



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



In the matter of:)
)
) ISCR Case No. 11-09931
)
)
Applicant for Security Clearance)

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: Alison Dougherty
Personal Representative

12/18/2012

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant owes \$20,103 in delinquent debt, including tax liens for excess unemployment benefits. Applicant assumed his spouse was making payments on his debts. He was not proactive in addressing the debts on learning of them, but he is now making payments to his creditors through his employer, who gave him a five-year loan that is being repaid by payroll deduction. Clearance granted.

Statement of the Case

On May 18, 2012, 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) and explaining why it was unable to find that it is clearly consistent with the national interest to grant or continue his 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 June 25, 2012, and he requested a decision without a hearing. On September 10, 2012, the Government submitted a File of Relevant Material (FORM) consisting of 13 exhibits (Items 1-13). On September 24, 2012, DOHA forwarded a copy of the FORM to Applicant and instructed him to respond within 30 days of receipt. Applicant received the FORM on October 1, 2012. On October 17, 2012, Applicant responded to the FORM through his employer's office manager, to whom he had given a power of attorney. Applicant's rebuttal to the FORM was accepted into the record as Applicant exhibit (AE) A without objection. On November 14, 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.

Applicant's rebuttal to the FORM referenced an attachment that was not in the file. Checks with Department Counsel led to inquiry of Applicant's representative, who faxed the referenced attachment on December 12, 2012. The Government did not object to its admission, so the document was accepted as AE B.

Findings of Fact

The SOR alleged under Guideline F that as of May 18, 2012, Applicant owed \$550 in unidentified medical debt in collection (SOR 1.a-1.h), state tax liens totaling \$15,939 (SOR 1.i-1.k, 1.w), \$1,751 in additional collection debt (SOR 1.l-1.v), and \$7,906.05 in judgment debt (SOR 1.x-1.y). (Item 1.) In his Answer to the SOR, Applicant admitted that he had owed the debts in SOR 1.a-1.h and 1.l-1.n, which were all medical, but they had been paid in full. He also acknowledged owing additional medical debt (SOR 1.p and 1.u), although he had made the first of \$50 monthly payments on each account. Applicant indicated that he had made the first of \$151.25 monthly payments toward the \$9,116 tax lien in SOR 1.i and the first of \$27.75 monthly payments toward the \$1,665 tax lien in SOR 1.j. Applicant denied the \$3,750 tax lien in SOR 1.k and the \$703 credit card debt in SOR 1.o because they had been resolved. As for the debts in SOR 1.q-1.t, the creditors were reporting zero balances, so he disputed them. Applicant denied owing the tax lien in SOR 1.w, believing it was the same debt as SOR 1.j, minus accrued interest. He denied the \$6,406.05 judgment in SOR 1.x in that the listed creditor did not hold the debt, and he had been unable to obtain information about the account. The \$1,500 judgment in SOR 1.y had been paid through interception of his federal income tax refund as of February 10, 2012. (Item 2.)

After considering the Government's FORM, including Applicant's Answer (Item 2) and his rebuttal to the FORM (AEs A-B), I make the following findings of fact.

Applicant is 48 years old. He has worked for his present employer, a company that services the DOD as well as private companies, since April 2006. (Item 3.) As of his receipt of the SOR, Applicant was being assigned to the Arabian Peninsula in support of the U.S. military. (Item 2.) Applicant served on active duty in the military from December 1981 to

April 1986 followed by 1.5 years in the inactive reserve. He held a secret clearance from June 1982 until August 1983, when it was upgraded to top secret. (Item 3.) From about 1988 to 1990, Applicant served in the National Guard at the rank of sergeant. (Item 4.)

