



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



In the matter of:)	
)	
)	ISCR Case No. 11-03409
)	
Applicant for Security Clearance)	

Appearances

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

06/18/2012

Decision

HEINY, Claude R., Administrative Judge:

Applicant is paying his mortgage and paid one additional debt. However, several charged-off or collection accounts, which total more than \$23,000, have yet to be addressed. He did not intentionally provide false answers on his security clearance questionnaire. He mitigated the personal conduct security concerns, but failed to rebut or mitigate the financial considerations security concerns. Clearance is denied.

History of the Case

Applicant contests the Department of Defense’s (DoD) intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) on October 5, 2011, detailing security concerns under Guideline F, financial considerations and Guideline E, personal conduct.

¹ Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

On November 1, 2011, Applicant answered the SOR and requested a hearing. On March 15, 2012, I was assigned the case. On April 5, 2012, DOHA issued a Notice of Hearing for the hearing held on April 24, 2012.

The Government offered exhibits (Ex.) 1 through 8, which were admitted into evidence without objection. Applicant testified, as did his wife, and he submitted Exhibits A through O, which were admitted into evidence without objection. The record was held open to allow Applicant to submit additional information. On May 18, 2012, additional material was submitted. Department Counsel had no objection to the material, which was admitted into the record as Ex. P. On May 1, 2012, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, he denied being in debt for a home equity loan (SOR 1.e, \$18,495), but admitted the remaining delinquent accounts. He neither admitted nor denied the personal conduct issues related to his answers on his June 2010 Electronic Questionnaire for Investigations Processing (e-QIP) related to being delinquent on his debts. His admissions are incorporated herein. After a thorough review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 61-year-old process technician and inspector who has worked for a defense contractor since August 1969, and seeks to maintain a security clearance. (Tr. 50)

Applicant is a valuable part of the shop team who takes pride in his work. (Ex. D) He is professional, courteous, eager to help, and he is willing to go the "extra mile" to assist the customer. (Ex. E) His duty performance has resulted in letters of appreciation, favorable comments, and awards. (Ex. A - M) He routinely accumulates numerous hours of vacation time, which he is unable to take. (Tr. 51-52)

Applicant acknowledges owing approximately \$24,000 on nine charged-off or collection accounts. In June 2010, when he completed his e-QIP, he failed to indicate he was currently more than 90 days delinquent on any debt or that he had been more than 180 days delinquent on any debt in the last seven years. Applicant's wife handled the family's finances. She does not discuss the family's finances with Applicant because she does not want to burden him with it. (Tr. 45) He was unaware of any delinquencies when he completed his e-QIP.

In August 2010, Applicant was asked about his delinquent accounts during a personal subject interview. (Ex. 6) At that time, he stated his wife handled the family's finances and he was unaware of his financial situation. (Ex. 6) At that time, they had cut up their credit cards and were going to review their credit bureau reports (CBR). (Ex. 6) In May 2012, he was sent interrogatories asking about the specific SOR accounts. (Ex. 5)

In October 2000, Applicant obtained a \$40,000 note with \$642 monthly payments. As of February 2011, the note was \$17,166 past due. (Ex. N) Applicant and the lender entered into a forbearance plan. In February 2011, he paid the \$5,150 required of the plan. He began making monthly payments of \$1,725.63, which represented the \$642 monthly installment plus an additional monthly payment of \$1,092 to address the arrearage. (Ex. N) He documented \$1,724 monthly payments from April 2011 through February 2012. (Ex. N) At the hearing, Applicant and his wife were both informed of the need to provide documentation establishing his delinquent debts were being addressed. (Tr. 31)

Applicant's annual income is approximately \$78,000. (Tr. 48) For seven years, Applicant's wife worked for an event planning company making approximately \$400 per week. (tr. 37) She just started in a custom drapes business and hopes to make a couple of thousand dollars a month. (Tr. 38) In December 2008, they hired an attorney to assist their son, which cost them \$7,000 to \$8,000. (Tr. 37) Applicant's home is worth \$80,000 and they owe approximately \$7,400 on it. (Tr. 40) Applicant was hoping to get a pay-off quote on the balance due on the house so he could pay it with some money he had saved. (Tr. 41)

