



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



In the matter of:)
)
) ISCR Case No. 10-04066
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeffrey Nagel, Esq., Department Counsel
For Applicant: *Pro se*

April 10, 2012

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 45-year-old employee of a defense contractor. He was alleged to be indebted to 19 creditors in the approximate amount of \$22,060, raising concerns under the guideline for Financial Considerations. He also had a 2007 traffic citation that raised security concerns under the guideline for Personal Conduct. Applicant failed to mitigate the Financial Considerations security concerns, but mitigated the Personal Conduct concern. Eligibility for access to classified information is denied.

Statement of the Case

On June 2, 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 and E, Personal Conduct. 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) effective September 1, 2006.

Applicant answered the SOR on July 26, 2011, and requested a hearing before an administrative judge. The case was assigned to me on January 20, 2012. DOHA issued a notice of hearing on January 23, 2012, scheduling the hearing for February 9, 2012. The hearing was convened as scheduled. The Government offered Exhibit (GE) 1 through GE 8, which were admitted without objection. Applicant testified on his own behalf. The record was left open for Applicant to submit exhibits and on February 29, 2012 Applicant presented a 56 page email that I have marked Applicant Exhibit (AE) A through AE G. Department Counsel had no objections to Applicant's post-hearing documents and they were admitted. DOHA received the transcript of the hearing (Tr.) on February 16, 2012.

Findings of Fact

Applicant admitted SOR allegations 1.a through 1.s. He denied SOR allegation 2.a. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 45-year-old employee of a defense contractor. From 1989 through 2001, he served in the Navy, achieving the rank of E-5. He then worked for various government contractors. He has worked for his current employer since 2007. He held a security clearance since joining the Navy in 1989. He is divorced and has two children, ages 15 and 22. (GE 1; Tr. 26-27, 30-37.)

Applicant's credit reports from February 8, 2008; March 9, 2009; November 18, 2010; and August 16, 2011; and his answers to interrogatories, show that Applicant was indebted to 19 creditors in the amount of \$22,060 as alleged on the SOR. (GEs 1-8.)

Applicant attributes his financial problems to a series of events beyond his control. In 2003, after 14 years of marriage, Applicant learned that his wife was cheating on him and wanted a divorce. He was served divorce papers on Christmas Eve of 2003. They divorced in 2004. Applicant was required to pay both alimony and child support as part of the divorce decree. Unbeknownst to Applicant, his ex-wife continued to incur debts in his name after their divorce. Further, in 2005 through 2008, Applicant's son underwent a series of surgeries on his eyes. Applicant was paying a lot to cover the medical bills and the other bills "slipped through the cracks." (Tr. 26-30, 38-41, 69-70.)

In 2008, when Applicant became aware of his outstanding debts, he contacted a credit management company to assist him in the repayment of his accounts. He testified he contested the debts that he believed were opened by his wife in his name after the divorce and plans to make payments on his other delinquent account. He has been working with the debt management company since July 2009. He has an installment payment plan managed by the company and made his agreed upon payment of between \$292 and \$276 every month, with the exception of his May 2010 payment, which was declined due to insufficient funds. He indicated he satisfied ten accounts through the debt management company, although none of the satisfied debts were accounts listed in the SOR. He intends to continue working with the debt management company to satisfy his remaining delinquent accounts. He indicated that the debt

management company has provided him with financial counseling. (AE D; Tr. 27-30, 41-45, 73-75.)

Applicant is indebted on a cell phone account opened by his ex-wife in the approximate amount of \$200, as alleged in SOR 1.a. Applicant testified he listed this debt with the credit management company. However, documentation from the credit management company failed to list this account. This debt remains unresolved. (AE D; Tr. 58-59.)