Around December 1989, Applicant ran through a stop sign in state X while driving home after drinking with a friend for a few hours. He attempted to evade the police and was arrested for driving under the influence (DUI), evasion, and assault on a police officer. Around June 1990, he pled guilty to DUI and to third degree assault. He was ordered into a work release program for two months, placed on probation for two years, and fined. He also lost his driver's license for two years. Applicant moved to nearby state Y. He did not realize that he had to pay motor vehicle surcharges of \$1,000 per year for the DUI. (Item 4.) On October 18, 1994, state X filed a tax lien against him in the amount of \$3,750 (SOR 1.k). (Item 8.) Applicant submits that the debt was paid in 1999. (Item 2.) Applicant's employer has been told by state X's division of motor vehicles that the account was fully resolved, and that Applicant is eligible for a driver's license in the state. (Ex. A.)

In August 1995, Applicant had a daughter out of wedlock. (Items 3, 4.) Around April 1998, Applicant was ordered to pay \$217 per month in child support. (Item 5.) In February 1999, his daughter's mother was awarded a \$1,500 judgment against him for unpaid child support. (Item 13; AE A.) Applicant's federal income tax refund was intercepted in the amount of \$1,697 to resolve the debt in February 2012.¹ (Item 2.)

Around 2000, Applicant received between \$6,000 and \$8,000 in overpayment of unemployment benefits from state X. In May 2004, the state filed a \$9,116.25 tax lien against him because he had not repaid the funds to the state. (SOR 1.i). (Items 4, 7, 11.) In 2002, Applicant received about \$1,190 in excess unemployment benefits from state Y. In August 2004, state Y filed a \$1,408 tax lien against him (SOR 1.w) after he failed to reimburse the state for the overpayment. (Items 4, 10.) In November 2002, a credit lender obtained a \$6,406.05 judgment against Applicant that also went unpaid (SOR 1.x). (Item 12.)

In May 2003, Applicant began working as a manager for a restoration company. In June 2003, Applicant married a woman who had a four-year-old daughter from a previous relationship. Applicant and his spouse had a son together in June 2004. (Item 3.) His spouse handled the family's finances, and he believed she was paying their debts, including his tax liens for the overpayments of unemployment. He thought his spouse had arranged to repay the \$9,116 tax lien (SOR 1.i) at \$100 per month, and that she had satisfied the \$1,408 tax lien. (Item 4.)

¹As noted in the FORM, the IRS' confiscation notice references a child support debt in state Z (Item 2) while the civil judgment was issued in state Y. (Item 13.) Yet, the evidence substantiates payment of the judgment with Applicant's income tax refund. The judgment creditor is the mother of Applicant's daughter. (AE A.) According to Applicant's Electronic Questionnaire for Investigations Processing (e-QIP), Applicant's daughter was born in state Y, but was living in state Z as of May 2011. (Item 3.) The child support office that intercepted Applicant's refund is located in the same city where Applicant's daughter resides. (Item 2.) Apparently, sometime after the judgment was awarded in 1999, Applicant's daughter moved with her mother to state Z. The judgment and lien filing document relied on by the Government (Item 13) has not been updated since 1999.

In February 2006, Applicant left his job with the restoration company because he wanted to focus on commercial rather than residential restoration. (Items 3, 4.) In April 2006, he began working for his current employer as its "IAQ Director of Operations." (Item 3.) In early June 2006, Applicant and his spouse separated due to her financial irresponsibility, and he filed for divorce. After they separated, Applicant continued to give his estranged spouse \$200 per month toward the \$550 payment for her minivan, which was financed in August 2005 for \$24,092. After the car was repossessed for nonpayment around April 2009, he learned that she had not been making her payments. The debt was charged off, but other creditors pursued him for payment. (Items 4-6.) In mid-June 2008, state Y issued a \$1,665 tax lien (SOR 1.j) against Applicant and his estranged spouse. (Items 7, 9.)

In April or early May 2011, Applicant obtained a copy of his credit report, on which he likely relied to complete his Electronic Questionnaire for Investigations Processing (e-QIP) for a secret clearance. (Items 2-4.) He began working with a credit service to improve his credit score from 480 to 656 by May 2012. (Item 2.)

