



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



In the matter of:)
)
) ISCR Case No. 11-03852
)
)
Applicant for Security Clearance)

Appearances

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

02/29/2012

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant lost a home to foreclosure, on which he owes a second mortgage of \$12,512. While some of his financial problems can be attributed to his spouse’s medical issues and her abuse of his credit, he defaulted on \$9,041 in student loan debt, and a \$3,098 judgment was issued against him for an unpaid medical debt. Applicant has since repaid the judgment, but he has yet to resolve other debts because he has chosen to pay \$800 per month in tuition for his son to attend private school. Clearance denied.

Statement of the Case

On July 25, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, Financial Considerations, which provided the basis for its preliminary decision to deny 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 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 September 23, 2011, and he requested a decision without a hearing. On October 18, 2011, the Government submitted a File of Relevant Material (FORM) consisting of eight exhibits (Items 1-8). DOHA forwarded a copy of the FORM to Applicant and instructed him to respond within 30 days of receipt. Applicant elected not to respond by the November 30, 2011 due-date, and on January 19, 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 July 25, 2011, Applicant owed several delinquent accounts: a \$3,908 judgment filed against him in June 2006 (SOR 1.a); medical debts of \$90 (SOR 1.b) and \$1,456 (SOR 1.c); a \$65 collection debt (SOR 1.d); a charged-off bank debt of \$810 (SOR 1.f); a \$12,512 mortgage loan in foreclosure (SOR 1.g); and student loans of \$4,483 (SOR 1.h) and \$5,755 (SOR 1.i). In his Answer, Applicant denied the judgment on the basis it had been paid, and the student loan debts because they were out of collections. He disputed the medical debt in SOR 1.c without explanation. Applicant admitted the debts in SOR 1.b and 1.d through 1.g. After considering the Government's FORM, including Applicant's Answer (Item 3), I make the following findings of fact.

Applicant is a 40-year-old information systems technician with an associate's degree. He has been employed by a defense contractor since May 2008 and seeks his first security clearance. (Item 4.)

Applicant and his spouse have been married since June 1996. They have a son, who was born in September 1996, a few months after their marriage. Applicant also has a daughter, who was born in December 2006. (Item 4.) He pays child support around \$458 per month. (Items 5, 7.)

In January 2003, Applicant bought a house. He took out a primary mortgage of \$80,000 and a second mortgage (SOR 1.g) of \$20,000. Following a job layoff in April 2003, Applicant was unemployed until August 2003. He fell behind in his mortgage payments and struggled to catch up after he began working as a systems analyst for a private company. Around April 2004, Applicant enrolled in a local university to further his education. He took out two federal student loans of \$3,459 (SOR 1.h) and \$5,582 (SOR 1.i).

Around 2005, Applicant's spouse had mental health issues that led to her hospitalization. In addition to incurring these unforeseen medical expenses, Applicant's spouse gambled addictively and spent excessively after her discharge. Not counting the medical expenses, Applicant estimates she incurred debt around \$12,000, about \$5,000 on his employer-sponsored credit card account. (Item 6.)

Applicant made a last payment on his mortgages in March 2005. His primary lender filed to foreclose on his property in May 2006 when his loan had a \$79,741 principal balance. (Items 6, 8.) Around February 2007, the house was redeemed to settle at least the primary mortgage. Applicant reportedly owed \$12,512 on the second mortgage (SOR 1.g).¹ He felt fortunate to have food on his table (Item 6), and he did not continue his education after May 2005. (Item 4.)

Between 2005 and 2007, several medical debts totaling \$2,200 were referred for collection. Applicant paid medical debts of \$26 and \$528 after collection, but debts of \$100 (not alleged), \$90 (SOR 1.b), and \$1,456 (SOR 1.c), remained unpaid as of April 2010. (Items 7, 8.) In March 2006, Applicant issued an insufficient funds check. A \$40 debt was referred for collection (SOR 1.d). In June 2006, a \$3,908 judgment was issued against Applicant for unpaid medical debt incurred by his spouse (SOR 1.a). In September 2006, Applicant and his spouse incurred a joint \$810 debt to their bank for a returned check (SOR 1.f). (Items 6, 8.)

