



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



In the matter of:)
)
) ISCR Case No. 10-02966
)
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: *Pro se*

04/23/2012

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant owes about \$17,373 in delinquent debt. Although he was on disability and more recently unemployed for short periods, he has been consistently employed since October 2009. He has made little progress toward resolving his past-due accounts. Clearance denied.

Statement of the Case

On October 17, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR)¹ to Applicant, detailing the security concerns under Guideline F, Financial Considerations, why it was unable to find that it is clearly consistent with the national interest to grant him a security clearance. DOHA took action under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security*

¹In response to interrogatories (Gov. X 6), Applicant corrected his name to note that he is a junior. The SOR does not include the suffix.

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 allegations on November 4, 2011, and he requested a decision without a hearing. On January 16, 2012, the Government submitted a File of Relevant Material (FORM) consisting of ten exhibits (Items 1-10).² DOHA forwarded a copy of the FORM to Applicant on January 24, 2012, and instructed him to respond within 30 days of receipt. Applicant received the FORM on January 31, 2012. He elected not to respond by the February 29, 2012 due date, and on March 21, 2012, 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.

Findings of Fact

The SOR alleged under Guideline F that as of October 17, 2011, Applicant owed \$23,488 in delinquent debt (SOR 1.a-1.y), including a \$1,147 unpaid credit card judgment (SOR 1.j). Applicant admitted the debts without explanation. After considering the Government's FORM, including Applicant's Answer (GE 3), I make the following findings of fact.

Applicant is a 33-year-old composite fabricator, who has been employed by a defense contractor since October 2009. Applicant previously worked for the company from July 2007 to January 2008, but there is no indication that he held a DOD security clearance during that time. (GE 4.)

Applicant pursued college studies from January 1997 to May 2001, although he did not earn a degree. Since September 2001, Applicant has been cohabiting on and off with his girlfriend, with whom he has had some relationship problems. As of December 2009, Applicant was spending most weekends with her and their three children. They have a daughter born in October 2002 and sons born in June 2005 and June 2008. (GE 4.)

From January 2002 to February 2003, Applicant was a runner for a private company. For the next nine months, he worked in the warehouse for a furniture retailer. He then worked as an installer for a garage door company until May 2007. Following a brief period of unemployment, in July 2007 he entered the defense industry as a fabricator for his current employer, although he stayed only six months. Applicant worked as a "CNC operator" for a succession of private well-drilling companies between January 2008 and October 2009, excepting some additional unemployment from March 2009 to July 2009, and September 2009 to October 2009. He has been consistently employed by his defense contractor employer since October 2009. (GE 4.)

On December 7, 2009, Applicant executed an Electronic Questionnaire for Investigations Processing (e-QIP). He responded affirmatively to a couple of financial

²The exhibits were pre-marked as Gov. X 1-10, respectively. The exhibits are referred to as GE 1-10 in this decision.

record inquiries covering the last seven years: 26.g, any bills or debts turned over to a collection agency, and 26.h, any account or credit card suspended, charged off, or cancelled for failing to pay as agreed. He answered "Yes" as well to question 26.n concerning any debts currently over 90 days delinquent. Applicant listed the debts in SOR 1.a, 1.c, 1.e-1.h, 1.m-1.n, 1.q, and 1.u (duplicated in SOR 1.r). Although Applicant responded "No" to question 26.b, whether he had any possessions or property voluntarily or involuntarily repossessed or foreclosed within the last seven years, he indicated that he had a car repossessed for failure to make his loan payments (SOR 1.u). Applicant attributed the vehicle repossession to the lender setting a monthly payment beyond what had been promised in a refinancing. Applicant explained that he fell behind on his other bills when he was out of work on disability for six months after he was assaulted in 2006. He indicated that now that he had a job, he would be able to make payment arrangements with his creditors. (GE 4.)

A check of Applicant's credit on December 22, 2009, revealed a previously undisclosed court judgment of \$1,147 (SOR 1.j) filed in August 2008, and some medical debts in collection, including a \$789 debt (SOR 1.x). (GE 5.) On January 20, 2010, Applicant was interviewed by an authorized investigator for the DOD about the adverse credit accounts on his e-QIP and his credit report. Applicant explained that he utilized his credit cards to make payments on some credit card accounts and living expenses while he was out of work on disability. Applicant denied any knowledge of the outstanding judgment against him, although he admitted that he had an account with the credit lender at one time that went delinquent. He indicated that he incurred the debt in SOR 1.h, knowing that he did not have the funds in his account, and the debt in SOR 1.d consisted of overdraft charges. Applicant did not deny the medical or consumer credit card debts on his record. He asserted he was able to meet his current obligations, and he intended to use his income tax refund to make payments on his past-due debts. (GE 6.)

In January 2010, Applicant paid off a \$700 fine for a March 2009 domestic violence incident involving his girlfriend. (GE 6.) As of October 2010, he owed \$900 in child support. While the debt had not been paid as of November 2011, there is no indication that he owed any additional arrearage. (GE 9.)

