



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



In the matter of:)
)
) ISCR Case No. 10-06999
)
Applicant for Security Clearance)

Appearances

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

June 22, 2011

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 December 23, 2010, 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.

Applicant answered the SOR on January 11, 2011, and requested a hearing before an administrative judge. The case was assigned to me on March 15, 2011. DOHA issued a notice of hearing on March 28, 2011, and the hearing was convened as scheduled on April 19, 2011. The Government offered Exhibits (GE) 1 through 4, which

were admitted without objection. Applicant testified and submitted Exhibits (AE) A and B, which were admitted without objection. The record was held open until May 27, 2011, for Applicant to submit additional information. Applicant timely submitted documents that were marked AE C through O and admitted without objection. Department Counsel's memorandum forwarding Applicant's exhibits is marked Hearing Exhibit (HE) I. DOHA received the hearing transcript (Tr.) on April 27, 2011.

Findings of Fact

Applicant is a 32-year-old employee of a defense contractor. He has worked for his current employer since October 2009. He is applying for a security clearance for the first time. He is single, and he has a four-year-old child.¹

Applicant was a national-caliber athlete. While in his teens, he was drafted by a professional team and played in the minor leagues. He envisioned a career as a professional athlete. An injury ended his minor-league career, but he was eventually able to recuperate and play two seasons in college. He quit school after a different injury ended his college athletic career. He bounced around jobs in the entertainment industry for a number of years. He returned to college in 2005, and he earned associate's degrees in 2006 and 2008, and a bachelor's degree in 2007. His father has been in the defense industry for about 30 years, and Applicant spent much of his youth avoiding the path that his father took. In 2009, Applicant realized that he was not getting any younger and he had a child to support, and he accepted a job at the same company where his father is employed.²

The SOR alleges 21 delinquent debts. Applicant admitted owing all the debts except the debts alleged in SOR ¶¶ 1.a, 1.l, 1.m, and 1.n, which he denied. Eleven of the debts alleged in the SOR are student loans, with balances totaling about \$230,000. In his response to the SOR, Applicant admitted all the student loan allegations.

DOHA sent Applicant interrogatories requesting information about his delinquent debts. He responded on October 30, 2010. He denied owing several debts. He wrote that he contacted a number of creditors on October 26, 2010. He stated that he had "repayment plan[s] set up" for five debts, and that he was "making monthly payments of \$100" on four private student loans. He stated that he requested forbearance on his federal student loans, and he submitted a letter stating that three federal student loans, totaling \$11,205, were in forbearance. At his hearing, Applicant testified that he was making monthly payments of about \$20 to a number of creditors for "[t]hree or four, maybe five months, somewhere right around there."³ He provided documented evidence of his payments after the hearing. Applicant's student loans and other individual debts are discussed further below.

¹ Tr. at 18, 33, 40; GE 1; AE L.

² Tr. at 16-20, 39-40; GE 1.

³ Tr. at 25-26, 29-30, 46-47, 52-53, 62; GE 2.

Applicant testified that the total amount he owes in student loans is \$121,567, \$73,667 in private loans and \$47,900 in federal loans. SOR ¶¶ 1.h through 1.k allege four private student loans with balances totaling \$73,666, so his testimony about his private student loans is consistent with the credit reports and the SOR.⁴

SOR ¶¶ 1.d through 1.g allege four federal student loans with balances totaling about \$150,000. Those four loans are listed on the combined credit report obtained on May 1, 2010, and the Equifax credit report obtained on October 5, 2010. The four loans are also listed on the combined credit report obtained on May 26, 2010, but with some discrepancies. There are other federal student loans listed on all three credit reports. The combined credit report obtained on May 26, 2010, lists that Equifax and TransUnion reported the balance on one student loan as \$54,118, while Experian reported the balance as \$4,883. The credit report lists that Equifax reported the balance on another student loan as \$5,927, while TransUnion reported it as \$6,176, and Experian reported it as \$35,978. Other loans have similar reporting problems.⁵

