able to make payments.” This debt, as collected by a collection company, is alleged in SOR ¶ 1.j. Applicant told the background investigator that the debt resulted from his wife and daughter going over their allotted minutes. He stated that he planned on contacting the creditor within the next 6 to 12 months and set up a payment plan. He testified that he settled the debt by paying a little every month. The debt is listed on the December 2011 Equifax credit report, under a different collection company and with a balance of \$1,429.¹³

Applicant stated that his finances are currently in better shape. He moved to a different shift that permits him to work more overtime. The company that is helping him correct his credit also provided him financial counseling. He stated that he is able to pay his current debts without incurring additional delinquent debts.¹⁴

Applicant’s supervisor testified that Applicant is one of the better workers in the company. He described Applicant as reliable and dependable.¹⁵

Policies

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 to be used in evaluating an applicant’s eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge’s 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.

¹² Tr. at 37-38, 53; GE 1, 6, 8; AE D.

¹³ Tr. at 39-42, 57-58; GE 6.

¹⁴ Tr. at 45-51; GE 7.

¹⁵ Tr. at 60-63.

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 the 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *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:

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

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

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

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant injured his back in 2009 and was off work for four to six months. His wife lost her job in about 2009, and she is still unemployed. Those events qualify as conditions that were outside his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances.

Applicant had financial issues before his family's employment problems. He had federal tax liens filed against him in 2002, 2003, and 2005, and he lost his house to foreclosure in about 2004. Applicant is credited with paying his federal taxes. He is also credited with making a \$3,000 payment as part of the settlement of the deficiency owed on his car loan after he returned the car to the finance company. Applicant submitted a copy of the settlement agreement in his post-hearing submission. The agreement called for the \$3,000 payment by January 31, 2012. The record was reopened on February 13, 2012, and Applicant was given the opportunity to submit proof that he made the \$3,000 payment. Applicant did not establish that he made the \$3,000 payment until after the record was reopened. He also did not establish that he started the monthly payments on his other payment agreement. I am not convinced that Applicant will maintain either payment once he is no longer under the threat of the denial of his security clearance.

Applicant has received financial counseling, establishing the first section of AG ¶ 20(c). However, I am unable to find that Applicant acted responsibly under the circumstances and made a good-faith effort to pay his debts. His finances are not yet under control. His financial issues are recent and ongoing. I am unable to determine that they are unlikely to recur. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) and 20(d) are not applicable. AG ¶ 20(b) is partially applicable. The second section of AG ¶ 20(c) is not applicable.

The debts alleged in SOR ¶¶ 1.e, 1.f, 1.g, 1.h, 1.i, 1.k, and 1.l have been deleted from Applicant's credit report. AG ¶ 20(e) is applicable to those debts. It is not applicable to any of the other debts. I find that financial concerns remain despite the presence of some mitigation.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's favorable character evidence. However, Applicant has not convinced me that his finances are sufficiently in order to warrant a security clearance.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has not mitigated financial considerations security concerns.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.d:	Against Applicant
Subparagraphs 1.e-1.i:	For Applicant
Subparagraph 1.j:	Against Applicant
Subparagraphs 1.k-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.

Edward W. Loughran
Administrative Judge