At DOHA's request, Applicant detailed efforts to address his debts as of April 14, 2011. He provided documentation showing a balance of \$68.27 due on the account in SOR 1.c due to interest. He planned to pay the debt in \$20 installments. He had also arranged to make monthly payments of \$20 toward SOR 1.n and of \$25 to another creditor.³ Initial payments were due by April 27, 2011. (GE 7.)

Subsequent credit checks of July 13, 2011, and January 16, 2012, reflected no progress toward resolving his past-due accounts. (GEs 8, 9.) The delinquency history of the debts in the SOR is set forth in the following table.

³Applicant provided information about contacts with a collection agency, but it is unclear which debt is currently held by that assignee.

Debt alleged in SOR	Delinquency history	Payment status
1.a \$127 medical debt	\$85 debt incurred Mar. 2006, for collection Aug. 2006; \$114 in collection with agency in SOR 1.y Dec. 2009; \$132 balance Jan. 2012. (GEs 4-6, 8-9.)	No payments as of Jan. 2012. (GE 9.)
1.b \$2,691 apartment debt in collection	\$2,443 debt from Jan. 2009, for collection Dec. 2009; balance \$2,691 Jun. 2011, \$2,778 Dec. 2011. (GEs 8-9.)	No payments as of Jan. 2012. (GE 9.)
1.c \$51 medical debt	\$51 dental debt from Dec. 2007, for collection May 2008; \$61 balance with assignee in SOR 1.v Dec. 2009, \$68.27 balance Apr. 2011. (GEs 4-8.)	Arranged to make \$20 payments starting Apr. 2011 (GE 7); no evidence of payments.
1.d \$1,239 credit union debt in collection	\$860 overdraft debt from Aug. 2006, for collection Sep. 2006; balance \$1,115 Oct. 2009, \$1,239 Feb. 2011. (GEs 6, 8-9.)	No payments as of Nov. 2011. (GE 3.)
1.e \$359 medical debt	\$264 dental debt from Feb. 2007, for collection Jul. 2007; balance \$318 Feb. 2009, \$359 Sep. 2010. (GEs 4-6, 8-9.)	No payments as of Nov. 2011. (GE 3.)
1.f \$941 credit card debt in collection	Opened Jan. 2002, \$664 balance from Jul. 2006 for collection Feb. 2007; balance \$925 Dec. 2009, \$941 Feb. 2010. (GEs 4-5, 8-9.)	No payments as of Nov. 2011. (GE 3.)
1.g \$105 telephone debt in collection	\$104 balance from Feb. 2009 for collection; \$105 balance Jan. 2010. (GEs 4-6, 8-9.)	No payments as of Nov. 2011. (GE 3.)
1.h \$1,132 credit union debt in collection	\$997 balance from Sep. 2007 for collection; balance \$1,132 Feb. 2009, \$1,142 Apr. 2009. (GEs 4-6, 8-9.)	No payments as of Nov. 2011. (GE 3.)
1.i \$27 medical debt in collection	\$26 medical debt from Feb. 2007; \$27 for collection Jun. 2007. (GEs 5, 8-9.)	No payments as of Nov. 2011. (GE 3.)

1.j \$1,147 judgment debt	Credit card account opened Jul. 2003, ⁴ \$1,147 judgment Aug. 2008; \$1,673 balance Dec. 2009. (GEs 4-6, 8-9.)	No payments as of Nov. 2011. (GE 3.)
1.k credit union debt \$345 past due 120 days	Auto loan \$13,772 opened Mar. 2006, current on \$11,846 balance Dec. 2009; \$345 past due on \$7,467 balance Jul. 2011, \$349 past due on \$5,845 balance Jan. 2012. (GEs 8, 9.)	Paying 31 to 60 days late as of Jan. 2012. (GE 9.)
1.l \$732 retail revolving credit balance charged off	Credit card opened Nov. 2005, last activity Jul. 2006; \$732 for collection Feb. 2008; \$732 charge-off balance Dec. 2011. (GEs 5-6, 8-9.)	No payments as of Dec. 2011. (GE 9.)
1.m \$2,023 collection debt	Credit card opened Mar. 2003, ⁵ high credit \$1,135, last activity Jun. 2006; \$1,479 for collection Oct. 2008; balance \$2,023 balance Jun. 2011, \$2,125 Dec. 2011. (GEs 4-6, 8-9.)	No payments as of Dec. 2011. (GE 9.)
1.n \$534 collection debt	Retail charge opened Mar. 2002, \$536 high credit, last activity Jun. 2006; for collection Jul. 2007, with listed assignee Sep. 2008; \$534 balance Jun. 2011. (GEs 4-6, 8.)	Arranged to pay in \$20 installments starting Apr. 2011 (GE 7); no evidence of payments.
1.o \$1,183 charge-off debt	Opened May 2004, high credit \$1,000; \$1,183 charge-off balance Jun. 2011. (GEs 8-9.)	No payments as of Jun. 2011. (GE 9.)
1.p \$1,883 charge-off debt	Same debt as SOR 1.u	See SOR 1.u.
1.q \$770 retail revolving credit balance charged off	Opened Dec. 2001, \$770 in collection Sep. 2007. (GEs 4-5, 8-9.)	No payments as of Nov. 2011. (GE 3.)
1.r \$2,000 debt for repossessed vehicle 120 days past due	Same debt as 1.u (GE 6.)	See SOR 1.u.