SOR ¶¶ 1.o and 1.p allege two federal student loans with balances totaling about \$6,186. The latest credit report lists these two loans as transferred or sold and listed a zero balance.⁶

Applicant contracted with two companies to address his student loans, one for his federal student loans and one for his private student loans. One company wrote they were in the process of securing a Federal Direct Consolidation Loan on Applicant's behalf to pay off his defaulted federal student loans in the amount of \$47,900, which would "remove the defaulted status from [his] student loans and give [him] a much more affordable monthly payment."⁷ The company handling Applicant's private student loans wrote:

Since these loans are private student loans, the best course of action is to work out a payment arrangement with [holder of loans] that will fit his current financial circumstances while ensuring optimal management of these loans. We will accomplish this by incrementally increasing payments as [Applicant's] situation will allow. Our company is experienced in working out these types of arrangements and is in the process of doing so.⁸

On December 28, 2010, Applicant paid \$20 toward the \$873 delinquent student loan alleged in SOR ¶ 1.c. He paid \$40 on February 15, 2011, and \$20 on May 16,

⁴ Tr. at 22-23; GE 2-4.

⁵ GE 2-4.

⁶ GE 2-4.

⁷ Tr. at 27-29, 48-50; AE A-C, M-O.

⁸ AE M.

2011. He reported the balance as \$813. This student loan is owed directly to a college and is separate from the loans addressed above.⁹

Applicant has consistently denied owing the \$2,916 debt to a telephone services company, as alleged in SOR ¶ 1.a. The debt is listed on the combined credit report obtained on May 1, 2010, and the Equifax credit report obtained on October 5, 2010, but it is not listed on the combined credit report obtained on May 26, 2010. Applicant stated that he spoke with the telephone services company, and it had no record of his name, account number, or Social Security number.¹⁰

SOR ¶ 1.b alleges a delinquent medical debt of \$807. Applicant paid \$20 toward this debt on December 28, 2010; \$40 on February 15, 2011; and \$20 on May 16, 2011. He reported the balance as \$747.¹¹

Applicant initially denied owing the \$145 and \$362 medical debts alleged in SOR ¶¶ 1.l and 1.m. The debts are not listed on the most recent credit report. He contacted the collection company handling the debts and was told that they verified the accounts. He stated that he will pay the debts now that they are verified.¹²

Applicant denied owing the \$237 debt to a cable services company, as alleged in SOR ¶ 1.n. He stated the debt was for a cable box that had been returned. Applicant decided to pay the debt, which he did on May 17, 2011.¹³

SOR ¶¶ 1.q and 1.r allege delinquent medical debts of \$1,743 and \$241. The debts are being handled by the same collection company. Applicant paid \$20 to the collection company on December 28, 2010; \$40 on February 15, 2011; and \$20 on May 16, 2011. He reported the balance as \$181. Neither debt is listed on the most recent credit report.¹⁴

On December 28, 2010, Applicant paid \$20 toward the \$2,523 debt to a company collecting on behalf of the owner of an apartment, as alleged in SOR ¶ 1.s. He paid another \$20 on May 16, 2011. He reported the balance as \$2,423. Applicant questioned the legitimacy of this debt, but started paying it because he felt he did not have a choice. He lived in an apartment that became unsafe. He received verbal permission from the property manager to vacate the apartment two months before the end of the lease. His rent was \$795 per month. About four months later, he received a phone call

⁹ Tr. at; AE G.

¹⁰ Tr. at 42-45; GE 2-4; AE C, E.

¹¹ Tr. at 45; AE J.

¹² Tr. at 53-54; GE 2-4.

¹³ Tr. at 54-56; AE E.