Due in part to his spouse's spending, Applicant and his wife temporarily separated in 2006. Applicant cohabited with the mother of his daughter for a short time in the summer of 2006 (Item 4), and he filed for divorce from his spouse in October 2006. However, he and his spouse subsequently reconciled. (Item 6.)

Applicant was terminated from his job in April 2007 when someone complained that he was not working the full 40 hour work week. He was unemployed until August 2007 and could not afford to repay his delinquent debt. (Items 4-8.) From August 2007 to April 2008, Applicant worked as a service technician for a cash register company. (Item 4.) In 2008, Applicant's student loans came out of deferment, but he made no payments when they came due, even after landing a job with his current employer in April 2008. An \$11,417 aggregate balance was placed for collection. As of September 2010, Applicant owed \$4,434 on one loan (SOR 1.h) and \$6,681 on the other loan (SOR 1.i). (Item 8.)

On October 25, 2010, Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP). He responded affirmatively to the financial record questions concerning any repossession or foreclosures, judgments, debts turned over for collection, accounts charged off, wage garnishments, counseling for violating terms of an employer-provided travel or credit card, debts over 180 days delinquent, debts currently over 90 days past-due, and delinquent federal debts. He indicated that he had satisfied the judgment debt (SOR 1.a) in April 2010, and that he was trying to work out a payment agreement on his delinquent second mortgage (SOR 1.g). His primary lender foreclosed on his home because he could not afford to pay the variable rate mortgage. Applicant indicated that he paid off the \$5,000 debt incurred through misuse of the employer-sponsored credit card account. As for his student loan debt (SOR 1.h and 1.i), Applicant indicated that he made a first payment on October 22, 2010, under a recently arranged repayment plan. Applicant maintained that his child support was current, that he was

¹Available credit reports (Items 7, 8) show a \$12,512 past-due balance on the mortgage. His November 2010 consolidated credit report indicates that the credit grantor reclaimed the collateral to settle the debt. (Item 8.) As of April 2011, Equifax was reporting a \$12,512 balance on a charged off account in foreclosure.

making payments on multiple medical bills totaling \$8,000. However, he had not satisfied the \$810 charge-off debt (\$800 on e-QIP) incurred for overdrawing his bank account (SOR 2.f). (Item 4.)

As of November 13, 2010, Applicant's credit record revealed that he owed some debts in collection that were not listed on his e-QIP (SOR 1.b through 1.e). Disposition of the judgment debt (SOR 1.a) was listed as "unknown." Applicant had paid off a \$10,958 car loan in August 2004, and he was making timely payments on a \$968 loan taken out in April 2010. The balance of the loan was \$535. (Item 8.)

On December 6, 2010, an authorized investigator for the Office of Personnel Management (OPM) interviewed Applicant about his financial delinquencies. Applicant admitted that he fell behind in his \$770 monthly rent in 2009 because his spouse was out of work for six months due to medical issues. He was paying \$1,000 per month to his landlord to catch up. Applicant indicated that in October 2010, he began working 32 hours per week as night stocker at a supermarket while maintaining his full-time day employment with the defense contractor. Applicant attributed his delinquencies to unemployment and his spouse's mental health issues, which led her to max out his company credit card. His wages were garnished by the grantor employer until the \$5,000 debt was satisfied around January 2007. After a creditor attempted to attach his pay to recover its default judgment, Applicant paid \$100 per month until January 2010, when the debt was paid off. Applicant admitted that he had made no payments toward his delinquent second mortgage (SOR 1.g) since the foreclosure. Applicant attributed his student loan default to his mistaken belief that the loans had been deferred for five instead of four years. After he was contacted by a collection agency, he arranged to pay \$465 per month starting in October 2010. Applicant also claimed that he had paid off the \$810 bank debt (SOR 1.f) around 2006. Applicant indicated that he did not realize that he owed around \$64 for his old landline telephone (SOR 1.e) or \$70 for a returned check (SOR 1.d), but he would look into them. Concerning a \$1,456 medical debt listed on his credit record, Applicant explained that the debt was from a medical procedure, which had a "set" price of \$200 that he paid. In November 2006, Applicant learned that the creditor was seeking \$1,456 from him (SOR 1.c). He was disputing the validity of the debt. Applicant expressed his hope that with his second job, his debts would be paid off within eight months. (Item 6.)