⁴Applicant listed the debt as a medical debt on his e-QIP. (GE 4.) Credit reports show the debt was incurred on a credit card account, which could have been used to pay medical expenses.

⁵Applicant listed it as a medical debt of \$1,682 on his e-QIP. (GE 4.)

1.s \$1,673 collection debt	Same debt as SOR 1.j	See SOR 1.j.
1.t \$1,135 credit card debt in collection	Same debt as SOR 1.m	See SOR 1.m.
1.u \$1,883 auto loan debt in collection	Joint auto loan of \$26,730 opened Aug. 2004, last activity Aug. 2005; \$2,025 past due on \$18,015 balance Oct. 2005; refinanced Mar. 2006; vehicle repossessed, \$1,883 charge-off balance May 2009. (GEs 5-6, 8-9.)	No payments as of Nov. 2011. (GE 3.)
1.v \$61 medical debt in collection	Same debt as SOR 1.c	See SOR 1.c.
1.w \$544 retail revolving charge debt in collection	Opened Jan. 2003, last activity Nov. 2007; \$544 high credit charged off and sold as of Oct. 2007. (GE 5.)	No payments as of Nov. 2011. (GE 3.)
1.x \$789 medical debt in collection	\$789 debt for collection May 2008. (GEs 5, 6.)	No payments as of Nov. 2011. (GE 3.)
1.y \$114 medical debt in collection	Same debt as SOR 1.a	See SOR 1.a.

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 overall 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 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.

Guideline F notes several conditions that could raise security concerns. The Government alleged that as of October 2011, Applicant had 25 accounts that were past due in the aggregate \$23,488. Applicant admitted all of the debts as alleged, although the evidence shows that some of the accounts were alleged in the SOR more than once. The loan for the repossessed car was apparently refinanced, and DOHA alleged the debt under the names of the original lender, the refinancing lender, and the current holder. Based on the latest available debt information, Applicant owed about \$17,373 in delinquent debt as of the end of 2011. AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” are established.

Concerning potentially mitigating conditions, 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, given the absence of any demonstrated progress toward resolving his past-due debt balances. 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," applies to the extent that his financial problems can be attributed to medical issues or unemployment. About \$1,375 of his delinquent debt is clearly medical or dental. Applicant submits that another \$3,267 of his debt (SOR 1.h, 1.m) is medical. The debt was incurred on consumer credit accounts, which could have been used to pay medical expenses. Applicant was apparently out of work on disability for six months in 2006, and he was unemployed from May 2007 to June 2007, March 2009 to July 2009, and September 2009 to October 2009. The evidence corroborates the negative impact of his disability in 2006. Several non-medical accounts went delinquent in 2006 (SOR 1.d, 1.f, 1.l-1.n, and 1.w). However, AG ¶ 20(b) does not mitigate Applicant's failure to address the debts, including a court judgment, once he was gainfully employed. The apartment debt in SOR 1.b and the telephone debt are from the January to February 2009 timeframe, when Applicant had employment income.

Applicant is credited with making repayment arrangements with three of his creditors or their assignees around April 2011. Yet, with no evidence of any payments in the record before me, I cannot conclude that the financial concerns are fully mitigated under either AG ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," or 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(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," applies only in that some of the alleged debts (SOR 1.p, 1.r-1.t, 1.v, and 1.y) were shown to be duplicate listings and not additional balances.

Whole-Person Concept

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(a).⁶

Applicant was candid from the outset about his financial difficulties, which were caused in part by factors outside of his control. While he has a responsibility to repay his creditors, he is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. Applicants for security clearance need only establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that

⁶ The factors under AG ¶ 2(a) are as follows:

- (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;
- (9) the likelihood of continuation or recurrence.

an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Applicant indicated on his e-QIP in December 2009 that he could begin repaying his debts, now that he was fully employed. He has provided no reasonable explanation for why he has not satisfied any of his past-due debts as of January 2012. His January 2012 credit report shows a \$900 child support balance. A substantial child support obligation could explain a lack of progress in resolving his old debts, but even so, a couple of his medical debts are under \$100, and the telephone debt is only \$105. The evidence falls considerably short of showing that he has done all that he can to address his financial problems. Based on the record before me, I am unable to conclude that it is clearly consistent with the national interest to grant Applicant security clearance eligibility.

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:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	For Applicant ⁷
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	For Applicant
Subparagraph 1.s:	For Applicant
Subparagraph 1.t:	For Applicant
Subparagraph 1.u:	Against Applicant
Subparagraph 1.v:	For Applicant
Subparagraph 1.w:	Against Applicant
Subparagraph 1.x:	Against Applicant

⁷Favorable findings are returned to those allegations that do not represent additional debt but are instead duplicate listings.

Subparagraph 1.y: 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