¹⁴ Tr. at 56-57; GE 2-4; AE K.

telling him that he owed \$2,500. He never received a final accounting from the landlord.¹⁵

Applicant pays \$200 per month, plus health insurance, as child support for his four-year-old child. He is current on those payments. He had a nine-year-old child, but he relinquished his parental rights to the child so that the child could be adopted by the husband of the child's mother. He no longer has to pay current child support for that child, but he pays \$100 per month by garnishment toward his child support arrearages. This debt is alleged in SOR ¶ 1.t. The October 2010 credit report listed the balance as \$5,842.¹⁶

SOR ¶ 1.u alleges a delinquent debt of \$672 to a credit union. Applicant paid \$40 toward this debt on December 28, 2010; \$20 on February 15, 2011; and \$20 on May 16, 2011. He reported the balance as \$592.¹⁷

In summary, in addition to his child support arrearages that are paid by garnishment, Applicant established debt payments of \$120 on December 28, 2010; \$140 on February 15, 2011; \$100 on May 16, 2011; and \$237 on May 17, 2011; for a total amount paid of \$597. Applicant will work overseas if he obtains a security clearance. His salary will greatly increase while overseas. He believes he can pay all his non-student loan debts and a large percentage of his student loans with his overseas pay. He has cut down or eliminated some expenses in order to pay his debts. He stopped driving to work and either rides a bike or rides with someone, which saves commuting and auto expenses. He recently moved in with his girlfriend, and he stated that he will apply the \$350 per month he will save from the move toward his debts. His girlfriend holds a security clearance. She stated that she would do anything she could to help him, including "sitting down and going through [his] finances with him." Applicant has received financial counseling.¹⁸

Applicant submitted a letter from his employer stating that he is a "top-notch employee," who takes pride in his work.¹⁹

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.

¹⁵ Tr. at 42, 57-62; AE H.

¹⁶ Tr. at 33-39; GE 1-4.

¹⁷ Tr. at 61; AE I.

¹⁸ Tr. at 21-27, 30-32, 40-42, 50-51, 63, 67-68; AE C, D

¹⁹ AE L.

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 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 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 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's financial problems cannot be attributed to conditions that were outside his control. AG ¶ 20(b) is not applicable.

Applicant received financial counseling and retained two companies to assist him with his student loans. The first part of AG ¶ 20(c) is applicable.

Applicant disputed owing several debts. AG ¶ 20(e) is applicable to the debt alleged in SOR ¶ 1.a and the student loans alleged in SOR ¶¶ 1.o and 1.p. Applicant

stated that he owed \$47,900 in delinquent federal student loans, which is also the number quoted by the company that is helping him with his defaulted federal student loans. There are problems with how his federal student loans are reported by the credit agencies. I find AG ¶ 20(e) applicable to Applicant's federal student loans in excess of \$47,900, which I will identify as SOR ¶¶ 1.e through and 1.g.

When he responded to interrogatories in October 2010, Applicant stated that he had "repayment plan[s] set up" for five debts, and that he was "making monthly payments of \$100" on four private student loans. In addition to his child support arrearages that are paid by garnishment, Applicant established debt payments of \$120 on December 28, 2010; \$140 on February 15, 2011; \$100 on May 16, 2011; and \$237 on May 17, 2011; for a total amount paid of \$597. I find that those payments are insufficient to qualify as a good-faith effort to pay his debts. AG ¶ 20(d) is not applicable.

Applicant is in the process of addressing his student loans, but he has not made any payments. He recently cut expenses, so that he can apply the savings toward his debts. Applicant stated that if he receives a security clearance, he will work overseas, and he will pay all his non-student loan debts and a large percentage of his student loans with his overseas pay.

A security clearance adjudication is not a debt collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that 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 appears to be sincere in his desire to address his financial problems. What is missing here is a track record of financial responsibility, in other words, significant actions to implement his plan. I find that Applicant's 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 the second part of AG ¶ 20(c) are not applicable. 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 reputation at his company. Applicant has made minimal payments toward his delinquent debts. His real plan is to obtain a security clearance, and then pay his debts with his overseas pay. If he can establish a track record of financial responsibility, he should be given that opportunity. While I believe that Applicant can arrive at that position, he is not there yet. Under AG ¶ 2(b), I am required to resolve my doubt in favor of national security.

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 FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.d:	Against Applicant
Subparagraphs 1.e-1.g:	For Applicant
Subparagraphs 1.h-1.m:	Against Applicant
Subparagraphs 1.n-1.p:	For Applicant
Subparagraphs 1.q-1.u:	Against 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