



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



In the matter of:)	
)	
)	ISCR Case No. 11-08255
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie R. Mendez, Esquire, Department Counsel
For Applicant: *Pro se*

01/23/2013

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings, testimony, and exhibits, I conclude that Applicant failed to rebut or mitigate the Government’s security concerns under Guideline F, Financial Considerations. His eligibility for a security clearance is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on February 24, 2011. On July 30, 2012, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. DOD acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; 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 for SORs issued after September 1, 2006.

On October 22, 2012, Applicant provided a notarized answer to the SOR and elected to have a hearing before an administrative judge. The case was assigned to me on November 26, 2012. I convened a hearing on December 17, 2012, to consider whether it is clearly consistent with the national interest to grant or continue a security

clearance for Applicant. The Government called no witnesses and introduced four exhibits, which were marked Ex. 1 through 4 and entered in the record without objection. The Government also introduced one demonstrative exhibit, which I marked as Hearing Exhibit (HE) 1 and entered in the record. Applicant testified and introduced 13 exhibits, which were identified and marked as Applicant's Ex. A through M and entered in the record without objection. At the conclusion of the hearing, I left the record open until close of business on January 4, 2013, so that Applicant could, if he wished, provide additional documentation showing payment of delinquent debts. Applicant timely filed a document which included a cover sheet and 22 additional pages. I marked Applicant's post-hearing submission as Ex. N and admitted it, without objection, to the record. DOHA received the hearing transcript (Tr.) on December 28, 2012.

Findings of Fact

The SOR contains 18 allegations of financial conduct that raise security concerns under Guideline F, Financial Considerations (SOR ¶¶ 1.a. through 1.r.) The financial delinquencies alleged in the SOR total approximately \$33,000. In his Answer to the SOR, Applicant admitted 16 of the SOR allegations. He denied the SOR allegations at ¶¶ 1.a. and 1.r. Applicant's admissions are entered as findings of fact.

Applicant, a high school graduate, is 48 years old. From 1984 until 2004, Applicant served in the U.S. military and held a security clearance. After receiving an honorable discharge, he accepted civilian employment as a security officer with a government contractor. He has been steadily employed as a security officer since 2005. (Ex. 1; Ex. A; Ex. B; Tr. 13, 48-50.)

Applicant married in 1985. Two sons, now adults, were born to the marriage in 1990 and 1992. Applicant and his family lived in a large city with a history of urban gang-related crime. Applicant and his wife separated in 2003, and they divorced in July 2012. (Ex. 1; Tr. 50-51.)

When Applicant and his wife separated, they agreed that their two young sons would go to live with Applicant's mother in a rural community because they believed such an environment would be safer and more conducive to their sons' personal and educational development. The boys went to live with their grandmother in 2005. Applicant sent his mother \$900 every month for the support of his two sons. He continued these payments until December 2012. In addition, he provided his older son with approximately \$400 each month while he attended college. (Ex. H; Tr. 51-52.)

Applicant's older son recently graduated from college and aspires to become a military officer. His younger son is currently pursuing college studies. (Tr. 52-54.)

In 2005, while separated from his wife, Applicant entered into a spouse-like relationship with another woman. Applicant and the woman are the parents of a son who is now eight years old. Applicant and his partner have recently separated, but Applicant stated that they are hoping to reconcile. They have an informal arrangement

for sharing custody of their son. Applicant estimates that he provides approximately \$100 to \$150 a month for his youngest son's care. (Ex. 1; Tr. 54-55, 101-102.)

The SOR alleges at ¶ 1.a. that Applicant is responsible for a \$2,324 judgment filed against him in 2005, and as of the date of the SOR, the judgment remained unsatisfied. The judgment appears on Applicant's credit bureau report of March 2011. Applicant denied the allegation. He stated that he paid the judgment in 2008 with a cashier's check at the time he purchased his home. He further stated that he was required to satisfy the judgment before he could be approved for his home mortgage loan. He stated that he had disputed the debt with the credit reporting agency but had not received a response. He did not have a record or receipt showing satisfaction of the debt. (Ex. 3; Ex. 4; Tr. 56-57.)