Neither Applicant nor his wife have had financial counseling. (Tr. 44, 55) Applicant owns a 1981 pickup that is paid off, and he is current on his payments on a 2006 van. (Tr. 49) He also just started making \$500 monthly payments to the IRS to address \$3,500 owed the IRS. (Tr. 49) He has no 401(k) retirement fund. (Tr. 53)

A summary of Applicant's judgment, accounts charged off, accounts placed for collection and other unpaid obligations and their current status follows:

	Creditor	Amount	Current Status
a	Charged-off account.	\$689	Not paid. Applicant asserts creditor agreed to settle the matter for \$689 with the first payment of \$159 to be made five weeks after the hearing. (Ex. P)
b	Collection account.	\$891	Not paid. (Tr. 32) Applicant asserts creditor agreed to settle the matter for \$818 with the first payment of \$85 to be made five weeks after the hearing. (Ex. P)
c	Collection account. Applicant asserts, but failed to document, that this debt and the debt listed in SOR 1.g are the same obligation. (Ex. P)	\$2,600	Unpaid. Creditor demanding immediate payment of half the debt. Applicant says he will contact the creditor again in August 2012. (Tr. 32)

	Creditor	Amount	Current Status
d	Collection account.	\$3,431	Not paid. Applicant asserted the collection service stated the debt was not the Applicant's debt, but related to a deceased person. Applicant was told to contact the collection service again in one to two weeks. (Ex. P) No documentation of further contact by Applicant has been shown.
e	Home equity loan.	\$18,495	Paying. Applicant is in compliance with the February 2011 forbearance plan. (Ex. N)
f	Charged-off account. In June 2008, Applicant purchased a 2006 Pontiac, which developed engine problems. (Tr. 34)	\$12,331	Unpaid. During the summer of 2011, Applicant returned the vehicle to the lender. (Tr. 34)
g	Charged-off account.	\$2,558	Duplication of SOR 1.c.
h	Collection account.	\$243	Paid. Applicant asserts the debt was paid by check in 2010 and the collection agency states there is a zero balance on the account. (Tr. 35, Ex. P)
i	Collection account for cellphone service. (Tr. 35)	\$1,055	Unpaid.
j	Collection account attempting to collect for restaurant.	\$51	Applicant stopped payment on a check after getting food poisoning at a restaurant. (Tr. 36)
	Total debt listed in SOR	\$42,344	

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 must be considered in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶

2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the interests of 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 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 Executive Order (EO) 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

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

Applicant was \$42,000 past due on his mortgage and nine additional charged-off or collection accounts. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

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 has brought his mortgage to current status and paid one additional collection account (SOR 1.h, \$243). Additionally, he stopped payment on a check to a restaurant after getting food poisoning, which I find to be a valid reason for nonpayment of the debt (SOR 1.j, \$51). Additionally, the debt listed in SOR 1.c and 1.g. are the same obligation. I find for him as to these four debts. I find against him on the remaining debts, which total approximately \$21,000. In August 2010, he became aware of the

delinquent accounts. He asserted he would make payments on a number of the delinquent accounts following the hearing. He was cautioned of the need to provide documentation supporting payment of his debts. No documentation showing payment has been received. He has no plan to address other delinquencies.

None of the mitigating factors apply to the remaining seven unpaid debts. Because he has multiple delinquent debts and his financial problems are continuing in nature, he receives minimal application of the mitigating conditions listed in AG ¶ 20(a). Applicant's handling of his finances, under the circumstances, casts doubt on his current reliability, trustworthiness, or good judgment. He has been aware of the debts since August 2010 and his efforts to address his delinquent debts since that time have been insufficient.