As of April 18, 2011, Equifax was reporting no progress toward resolving the disputed medical debt (SOR 1.c), the \$70 balance for the returned check (SOR 1.d), the \$65 debt for his old landline account (SOR 1.e), the \$810 bank debt (SOR 1.f), or the \$12,512 balance of his defaulted second mortgage (SOR 1.g). His credit report also did not show any payments on his student loans, which had balances of \$4,483 (SOR 1.h) and \$6,755 (SOR 1.i) as of March 2011. The current status of the judgment debt (SOR 1.a) was not reported. (Item 7.)

On June 1, 2011, Applicant acknowledged to DOHA that he had not been able to make any payments on his defaulted second mortgage (SOR 1.g) because he has been making payments on his and his spouse's student loans, medical bills, and other past-due accounts. He had also made no payments on the \$810 bank debt (SOR 1.f), inasmuch as

it was charged off.² Applicant indicated that he would satisfy the \$65 landline debt (SOR 1.e) by July 15, 2011, and the \$70 returned check charge (SOR 1.d) within the next 30 days. He had been unable to identify the creditor reportedly owed the \$90 medical debt (SOR 1.b). Applicant disputed the \$1,456 medical debt (SOR 1.c) with the collection agency handling that account, but he had received no response from the assignee. He maintained that his student loans had been rehabilitated as of May 28, 2011, so they were in good standing. Applicant estimated that after paying monthly expenses, which included \$800 per month in private school tuition for their son, he and his spouse had \$300.67 in discretionary income. Applicant indicated that it would take him another 18 to 24 months to bring all his accounts in good standing. (Item 5.)

As of September 23, 2011, Applicant had made no payments on the undisputed debts identified in SOR 1.b and 1.d through 1.g. He had made no payments toward the disputed \$1,456 medical debt (SOR 1.c). He asserted that he had satisfied the judgment debt in SOR 1.a, and that he had rehabilitated his student loans (SOR 1.h and 1.i), although he presented no evidence showing payments. Applicant expressed his intent to continue to resolve his undisputed debts, but it was taking him longer to pay off his debts because of the cost of private school tuition (“I send my son to private school because of the lack of quality education in the public school system.”). (Item 3.)

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

² In his response to DOHA interrogatories, Applicant referenced an attachment to show that his account was charged off and closed. The interrogatory response provided to me for review (Item 5) does not include any attachments. However, his November 13, 2010 credit report (Item 8) shows the account as closed and charged off to profit and loss.

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. AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” are established. Applicant defaulted on mortgages for his home. The first mortgage was settled by the foreclosing lender redeeming the property, but the second mortgage has been past-due since 2005. Several medical debts were referred for collection between 2005 and 2007. While Applicant denied SOR 1.a on the basis of repayment, he does not dispute the default judgment of \$3,908 entered against him in June 2006. Applicant or his spouse issued a bad check of \$40, for which Applicant is legally liable in the amount of \$70. A \$65 balance on an old landline account is still in collection. Bank account overdraft charges of \$810 have been charged off by the financial institution, but Applicant does not dispute that he and his spouse incurred the debt. Moreover, Applicant’s student loans went into default in 2008 for failure to make payments when they came out of deferment. Efforts on Applicant’s part to rehabilitate the loans could

implicate mitigating conditions AG ¶ 20(c) or ¶ 20(d) or both, but he also admitted, and his credit reports show, that his student loans went into collection.