On May 13, 2011, Applicant certified an e-QIP on which he disclosed 15 delinquent debts totaling \$21,869, including the debts in SOR 1.b-1.f, 1.h, 1.j, 1.l, 1.o, 1.q, 1.s, 1.u, and 1.v, and a charged-off balance of \$16,633 for his estranged spouse's repossessed minivan. Applicant explained that several of the accounts were in collection, and that he was in divorce proceedings. (Item 3.)

As of June 10, 2011, the credit reporting agencies were listing three tax liens on his record of \$1,665 (SOR 1.j), \$9,116 (SOR 1.i), and \$3,750 (SOR 1.k). Only one lien (SOR 1.j) had been previously disclosed. The status of each lien was unknown. Applicant reportedly owed medical debt totaling \$1,235, including two debts, of \$182 (SOR 1.u) and \$147 (SOR 1.v) placed for collection in September 2010. Two credit card accounts were reportedly in collection. The account in SOR 1.o reportedly had a \$703 balance (\$843 on his e-QIP); although another credit card account was listed as having a zero balance after collection (\$1,085 on his e-QIP). (Item 7.)

On June 28, 2011, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). Applicant indicated that he had obtained his credit report around 1.5 months ago, which listed several delinquent accounts. Applicant denied any personal knowledge or use of the delinquent credit card accounts listed on his credit record, surmising that his estranged spouse had incurred the balances and not paid the debts. He indicated that the medical debts were either pediatric or hospital debts incurred by family members. As for the tax lien disclosed on his e-QIP (SOR 1.j), Applicant expressed his belief that the lien in SOR 1.j was for overpayment of unemployment benefits from 2002. About two to four years ago, he learned that his spouse had not made payments to resolve the lien. Applicant volunteered that two other tax liens had been issued against him in state X for excess unemployment payments (SOR 1.i) and for motor vehicle charges stemming from the 1989 DUI (SOR 1.k); although he believed he had satisfied that \$3,750 lien in full. He could not explain why the lien was still on his credit

record as an open account. Applicant planned on satisfying the other liens (SOR 1.i and 1.j) in full on receipt of an expected \$20,000 bonus from his employer for work already completed. Applicant told the investigator that his estranged wife had handled their finances during their marriage, and they separated because of her financial irresponsibility. Applicant felt no repayment responsibility for the two credit card debts, which were incurred by his spouse, or for any deficiency balance on the loan for her minivan. Applicant admitted to the investigator that he had received no financial counseling. (Item 4.)

A check of Applicant's credit on April 10, 2012, showed no progress toward resolving the lone tax lien still on his credit record, the \$9,116 tax lien (SOR 1.i). Applicant had filed disputes with Equifax Information Services about the \$550 in medical debt placed in collection between October 2005 and April 2007 (SOR 1.a-1.h). His credit card account in SOR 1.o was listed as transferred with a zero balance. Applicant had opened a \$500-limit credit card account in September 2011, on which he owed a current balance of \$109. (Item 6.)

On April 12, 2012, DOHA asked Applicant to update the status of the delinquent accounts on his credit report. Applicant executed a power of attorney, giving his employer's office manager legal authority to address his debts on his behalf because he was working offsite.² Applicant's employer hired an attorney to help clear up Applicant's credit record. As of April 23, 2012, repayment terms were still to be negotiated with Applicant's creditors. Applicant had only \$4.00 in net income each month after paying his monthly expenses, including his child support (Item 4.), although a few days later, he received a pay increase. (AE A.)

On May 18, 2012, DOHA issued an SOR to Applicant, alleging unpaid delinquent debt totaling \$26,146.05. (Item 1.) As of late June 2012, Applicant was no longer disputing his liability for the medical debts in SOR 1.a-1.h for pediatric services. Applicant's employer paid \$200 on June 25, 2012, toward the pediatric debts in SOR 1.a-1.h and 1.l-1.n in collection. The pediatric provider had referred three other debts totaling \$379.20 to the collection agency identified in SOR 1.p, 1.u, and 1.v. On June 25, 2012, Applicant's employer paid the first of \$50 monthly payments to continue until the debt is paid in full. Also, on that date, Applicant's employer paid the first of \$151.25 monthly payments to state X toward the lien in SOR 1.i and the first of \$27.75 monthly payments to state Y toward the lien in SOR 1.j. Applicant could not afford to pay more toward his debts. (Item 2.)