Applicant is indebted on credit card debt in the approximate amount of \$562, as alleged in SOR 1.b. He testified that this account was for a corporate credit card. The account became delinquent in 2009 when his company was slow to reimburse him for payments and he incurred late fees. The company policy required Applicant to pay the late fees, but he could not afford to do so at that time. Applicant claimed he listed this debt with the credit management company. However, documentation from the credit management company failed to list this account. This debt is listed on Applicant's most recent credit report as an unpaid collection account. This debt remains unresolved. (AE C; Tr. 59-60.)

Applicant is indebted on a co-payment on a medical debt in the approximate amount of \$360, as alleged in SOR 1.c. Applicant incurred this debt when his ex-wife failed to pay the co-payment for their son's treatment. He testified that this debt was satisfied through the debt management company. He presented documentation from the debt management company that shows Applicant satisfied two debts with this creditor. However, Applicant had three delinquent accounts with this creditor. The satisfied accounts with the creditor bear different account numbers than the present debt. This debt is still listed on Applicant's most recent credit report and remains unpaid. (AE B; AE C; Tr. 60.)

Applicant is indebted on a cable-television bill in the approximate amount of \$131, as alleged in SOR 1.d. Applicant incurred this debt when his ex-wife moved and failed to satisfy the debt. This debt is listed on Applicant's most recent credit report as an unpaid collection account. Applicant listed this creditor with the debt collection company. However, it appears from the credit report that Applicant had more than one account with this creditor. This account is still listed on Applicant's most recent credit report as an unpaid collection account. (AE C; AE D; Tr. 61.)

Applicant is indebted on a gas bill in the approximate amount of \$180, as alleged in SOR 1.e. Applicant's name was still on the account after he moved out of his residence with his ex-wife. He testified that he contested this debt with the credit reporting agencies. However, documentation from the debt management company fails to list this account as one they are attempting to manage for Applicant. Applicant indicated in his post-hearing submission that he contested this debt with the credit reporting agencies and that it no longer appears on his credit report. He failed to present documented evidence that he disputed this debt. (AE A; AE C; AE D; Tr. 61-63.)

Applicant is indebted on a telecommunications account opened by his ex-wife in his name after their divorce in the approximate amount of \$470, as alleged in SOR 1.f. He testified that he contested this debt with the credit reporting agencies and it has been removed from his credit report. He failed to present documented evidence that he disputed this debt. (AE A; AE C; Tr. 63.)

Applicant is indebted on a department store credit card in the approximate amount of \$519, as alleged in SOR 1.g. Applicant testified he is not familiar with this account and reported that he has contested this debt with the credit reporting agencies. It no longer appears on his credit report. He failed to present documented evidence that he disputed this debt. (AE A; AE C; AE D; Tr. 63-64.)

Applicant is indebted on a department store credit card in the approximate amount of \$1,011, as alleged in SOR 1.h. Applicant testified that he listed this account with the debt management company. He provided evidence that this account is listed with the credit management company, but that repayment is currently "inactive." (AE D; Tr. 64.)

Applicant is indebted to a gas company in the approximate amount of \$170, as alleged in SOR 1.i. Applicant testified that he listed this account with the debt management company. However, documentation from the debt management company failed to identify this account as one they are managing. Applicant indicated in his post-hearing submission that he contested this debt with the credit reporting agencies and that it no longer appears on his credit report. He failed to present documented evidence that he disputed this debt. (AE A; AE C; AE D; Tr. 65.)

Applicant is indebted on a repossessed vehicle in the approximate amount of \$12,803, as alleged in SOR 1.j. Applicant became delinquent on his vehicle in 2006. This debt is not listed in the documentation from the debt management company as an account they are managing. He presented no documentation that he has disputed this account. It remains unsatisfied. (AE A; AE D; Tr. 65-66.)

Applicant is indebted on a department store credit card in the approximate amount of \$324, as alleged in SOR 1.k. Applicant only found about this debt after his divorce, but he testified he has not contested this account. He testified he listed this account with the debt management firm for repayment. However, documentation from the debt management firm fails to verify this claim. Applicant, in his post-hearing submission, claims this debt was deleted from his most recent credit report after he disputed it. He failed to present documented evidence that he disputed this debt. (AE A; AE D; 65-66.)

