



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



In the matter of:)
)
) ISCR Case No. 11-09627
)
)
Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank, Esq., Department Counsel
For Applicant: *Pro se*

February 25, 2013

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is delinquent on 13 accounts in the amount of \$42,702. He presented evidence that he repaid three of his delinquent accounts and was making payments on one other debt. He claimed to be making payments on six additional debts, but he failed to sufficiently document his claims. He has not mitigated the Financial Considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On October 17, 2012, the Department of Defense 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) effective on September 1, 2006.

Applicant's Answer to the Statement of Reasons (Answer) was dated November 14, 2012. Applicant elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on December 20, 2012. A complete copy of the file of relevant material (FORM) was received by Applicant on December 26, 2012. He was afforded 30 days to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant requested an extension until February 2, 2013 to present his response to the FORM. On January 31, 2013, Applicant submitted a 28-page response (Response). Department Counsel did not object to Applicant's Response and it was admitted into the record. The case was assigned to me on February 14, 2013.

Findings of Fact

Applicant admitted SOR allegations 1.b, 1.g, and 1.k, with explanations. He denies 1.a, 1.c through 1.f, 1.h, 1.i, 1.j, 1.l, and 1.m. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 26-year-old employee of a defense contractor. He is single and has no children. He earned a bachelor's degree in May 2008. (Item 4.)

Applicant worked in his current position, as a financial analyst, with the defense contractor since February 2011. He works a second part-time job at a restaurant, where he has been employed since October 2010. From May 2008 to September 2009, he was employed in a full-time position with a municipal governmental office. On his Electronic Questionnaires for Investigating Processing (e-QIP) he identified only one period of unemployment, extending from January 2006 through June 2006. (Item 4.)

Applicant is alleged in the SOR to be indebted on 13 accounts in the amount of \$42,702. Applicant asserts that "the vast majority of these debts are a 'residual result of detrimental periods of unemployment for [him] and those that [he has] been dependent upon to assist [him] with payments of these debts.'" (Item 5.) In his answers to interrogatories, he further disclosed that "these accounts are partially due to [his] father losing his house and the loss of assistance from him with student loans." Applicant provided a copy of the "short sale record" for his father's home to support his claim. (Response.)

In his Response, he explained:

With very little notice, I was suddenly required to pay my student loans independently and without any assistance. In reference to the 'Statement of Reasons', the debts related to student loans account for approximately 84% of the total debts listed. This abrupt and drastic change to my financial stability had temporarily created progressively detrimental financial difficulties by affecting my abilities to manage and pay other bills and outstanding debts. (Response.)

Credit reports dated April 15, 2011; July 20, 2012; and September 10, 2012; show each of the debts identified on the SOR. (Item 5; Item 6; Item 7.) Applicant's debts are as follows:

Applicant is indebted on a medical account placed for collection in the approximate amount of \$697, as alleged in SOR ¶1.a. This debt has been in collections since August 2008. In January 2013, Applicant contracted with a debt solutions company to manage the repayment of this debt. He provided a copy of the agreement and a detailed repayment schedule, dated January 29, 2013. However, he failed to submit proof of payments under this plan. The first payment was to be deducted from his bank account on February 15, 2013. (Item 7; Response.)

Applicant is indebted on a collections account in the approximate amount of \$455, as alleged in SOR ¶1.b. Applicant failed to address this debt in his Response. (Item 5.)

Applicant is indebted on a cable bill placed for collection in the approximate amount of \$383, as alleged in SOR ¶1.c. This debt has been past due since May 2012. In January 2013, Applicant contracted with a debt solutions company to manage the repayment of this debt. He provided a copy of the agreement and a detailed repayment schedule, dated January 29, 2013. However, he failed to submit proof of payments under this plan. The first payment was to be deducted from his bank account on February 15, 2013. (Item 7; Response.)