Applicant acknowledges that his spouse underwent a medical procedure that obligated him financially to the provider represented in SOR 1.c. However, he has consistently denied that he owes an outstanding debt of \$1,456 as alleged, contending that he paid the \$200 cost for the procedure set before it was performed. The listing of the debt on Applicant's credit record, as a \$1,456 outstanding balance from November 2006 referred for collection in July 2007 (Items 7, 8), is sufficient to establish the Government's burden of establishing the controverted debt.³

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 progress toward resolving the debts identified in SOR 1.b through 1.g.

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 his spouse's mental health issues and unemployment. Applicant's pay was garnished to repay \$5,000 in credit card debt incurred by his spouse on his employer-sponsored credit card. Medical expenses, including those in SOR 1.a through 1.c, were in all likelihood not discretionary. Yet, AG ¶ 20(b) does not mitigate Applicant's default of his student loans. Applicant had an obligation to know when his student loans came out of deferment, and to seek hardship forbearance if he could not afford to make payments. Nor does AG ¶ 20(b) mitigate Applicant's ongoing failure to address his mortgage debt. Applicant admitted to the OPM investigator that he had been "sitting on the debt" since the foreclosure of his house. He averred that he had recently discussed a payment plan and would begin to repay the debt at \$250 per month starting January 2011. As of late September 2011, Applicant had made no payments. Similarly, he told DOHA in June 2011 that he would pay the \$65 landline debt by July 15, 2011. As of late September 2011, the debt had not been paid, even though he had net discretionary income of \$300 per month. While it is understandable that Applicant would want the best education for his son, his expenditure of \$800 per month in private school tuition is difficult to justify when creditors are not being repaid.

Despite the lack of corroborating evidence, the Government is not disputing Applicant's claim that he satisfied the \$3,908 judgment debt at \$100 per month after the creditor initiated garnishment action. As of April 2011, the judgment was still on Applicant's

³In the decision-making process, facts must be established by "substantial evidence," which is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

credit record but with no information about it being paid or not. Assuming the debt has been satisfied, actions taken in response to a court judgment are not entitled to full weight in mitigation under AG ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” According to Applicant, his student loans were rehabilitated as of May 28, 2011. While it is conceivable that the loans would continue to be reported as delinquent until they were brought current, Applicant had an opportunity to document his good-faith efforts to rehabilitate the loans, and he presented no such evidence. In light of his failure to make the payments on his mortgage loan that were reportedly to commence in January 2011, I concur with the Government that some corroboration of his student loan repayments is required before his loan default is mitigated under either AG ¶ 20(d) 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.” Applicant admits that he has made no payments toward the undisputed debts in SOR 1.b, 1.d, and 1.e, which are under \$100 and appear to be within his means to satisfy. Neither AG ¶ 20(c) nor AG ¶ 20(d) applies to those debts. As for the \$810 in outstanding past-due bank account overdraft charges, the financial judgment concerns persist even if the creditor wrote off the debt to profit and loss.

As for the disputed \$1,456 medical debt alleged in SOR 1.c, Applicant has not provided evidence that would establish 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.” Had Applicant submitted evidence of a billing or insurance statement showing his liability was only \$200, or proof of his claimed \$200 payment, he could have gone a long way toward challenging the validity of the debt. His uncorroborated assertions are insufficient to apply AG ¶ 20(e).

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).⁴

Applicant’s financial difficulties were caused in part by factors outside of his control. That being said, he has a responsibility to repay his creditors for debt incurred by him or in his name. 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 financial problems and take significant actions to implement the plan. There is no requirement that

⁴ 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;
- and (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). That being said, he has indicated that he would be making payments on some debts in the past and not made good on those promises, apparently because his finances are strained by \$800 in monthly tuition for his son's private schooling. Even if I accept his uncorroborated claim of rehabilitation of his student loans, Applicant has not shown that he has a reasonable plan in place to address his sizeable mortgage debt. Based on the available evidence, I am unable to conclude that it is clearly consistent with the national interest to grant Applicant a security clearance at this time.

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:	For 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

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