Applicant is indebted to an attorney in the approximate amount of \$4,371 as alleged in SOR 1.l. He has been delinquent on this account since 2004. He knew he owed the attorney money, but he did not follow up with his divorce attorney to find out how much he owed. He provided evidence that this account is listed with the credit management company, but that repayment is currently "inactive." (AE D; Tr. 67-68.)

Applicant is indebted to city court in the approximate amount of \$250, as alleged in SOR 1.m. Applicant testified that this debt was for his ex-wife's speeding ticket. He claimed it appeared on his credit report because they were married at the time of offense. Applicant claimed he contested this debt and it has been removed from his credit report. It does not appear on his most recent report of credit. However, he failed to present documented evidence that he disputed this debt. (AE C; Tr. 68-69.)

Applicant is indebted on a medical bill in the approximate amount of \$206, as alleged in SOR 1.n. Applicant testified that this debt was for his son's treatment. Applicant, in his post-hearing submission, claims this debt was deleted from his most recent credit report after he disputed it. He failed to present documented evidence that he disputed this debt. (Tr. 69-70.)

Applicant is indebted to a bank in the approximate amount of \$166, as alleged in SOR 1.o. Applicant testified he listed this debt with the credit management company. He provided evidence that this account is listed with the credit management company, but that repayment is currently "inactive." Applicant, in his post-hearing submission, claims this debt was deleted from his most recent credit report after he disputed it. However, he failed to present documented evidence that he disputed this debt. (AE A; AE C; AE D; Tr. 70.)

Applicant is indebted on his daughter's afterschool care in the approximate amount of \$130, as alleged in SOR 1.p. His ex-wife put the account in his name and then failed to satisfy the debt. He testified he has contested this debt, but presented no evidence substantiating his claim. (Tr. 70-71.)

Applicant is indebted on a telecommunications bill placed with a collection agent in the approximate amount of \$99, as alleged in SOR 1.q. Applicant testified that he has no knowledge of this account. He testified he contested this debt with the credit reporting agencies. Applicant, in his post-hearing submission, claims this debt was deleted from his most recent credit report after he disputed it. He failed to present documented evidence that he disputed this debt. (AE A; AE C; AE D; Tr. 71.)

Applicant is indebted on a medical account in the approximate amount of \$74, as alleged in SOR 1.r. Applicant did not know how this debt was incurred. He testified that he will make sure it is listed with the credit management company. Applicant, in his post-hearing submission, claims this debt was deleted from his most recent credit report after he disputed it. He failed to present documented evidence that he disputed this debt. (AE A; AE C; AE D; Tr. 72.)

Applicant is indebted on a collections account in the approximate amount of \$34, as alleged in SOR 1.s. Applicant testified that he has no knowledge of this account. He contested this debt with the credit reporting agencies. Applicant, in his post-hearing submission, claims this debt was deleted from his most recent credit report after he disputed it. However, he failed to present documented evidence that he disputed this debt. (AE A; AE C; AE D; Tr. 72.)

On August 10, 2007, Applicant was charged with Driving on a Suspended license, Disobeying Official Traffic Control Device, and Registration Required. On October 18, 2007, he was also charged with Failure to Appear, and a warrant was issued for his arrest. On December 31, 2009, Applicant was found guilty of Driving on a Suspended License and the other charges were dismissed. He was fined \$228.50. Applicant satisfied the fine on January 3, 2011, as evidenced by the minutes of the court. (AE E; Tr. 29-30, 73)

Applicant is well respected by a co-worker, and his project manager, who each wrote letters of support on Applicant's behalf. Both indicate Applicant is a responsible individual. His project manager stated Applicant "is an asset to any organization, and [he] is happy to provide [his] wholehearted endorsement." (AE F.) Applicant's military records indicate he was awarded two Good Conduct Medals during his Navy service. He also testified that he received two Navy and Marine Corps Achievement Medals. (AE A; AE G; Tr. 33.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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.