Applicant is indebted on a student loan in the approximate amount of \$1,796, as alleged in SOR ¶1.d. Applicant contends that this debt has been consolidated with a credit recovery company. He presented two account statements. The statements do not identify the individual creditors, other than to list a "client" and account number that do not readily match any of the allegations on the SOR. The November account statement showed that a payment of \$200 was due and the total amount of debt listed with the credit recovery company was \$14,389.07. The December 2012 statement showed that a payment of \$200 was due and the total amount of debt listed with the credit recovery company increased to \$17,564.12. Neither of the statements show that a payment was actually made, as the notice is dated prior to the date of the authorized payment. (Answer; Item 5; Response.)

Applicant is indebted on a student loan in the approximate amount of \$633, as alleged in SOR ¶1.e. Applicant contends that this debt has been consolidated with the credit recovery company. As discussed above, the account statements presented by Applicant do not identify this creditor, nor do they show that a payment was actually made to the credit recovery company. (Item 5; Response.)

Applicant is indebted on a student loan in the approximate amount of \$23,571, as alleged in SOR ¶1.f. Applicant's September 2012 credit report lists this debt as "charged-off as bad debt." In his Response, Applicant admits, "I have not yet been able to afford to negotiate this account and work toward returning [it] to good standing." (Item 5; Response.)

Applicant is indebted to a city for four separate debts in the approximate total amount of \$183, as alleged in SOR ¶¶1.g through 1.j. Applicant's September 2012 credit report lists each of these debts as "charged off." Applicant indicated he has paid off three of these debts identified in ¶¶ 1.h, 1.i. and 1.j. He presented a banking account transaction statement dated November 1, 2012, that shows he paid \$84.78 (the approximate sum of the three debts \$28.00, \$29.00, and \$28.00) to this creditor. He indicated the debt in ¶1.g "will be paid forthcoming upon the availability and feasibility." (Item 5; Response.)

Applicant is indebted on to a bank in the approximate amount of \$5,198, as alleged in SOR ¶1.k. In January 2013, Applicant contracted with a debt solutions company to manage the repayment of this debt. He provided a copy of the agreement and a detailed repayment schedule, dated January 29, 2013. However, he failed to submit proof of any payments under this plan. His first payment was to be deducted from his bank account on February 15, 2013. (Item 5; Item 7; Response.)

Applicant is indebted to a university for an educational loan in the approximate amount of \$8,306, as alleged in SOR ¶1.l. This debt has been past due since April 2011. Applicant indicated this debt was consolidated along with the debts listed in ¶¶ 1.d and 1.e. As discussed above, the account statements presented by Applicant do not identify this creditor nor do they show that a payment was actually made to the credit recovery company. (Item 5; Item 7; Response.)

Applicant is delinquent in the amount of \$1,480 on a student loan, as alleged in SOR ¶1.m. Applicant presented documentation from this creditor that shows the total amount of his debt held by this creditor as of January 31, 2013, is \$26,669.27. In his Response, he indicated he paid \$1,400 on October 30, 2012, and the account was returned to good standing. An account statement from this creditor dated January 13, 2013, shows that from August 2009 to October 2010, Applicant made regular payments of \$115.77 on this debt. No payment was made from November 2010 to July 2011. In August through September 2011, Applicant made two payments of \$245.89 each. No payments for October 2011 through July 2012 were recorded. Applicant has made payments of varying amounts on a monthly basis since August 2012 including: \$250 in August 2012; \$251.27 in September 2012; \$1,400 in October 2012; \$600 in September 2012; \$950 in December 2012; and \$100 in January 2013. However, the payments of \$600 in September 2012 and \$950 in December 2012 were "reversed" and Applicant's account was not credited for those funds. (Item 5; Item 7; Response.)

Applicant indicated he sought credit counseling and enrolled in a personal credit monitoring program through a bank. He indicated that he has "recovered from the negative progression by way of consolidated loan payment plans and increases in pay as a result of good work performance." He presented a copy of a January 2013 letter promoting him to a new position as a salaried employee with his present employer. (Item 2; Response.)