Applicant disputed the validity of some of the debts. He maintained that the \$1,408 lien debt in SOR 1.w was an earlier balance of the lien balance in SOR 1.j and was not an additional lien, and that the \$3,750 tax lien for motor vehicle surcharges had been paid in 1999. Applicant also disputed the \$703 credit card debt alleged in SOR 1.o as it had been fully resolved in April 2011. He provided as proof of satisfaction an online report from Credit Karma stating that all of his accounts were showing "as paid as agreed" as of May 31, 2012. Applicant disputed the debt in SOR 1.x with a credit bureau to determine who

²With her response to DOHA on Applicant's behalf, the office manager apparently provided a copy of the power of attorney. (Item 4.) The power of attorney was not included in the FORM.

held the debt. Although Applicant had been delinquent in his child support, the debt in SOR 1.y had been resolved with his tax refund. (Item 2.)

As of August 2012, Applicant owed a current balance of \$17 on the credit card account opened in September 2011. Equifax Information Services was still reporting as outstanding collection debt the medical debts in SOR 1.a-1.d and 1.f-1.h, although there had been no update to the account information since April 2012. The \$9,116 tax lien (SOR 1.i) was still on his credit record. (Item 5.)

In the FORM, Department Counsel questioned the adequacy of Applicant's evidence to establish that he resolved the debts in SOR 1.a-1.h, 1.l-1.n, and 1.y; that the lien debt in SOR 1.w was a duplicate listing of SOR 1.j; and that the IRS intercepted his tax lien to resolve his child support debt in SOR 1.y. On October 16, 2012, Applicant's employer paid \$329.20 to satisfy in full the medical debts in SOR 1.p, 1.u, and 1.v. An additional \$485.19 was paid to the agency collecting the debts in SOR 1.a-1.h and 1.l-1.n to satisfy those debts. On October 17, 2012, Applicant's employer indicated monthly payments of \$151.25 toward the tax lien in SOR 1.i and \$27.75 toward the tax lien in SOR 1.j had been made on Applicant's behalf through October 2012.³

As of October 2012, Applicant was no longer disputing his repayment liability for the \$325 in medical debts in SOR 1.q-1.t, the \$1,408 tax lien in SOR 1.w, and the \$6,406.05 in judgment debt in SOR 1.x. The hospital had reportedly recalled its accounts (SOR 1.q-1.t) from the assignee, but the hospital would not accept any payments pending review by patient financial services. Applicant's employer had assurances from state Y that it would accept monthly payments. The employer indicates it initiated a monthly payment of \$25 until the debt is paid in full. The creditor holding the judgment debt in SOR 1.x wanted 75% of the payoff balance to settle the debt, but it agreed to accept monthly payments of \$42 to resolve the \$8,484.16 balance as of October 18, 2012. (AE B.)

To resolve his debts, Applicant accepted a 60-month loan from his employer that he is repaying through weekly deductions of \$93.22 from his earnings, starting with the pay period ending October 11, 2012. (AE A.)

As of October 2012, Applicant was disputing the debts in SOR 1.k and 1.o. State X's division of motor vehicles told Applicant's employer there is no outstanding debt for motor vehicle surcharges (SOR 1.k). Applicant maintains that the credit card debt was incurred by his now estranged spouse, who opened the account during their marriage. (AE A.) The account had been deleted from Applicant's credit record sometime between April 10, 2012, and September 4, 2012. (Items 5, 6.)