The SOR alleges that Applicant is responsible for the following eight delinquent medical debts: ¶ 1.b. (\$94); ¶ 1.c. (\$94); ¶ 1.d. (\$34); ¶ 1.e. (\$121); ¶ 1.f. (\$61); ¶ 1.g. (\$318); ¶ 1.h. (\$99); and ¶ 1.i. (\$876). Applicant testified that he had paid the debts identified at SOR ¶¶ 1.b., 1.c., 1.d., 1.e., 1.f., and 1.h. He provided a document from the creditor confirming a payment agreement of \$35 a month as of June 29, 2012 for the six debts. He also provided a document, dated September 2012, corroborating payment of the debt alleged at SOR ¶ 1.f. Additionally, he provided a document, dated December 17, 2012, confirming an agreement to pay the creditor \$50 a month until the debts identified at SOR ¶¶ 1.g. and 1.i. were satisfied. In a post-hearing submission, he provided acknowledgment from the creditor of a postdated check for \$50, which would be deposited on December 31, 2012. (Ex. 4; Ex. J; Ex. N; Tr. 58-61.)

The SOR alleges at ¶ 1.j. that Applicant owes a \$3,332 judgment entered against him in 2008, and the judgment remained unsatisfied as of July 30, 2012. Applicant stated that the judgment arose from delinquent credit card debt. He stated that he had an agreement with the creditor to pay \$50 a month on the account, and in 2012, he had made three \$50 payments. (Ex. 2; Tr. 61-64.)

The SOR alleges at ¶ 1.k. that Applicant was 90 days past due in paying \$208 on a credit card debt with a balance of \$3,245. He testified that the creditor deducted payments on this debt four times a year from his military retirement pay. In a post-hearing submission, he provided documentation, dated January 2, 2013, which notified him that the last garnishment from his military retirement account was for \$264. The communication also stated that his account was four payments past due, and his next payment of \$88 was due on January 12, 2013. (Ex. N at 22; Tr. 72-77.)

The SOR alleges at ¶ 1.l. that Applicant was 90 days past due on a payment of \$32 on an account with a balance of \$740. Applicant's Ex. I is a December 2012 letter to Applicant from a debt collection firm which represents the creditor. In the letter, the debt collection firm states: "In light of your current financial situation [this firm] has agreed to accept up to 3 installment payments and place your account in a temporary hardship status." The letter then specifies that it will accept payments of \$35 from Applicant on December 15, 2012, January 15, 2013, and February 15, 2013. The letter

further states that, upon receipt of the three specified payments, the creditor will contact Applicant to discuss payment arrangements on the remaining balance. At his hearing, Applicant stated he would try to provide bank statements showing past monthly payments of \$75 to this creditor, but he failed to do so. (Ex. I; Tr. 77-79.)

The SOR alleges at ¶ 1.m. that Applicant was 60 days past due in the amount of \$3,000 on a home mortgage with a total account balance of approximately \$259,000. At his hearing, Applicant stated that he had caught up on his mortgage delinquencies, and the mortgage company had agreed to a mortgage modification to lower his monthly payments of \$1,642. In a post-hearing submission, Applicant provided documentation showing he had written a check to the mortgage company, dated December 22, 2012, for his November 2012 mortgage payment. He also provided documentation that he had sent the mortgage company his December 2012 mortgage payment by Western Union on January 3, 2013. (Ex. N, 1-2; Tr. 79-81.)

The SOR alleges at ¶ 1.n. that Applicant owes a creditor \$9,234 on an account in collection status. Applicant stated that he purchased an automobile on credit for his son. His son agreed to make the monthly payments on the automobile, but he fell behind and did not inform his father of the delinquency. The automobile was repossessed. Applicant provided documentation, dated June 2012, in which the creditor agreed to accept monthly payments of \$50 on the debt. Applicant stated he had made three payments on the debt and was entering a new arrangement authorizing payments from his bank account in December 2012. (Ex. 4; Tr. 69-72.)

The SOR alleges at ¶ 1.o. that Applicant owes a creditor \$9,226 on a delinquent account in collection status. Applicant stated that this debt arose when he purchased an automobile for his former wife, and she allowed it to be repossessed in 2009. Applicant provided documentation from the creditor, dated June 2012, in which the creditor agreed to accept monthly payments of \$50 on the debt, beginning in July 2012. Applicant stated that he had a previous agreement with the creditor, and, pursuant to that agreement, he had made two payments in 2010 and none in 2011. (Ex. 4; Ex. N; Tr. 82-83.)

The SOR alleges at ¶ 1.p. that Applicant is responsible for an unpaid debt, of \$462, in charged-off status. Applicant provided documentation, dated December 10, 2012, showing that amount owed on the debt was \$387.42. The collection agent for the creditor noted that the debt was unpaid, past due, and demanded payment. (Ex. L.)