Policies

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

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 13 delinquent debts totaling \$42,702. This delinquent debt includes a significant amount of student loan debt. Some of these delinquent accounts have been past due for two to four years and the oldest has been delinquent since 2008. The evidence is sufficient to raise the above disqualifying conditions.

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 the burden of showing that future delinquencies are unlikely to recur and that his financial decisions do not cast doubt on his current reliability, trustworthiness, or good judgment. Applicant still has a significant amount of delinquent debt. He failed to present sufficient evidence that he is addressing his debts in a responsible manner or that he has the means and discipline to continue to resolve them. He has attempted to negotiate with some of his creditors, but he failed to present enough documentation to substantiate all of his claims. His financial issues are recent and ongoing. AG ¶ 20(a) is not applicable.

AG ¶ 20(b) is not applicable. Applicant explained in his Response that he became delinquent on his debts as result of unemployment and his father's inability to assist with his student loans. Applicant has not been unemployed since June 2006. He has been fully employed with a government contractor since February 2011. From the record evidence, it is unclear how his past unemployment effected his present financial situation. However, he did document his father's financial hardship, which was largely beyond the Applicant's control, and resulted in the short sale of his father's home. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant failed to demonstrate a track record of responsibly addressing his delinquent accounts. Of his 13 debts, he showed evidence he repaid three small debts of \$28.00, \$29.00, and \$28.00. He documented he made payments on one student loan account (SOR ¶1.m) consistently since August 2012, however two of his payments were reversed. He indicated that he was repaying six other debts; three through consolidation and three through a debt management company. However, he failed to produce any evidence of payments on these debts. The remaining debts have not been addressed by Applicant. I am unable to make a determination that he acted responsibly under the circumstances.

Applicant indicated that he attended financial counseling. However, there is little indication that the majority of Applicant's delinquent accounts are being resolved or are under control. AG ¶ 20(c) does not apply.

An applicant is not required to establish that he has paid off each debt listed in the SOR. All that is required is that an applicant demonstrates that he has established a plan to resolve his financial problems and has taken significant actions to implement that plan.¹ In this case, however, Applicant has not made a good-faith effort to pay or resolve his delinquent debts. He does not have a concrete plan to address all of his debts. Further, the record shows that Applicant has failed to follow through on his payment plans with at least one of his creditors as demonstrated by the reversed payments. He lacks the requisite concomitant conduct to show that he will follow

¹ ISCR Case No.07-06482 at 3 (App. Bd. May 21, 2008.)

through on plans and address his debt as funds become available. AG ¶ 20(d) is not applicable.

Applicant presented no evidence to show that he was in the process of formally disputing any of his debts or that he had successfully disputed any of his debts in the past. AG ¶ 20(e) is not applicable.

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 the 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. While Applicant was unable to anticipate his father's financial hardship, he is responsible for his student loans and other debts. He has not presented substantial documentation of his good faith efforts to resolve his debt. Applicant is young and reasonably may have relied upon his father's help. However, as a financial professional, he should have been aware of his responsibilities. He failed to clearly document the efforts he has made to resolve the debts, including proof of payments. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated Financial Considerations security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a:	Against Applicant
Subparagraphs 1.b:	Against Applicant
Subparagraphs 1.c:	Against Applicant
Subparagraphs 1.d:	Against Applicant
Subparagraphs 1.e:	Against Applicant
Subparagraphs 1.f:	Against Applicant
Subparagraphs 1.g:	Against Applicant
Subparagraphs 1.h:	For Applicant
Subparagraphs 1.i:	For Applicant
Subparagraphs 1.j:	For Applicant
Subparagraphs 1.k:	Against Applicant
Subparagraphs 1.l:	Against Applicant
Subparagraphs 1.m:	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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Jennifer I. Goldstein
Administrative Judge