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 clearance 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 protect or 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 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, 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 concern under AG ¶ 19. Two are potentially applicable in this case:

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

From 2004 through 2009, Applicant accumulated a significant amount of delinquent debt. During that period, he failed to adequately address his debts. While he may not have known about some of the debts incurred in his name by his ex-wife, he was aware of other debts, like his bill owed to his attorney for his divorce. In July 2009, he started working with a credit management company to address some, but not all, of his delinquent accounts. Despite the assistance of the credit management company, he has failed to adequately address any of the debts listed on the SOR in over two-and-a-half years since enlisting its help. He has a long history of failing to meet his financial obligations. The Government established a *prima facie* case for disqualification under Guideline F.

Five 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;
- (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's financial difficulties are recent and on-going. He has failed to satisfy any of the debts listed on the SOR. While some of the debts no longer appear on his most recent credit report, he failed to present evidence that they were removed due to his disputes and not due to the passage of time. Applicant's most recent credit report (AE C) added little weight to his claims, since there was more than one plausible explanation for the absence of debts from the credit report.

The Appeal Board has previously noted that it is reasonable for a Judge to expect applicants to present documentation about the satisfaction of individual debts.¹ At least some of the debts Applicant identified as not being on the credit report were nevertheless acknowledged by Applicant during the hearing as being both legitimate and unsatisfied. Further, the Board recognized that debts remain relevant for the purpose of security purposes even if they could not "be legally listed on a credit report after the passage of seven years."²

¹ See, e.g., ISCR Case No. 06-17520 at 2 (App. Bd. Sep. 20, 2007).

² ISCR 98-0111 at 2-3 (App. Bd. Nov. 13, 1998); See also ISCR Case No. 03-20327 (App. Bd. Oct. 26, 2006).

While some of Applicant's debts may have been incurred through circumstances beyond his control such as a dishonest ex-wife and the unexpected medical treatment of his son, other debts like his attorney bill became delinquent due to his failure to act responsibly. While he has paid some delinquent debts absent from the SOR through the debt management company that he has been working with for the past two years, he has failed to list all of his delinquent accounts for repayment with them. He has failed to show that he is acting responsibly with respect to his debts listed on the SOR, or that these debts are under control or otherwise resolved. He is still delinquent on all \$22,060 of debt listed on the SOR. None of the above mitigating conditions apply.

Guideline E, Personal Conduct

The security concern for the Personal Conduct guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information.

Applicant exercised poor judgment in his August 2007 driving decisions which lead to charges of Driving on a Suspended License, Disobeying Official Traffic Control Device, and failure to produce his registration when required. He continued to use poor judgment when he failed to appear on his appointed court date. As a result of the charges against him, he was fined \$228.50, which he failed to pay until January 2011. AG ¶ 16(c) is applicable as a disqualifying condition. Applicant demonstrated questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, in both committing and failing to adequately address these offenses.

AG ¶ 17 provides conditions that could mitigate security concerns. The following is potentially applicable:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is

unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant's offenses were minor. Further, he has not committed similar offenses since this incident in 2007. While he exercised poor judgment in failing to pay his fine until 2011, he has now satisfied the debt. Future offenses are unlikely to recur and do not cast doubt on Applicant's future trustworthiness. Those that know him best speak highly of his character. He can be trusted to comply with laws and regulations in the future. AG ¶ 17(c) is mitigating.

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 Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is well respected by his project manager and co-worker. He performs well at his job. However, he has \$22,060 worth of debt that he has failed to adequately address. While Applicant has worked with a debt management firm for the past two years, and is making slow progress towards resolving his delinquent accounts, he has not documented enough progress to mitigate the Government's concerns.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the Financial Considerations security concerns. However, he has mitigated the Personal Conduct 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
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:	Against Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	Against Applicant
Subparagraph 1.s:	Against Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraph 2.a: 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.

Jennifer I. Goldstein
Administrative Judge