³ According to the company's office manager, neither state X (SOR 1.i) nor state Y (SOR 1.j) would enter into a formal agreement but would accept monthly payments. Payments made on June 25, 2012, had been posted to the company's business checking account in July 2012. The payments to cover the months of July through September to state X (checks #15088, #15089, and #15090) and to state Y (checks #15092, #15093, and #15094) are all dated July 2, 2012. The company did not provide copies of those payments that had apparently just been processed for October 2012. Assuming all payments cleared, Applicant had paid \$756.25 toward the \$9,116 lien in SOR 1.i and \$138.75 toward the \$1,665 tax lien in SOR 1.j as of late October 2012.

As of October 2012, Applicant had \$76.87 in monthly net income after payment of monthly expenses and deductions from his pay for child support and the loan from his employer. (AE A.) Applicant's employer intends to continue to work on resolving Applicant's remaining debt. Applicant is considered the company's best employee. He has demonstrated responsibility, loyalty, trustworthiness, and reliability in carrying out his duties, including in difficult situations. (AE A.)

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 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 about the 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

a/so 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 Government alleged that as of May 18, 2012, Applicant owed \$26,146.05 in delinquent debt, consisting primarily of tax liens, medical debt, and judgment debt. The judgment debt issued in February 1999 for \$1,500 in child support arrearage (SOR 1.y) was satisfied in February 2012, before the SOR was issued. Applicant submits that in 1999, he paid off the \$3,750 tax lien issued in October 1994 for motor vehicle surcharges stemming from the 1989 DUI (SOR 1.k). While the lien was still on his credit record as of June 2011, its status was reported as unknown. I have no reason to disbelieve Applicant's employer, who has been assured by state X's motor vehicle division that there is no debt outstanding. As for the disputed repayment liability for the credit card debt in SOR 1.o, even if his spouse incurred the debt without his knowledge, he is the account holder and therefore liable for any outstanding debt. Yet, credit checks in 2012 show no balance on the account, and there is no evidence that the creditor is attempting collection. The evidence is sufficient to establish that he owed past-due debt around \$20,000 as of May 2012. AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations," both apply.

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," is not established. Most of the delinquencies are longstanding with no demonstrated progress toward resolving them before June 2012.

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," is partially implicated. Several of the debts were medical and necessary for the care of his spouse and children. Applicant trusted his now estranged spouse to pay their financial obligations as well as his old tax liens for overpayment of unemployment benefits. He initially did not know that she was not making the payments. His spouse apparently incurred consumer credit debt (SOR 1.o) without his authorization. However, AG ¶ 20(b) does not mitigate the poor financial judgment exercised by Applicant

in several aspects. Applicant separated from his spouse in June 2006 because of her financial irresponsibility. Even if he was unaware of the full extent of his personal indebtedness, he had to have known by June 2006 that some accounts were not being paid on time or that his spouse was spending beyond their means. It was incumbent on him to ascertain the extent of his delinquencies, including with states X and Y for the known overpayments of unemployment in 2000 and 2002, and to arrange affordable repayment terms, if possible. He indicated in response to the SOR that he signed up for a free service provided by Credit Karma in 2009, but the record otherwise shows no steps between June 2006 and April 2011 to address his debts. In April or May 2011, he obtained his credit report and reportedly began working to improve his credit score. The increase in his credit score from 480 to 656 over the next year could have been because of disputing debts, paying others not in the SOR, or a combination of factors, although Applicant provided no documentation of any debt payments between April 2011 and May 2012. Applicant told the OPM investigator in June 2011 that he planned to pay the \$1,665 (SOR 1.j) and \$9,116 (SOR 1.i) tax liens in full with an estimated \$20,000 in bonus pay expected from his employer within the next couple of weeks. It is unclear whether he received the bonus pay. The only documented payment before June 2012 was through confiscation of his income tax refund for past-due child support in February 2012.