Likewise, Applicant receives partial application of the mitigating conditions listed in AG ¶ 20(b). Applicant's wife was unemployed for a period of time and \$7,000 to \$8,000 was spent in attorney fees to help his wife's son. However, Applicant has been employed with the same company for 43 years. There is little documentation that Applicant was substantially affected by circumstances beyond his control. Given sufficient opportunity to address their financial delinquencies, Applicant has failed to act timely or responsibly under the circumstances. He failed to resolve his debts and failed to reduce his delinquencies.

The mitigating condition listed in AG ¶ 20(c) does not apply. Neither Applicant nor his wife have received "financial counseling" and several of the delinquent accounts have yet to receive any payments.

The mitigating condition listed in AG ¶ 20(d) does not apply to the seven debts, but does apply to the two debts he paid or is paying, because, to date, Applicant's efforts to address the seven delinquent accounts have been minimal. Having been cautioned about the need to document his claims, there is no documentation that any payments have been made. Applicant has failed to act aggressively, timely, or responsibly to resolve his delinquent debts.

The mitigating condition listed in AG ¶ 20(e) does not apply because Applicant has not provided documented proof to substantiate the basis of any disputed account. He claims the repossessed vehicle had engine problems, but he must do more than claim a reasonable basis to dispute the legitimacy of the past-due debt. He must provide documented proof to substantiate the basis of the dispute or provide documentation showing evidence of reasonable actions to resolve the issue, which he has failed to do.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct, which is 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.

The government has shown Applicant's answers to the e-QIP question as to delinquencies on his debts were incorrect, but this does not prove Applicant deliberately failed to disclose information about his finances. Applicant's wife handled the family's finances and did not tell him about the financial problems. She did not want to burden him with the information. The Applicant denied any intentional falsification. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government, when applying for a security clearance, is a security concern. But every inaccurate statement is not a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully.

When Applicant completed his e-QIP, he was unaware any of his debts were delinquent. Having observed Applicant's demeanor and listened to his testimony, I find his answers were not deliberate omissions, concealments, or falsifications.

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. There is some evidence in favor of mitigating Applicant's conduct. His work performance is excellent. He has worked for the same company for 43 years. He paid one bill and is making monthly payments on another. After a lengthy period of inaction during which he did not address his past delinquent accounts, he asserts he has initiated some effort to address his debts with payments to start following the hearing. The disqualifying evidence under the whole-person concept is more substantial. In August 2010, he was interviewed about his debts. In June 2011, he answered interrogatories about the specific SOR debts.

Following the April 24, 2010 hearing, he asserted he would start making payments on some of the debts, but provided no documentation showing payment.

Failing to repay creditors or to arrange payment plans, reflects traits which raise concerns about Applicant's fitness to hold a security clearance. An applicant is not required to establish that he has paid off each and every debt listed in the SOR. All that is required is for him to demonstrate he has established a plan to resolve his delinquent debt and has taken significant action to implement that plan. I must reasonably consider the entirety of Applicant's financial situation and his actions in evaluating the extent to which that plan is credible and realistic. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan may provide for payment on such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR. However, he has documented payment of only one debt and payments to address one other debt.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a security clearance. The awarding of a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under Applicant's current circumstances, a clearance is not merited. Should Applicant be afforded an opportunity to reapply for a security clearance in the future, having paid the delinquent obligations, established compliance with a repayment plan, or otherwise addressed the obligations, he may well demonstrate persuasive evidence of his security worthiness. However, a clearance at this time is not warranted.

The issue is not simply whether all Applicant's debts have been paid – they have not – it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(a)(1).) Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial considerations. He did not intentionally provide false answers on his e-QIP with intent to deceive. The personal conduct security concerns are mitigated.

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, Financial Considerations: **AGAINST APPLICANT**

Subparagraphs 1.a – 1.d	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f – 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant

Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Paragraph 2, Personal Conduct:	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 interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is denied.

CLAUDE R. HEINY II
Administrative Judge