The SOR alleges a \$423 debt, in charged-off status, at ¶ 1.q. Applicant stated that this debt was to the same creditor as identified in the allegation at SOR ¶ 1.p. In his answer to the SOR, he stated that he was paying the creditor \$25 each month on each of the debts. At his hearing, he stated that he had satisfied the debt alleged at SOR ¶ 1.q. and was continuing to pay the debt alleged at SOR ¶ 1.p. He did not have a letter or a receipt from the creditor showing satisfaction of this debt. (Tr. 84-85.)

The SOR alleges at ¶1.r. that Applicant owes \$165 on a medical account that was placed for collection. Applicant denied the debt, which is listed on his credit bureau report of March 2011. He stated that he had disputed the debt in writing, but had received no response. (Ex. 3; Tr. 86.)

Applicant provided two commendations and five letters of character reference which attested to his trustworthiness, leadership abilities, and excellent work as a security officer charged with protecting high government officials. His coworkers and supervisors consider him to be a valuable member of their professional team. (Ex. A; Ex. B; Ex. C; Ex. D; Ex. E; Ex. F; and Ex. G.

Applicant provided a current financial statement in a post-hearing document. He listed his monthly net income from his employment at \$3,492. In addition, he receives \$1,485 each month in military retirement pay. Applicant's total net monthly income is \$4,977. (Ex. N at 3.)

Applicant identified the following monthly living expenses: home mortgage, \$1,645; car payment, \$485; groceries, \$200; clothing, \$100; utilities, \$330; car expenses, \$70; and medical expenses, \$60.¹ Additionally, he identified five debt payments, which total \$294. Applicant's net monthly remainder is \$1,793. The record does not reflect that Applicant has had financial credit counseling. (Ex. N at 3.)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant Applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider and apply the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, the administrative judge applies these guidelines in

¹ Applicant did not include the \$100 to \$150 he said he provides for his younger son's expenses when he has custody of the child.

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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion in seeking 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 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 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 relating to the guideline 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(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly, under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. For several years, Applicant accumulated substantial delinquent debt and was unable or unwilling to pay his creditors. This evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant’s financial delinquencies. Unresolved financial delinquency might be mitigated if it “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.” (AG ¶ 20(a)) Additionally, unresolved financial delinquency might be mitigated if “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.” (AG ¶ 20(b)) Still other mitigating circumstances that might be applicable include evidence that “the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control” (AG ¶ 20(c)) or “the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” (AG ¶ 20(d)) Finally, if “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 options to resolve the issue,” then AG ¶ 20(e) might apply.

Applicant has a history of financial difficulties and inattention to his financial responsibilities. Many of his attempts to resolve his debts occurred recently, in June and July of 2012. While he arranged some plans to pay his debts in the past, he was unable to follow through and pay those debts consistently over time. He reported that he had a payment plan to resolve a debt that arose from an automobile repossession, but made only two payments in 2010 and none in 2011. The debt has not been resolved.

Applicant has recently set up a number of payment plans in order to resolve debts alleged in the SOR. He merits some credit for these actions. However, what is missing from Applicant’s record is consistent payment of his debts over time. He has not established a track record that demonstrates that he can be relied upon to allocate his resources to satisfy his many substantial financial delinquencies.

Applicant’s financial delinquencies occurred under circumstances that are likely to recur. He stated that he had resolved a number of small medical debts, but he provided documentation to corroborate payment of only one of those debts. He has not

had financial credit counseling, and he lacks a clear and timely strategy for resolving his delinquent debts.

Applicant's post-hearing financial statement reflected a net monthly remainder of nearly \$1,800. It appears he has the resources to make substantial payments to resolve his delinquent debts. Accordingly, I conclude that while AG ¶ 20(d) has partial applicability in this case, AG ¶¶ 20(a), 20(b), 20(c) and 20(e) do not apply in 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. Applicant is a mature person of 48 years. His colleagues and coworkers regard him as a valued professional. His financial problems began several years ago and are ongoing. His efforts to address his financial delinquencies are recent. He does not have a reliable history of timely and consistent payment of his financial obligations. He failed to support many of his assertions of debt payment with corroborating documentation. Despite a steady income for several years, he has failed to budget his income to satisfy his many debts, and he has not sought credit counseling.

Overall, the record evidence leaves me with questions and doubts about Applicant's judgment as well as his eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising from his financial delinquencies.

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
Subparagraphs 1.a. - 1.e.:	Against Applicant
Subparagraphs 1.f.: and 1.g.:	For Applicant
Subparagraph 1.h.:	Against Applicant
Subparagraph 1.i.:	For Applicant
Subparagraphs 1.j. - 1.r.:	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.

Joan Caton Anthony
Administrative Judge