As of April 23, 2012, Applicant had given his employer's office manager a power of attorney to resolve his remaining debts on his behalf. On June 25, 2012, the office manager began making payments toward Applicant's debts for him. As of October 16, 2012, the company had paid \$756.25 toward the tax lien in SOR 1.i; \$138.75 toward the tax lien in SOR 1.j; \$379.20 to satisfy in full the medical debts in SOR 1.p, 1.u, and 1.v; \$200 to settle the pediatric medical debts in SOR 1.a-1.h; and \$485.19 to satisfy in full the remaining medical debt held by the assignee (SOR 1.l-1.n). In the FORM, Department Counsel argued against application of mitigating condition AG ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," because the checks were issued by Applicant's employer rather than from Applicant. Also, there was no proof that any of the payments had been "sent, received, deposited, or cleared." Applicant has addressed those concerns. He has given his office manager a legal power of attorney to handle resolution because of his work duties overseas in often difficult situations. His employer's decision to handle the debt negotiations and payments is unusual, but it does not reflect adversely on Applicant. To the contrary, it demonstrates Applicant's value to his employer. Department Counsel's second concern has some merit in that the file lacks formal letters of satisfaction or settlement from creditors and of the repayment agreements with states X and Y. Applicant presented a statement from its employer's corporate checking account confirming the first payments to X and Y cleared in July 2012. I have no reason to doubt mailing or acceptance of subsequent payments made by the company. By involving his employer, Applicant has shown good faith intent to resolve his debts, and diminished any concerns of susceptibility to criminal acts for the funds needed to address his debts.

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," is more difficult to apply, even though there is no evidence of any new delinquencies. After

the recent payments, Applicant still owes about \$20,103 in undisputed delinquent debt: \$8,360 on the lien in SOR 1.i; \$1,526.25 on the lien in SOR 1.j; \$325 to a hospital (SOR 1.q-1.t); \$1,408 on the lien in SOR 1.w; and \$8,484.16 on the judgment in SOR 1.x that he has arranged to repay at \$42 a month. Applicant's net monthly income was only \$4.00 as of April 2012. He now has about \$76.87 in discretionary funds each month after paying his child support and the loan from his employer. He has taken a 60-month loan from his employer. The amount of the loan is not of record, and his employer just started taking a miscellaneous deduction of \$93.22 from his weekly pay as of the pay period ending October 11, 2012. Clearly, it is going to take some time to resolve his remaining delinquencies. (AE A.)

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," applies only to the judgment in SOR 1.y and the \$3,750 lien in SOR 1.k, which were paid before the SOR was issued, and the disputed \$703 credit card debt in SOR 1.o. The credit item has been dropped from his credit record, and there is no evidence of any collection efforts against Applicant.

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 should have been more proactive about addressing his delinquent debts once he realized that his spouse was not making the payments. It is particularly troubling that he resigned from a job in February 2006 without a new job in place when he owed a judgment for child support since 1999. As of his subject interview in June 2011, he was placed on notice that his poor credit record was an issue, and he did little about his debts until DOHA sent him interrogatories in April 2012. In his favor, Applicant has apparently been such a productive, reliable employee that his employer is not only vouching for him, but also helping him clear up his debt. The DOHA Appeal Board has held that 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. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Applicant's efforts to address his debt do not carry the usual implication that he can be counted on to meet his future obligations because the payments are being made on his

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.

behalf. At the same time, Applicant's credit report in September 2012 showed no new delinquencies or excessive reliance on consumer credit. He had opened a new credit card account in September 2011, which had a \$17 current balance as of August 2012. Applicant's delinquent debts exceed \$20,000 in the aggregate, when he has only \$76.87 in net income each month, but he has an established plan in place to resolve his debts. Applicant has been forthcoming with the DOD as well as with his employer about his financial difficulties, which are now in the process of being resolved. Based on the record before me, I conclude that it is clearly consistent with the national interest to grant Applicant a security clearance.

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: FOR APPLICANT

Subparagraph 1.a-1.y: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Elizabeth M. Matchinski
Administrative Judge