



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



In the matter of:)
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)
)
Applicant for Security Clearance)

ISCR Case No. 11-11241

Appearances

For Government: David F. Hayes, Esq. Department Counsel
For Applicant: *Pro se*

05/02/2013

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 regarding 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 May 10, 2011. On January 11, 2013, 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 January 28, 2013, Applicant provided a notarized answer to the SOR. He elected to have a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on March 18, 2013. A notice of hearing was issued on March 20, 2013, and I convened a hearing, as

scheduled, on April 10, 2013, 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 seven exhibits, which were marked Ex. 1 through 7 and entered in the record without objection. Applicant testified and did not submit any documents. At the conclusion of the hearing, I left the record open until close of business April 24, 2013, so that Applicant could, if he wished, provide additional information for the record. Applicant timely provided 15 documents. I marked the documents as Ex. A through Ex. O and admitted them to the record without objection. DOHA received the hearing transcript (Tr.) on April 18, 2013.

Findings of Fact

In his Answer to the SOR, Applicant admitted three allegations (SOR ¶¶ 1.a., 1.c., and 1.i.). He denied SOR allegations at ¶¶ 1.b., 1.d., 1.e., 1.f., 1.g., 1.h., 1.j., and 1.k. Applicant's admissions are entered as findings of fact. I also make the following additional findings of fact:

Applicant is 30 years old, married, and the father of a five-year-old child. He is employed by a government contractor as a security analyst. He was awarded an interim security clearance in 2009. (Ex. 1; Tr. 14-16, 26, 29.)

Applicant earned a bachelor's degree in economics in 2005, and he has been steadily employed since that time. His wife is employed full time as a veterinarian's assistant. Applicant testified that his wife's employment is recent. Before she was employed, Applicant paid all household and living expenses. Applicant's child attends a private school with monthly tuition and fees of approximately \$700. Applicant testified that his grandmother has been helping him financially with the child's education expenses. (Ex. 1; Tr. 27-32, 86-87.)

The SOR alleges eleven delinquent debts totaling approximately \$14,403. In response to DOHA interrogatories, Applicant stated he had an agreement with a debt resolution law firm to resolve the debts alleged on the SOR. At his hearing, he stated he hired the firm after he received DOHA's interrogatories in October 2012. He reported that he worked with the firm for six or seven months thereafter, but he no longer had a relationship with the firm at the time of his hearing. (Ex. 3; Tr. 41-45.)

Applicant admitted a \$577 debt to a communications provider, alleged at SOR ¶ 1.a. He stated that he had an agreement with the creditor to make monthly payments of \$124 until the debt is satisfied. He asserted that his first payment under the agreement was due two days after his hearing. In a post-hearing submission, Applicant stated that he was making bi-weekly payments of \$125.91 on the debt, and he anticipated that the debt would be resolved on May 27, 2013. The debt is in the process of being resolved. (Ex. A; Ex. B; Tr. 38-38-41.)

In his answer to the SOR, Applicant denied a \$143 debt to a credit card company, alleged at SOR ¶ 1.b. He stated: "I have not had any calls [from the creditor]

pertaining to this debt.” When he was interviewed by an authorized investigator from the Office of Personnel Management (OPM) about the debt in June 2011, Applicant denied knowledge of the debt and stated he would contact the creditor to request that the debt be removed from his credit report. At his hearing, he acknowledged he had not contacted the creditor, and he denied owing the debt. In a post-hearing submission, Applicant provided documentation showing that the creditor acknowledged payment in full of \$142.83 on April 24, 2013. The debt has been resolved. (Answer to SOR; Ex. 2; Ex. A; Ex. C; Tr.46-49.)

In his answer to the SOR, Applicant admitted a \$321 debt alleged at SOR ¶ 1.c., and he stated: “I will pay this off by the end of February.” At his hearing, Applicant admitted that he had not yet paid the debt. In a post-hearing submission, Applicant stated that he had paid the creditor \$45.66 on April 19, 2013. He further stated that he would make payments of \$100 to the creditor on May 10, 2013, May 24, 2013, and June 7, 2013. The debt is in the process of being resolved. (Answer to SOR; Ex. A; Ex. D; Tr. 49.)

The SOR alleges at ¶ 1.d. that Applicant owed a creditor a \$623 debt in collection status. In his answer to the SOR, Applicant denied the debt and stated: “I have had no contact with [the creditor] relating to this debt.” At his hearing, Applicant stated that the creditor had garnished his wages to satisfy the debt. In a post-hearing submission, he provided documentation showing that his employer had garnished his wages in February 2013 to satisfy the debt. The debt has been resolved. (Answer to SOR; Ex. A; Ex. E; Tr. 49-50.)

The SOR alleges at ¶ 1.e. that Applicant is responsible for a \$9,430 debt in charged-off status. In his answer to the SOR, Applicant denied the debt and stated that he had satisfied the debt “in 4-5 payments going on a year ago.” At his hearing, Applicant explained that his automobile had been demolished in an accident, and because his insurance had lapsed, he was responsible for paying the creditor directly. He stated that he had paid the creditor six payments of \$1,400 each. In a post-hearing submission, he submitted an order of satisfaction, dated December 5, 2011, corroborating payment to the creditor. The debt has been resolved. (Answer to SOR; Ex. A; Ex. F; Tr. 52-54.)

The SOR alleges at ¶ 1.f. that Applicant owed a communications company a \$211 debt in collection status. In his answer to the SOR, Applicant denied the debt and stated: “I have no debt owed to [the creditor] besides my current monthly bill.” In his June 2011 interview with the OPM investigator, Applicant denied the debt and told the investigator he would contact the credit bureau and have the debt removed from his credit report. At his hearing, Applicant stated he did not believe he had a debt because his current account with the creditor was not affected. In a post-hearing submission, Applicant provided a letter, dated April 19, 2013, from a collection company acting for the creditor, which acknowledged payment of the debt. The debt has been resolved. (Answer to SOR; Ex. 2; Ex. A; Ex. G; Tr. 54-55.)

The SOR alleges at ¶ 1.g. that Applicant owed a creditor a \$25 debt which had not been satisfied. In his answer to the SOR, Applicant denied the debt and stated: "I have no correspondence with [the creditor] regarding a debt owed to them." In his June 2011 interview with the OPM investigator, Applicant admitted the debt and told the investigator he did not have enough money to pay it. At his hearing, Applicant again denied any correspondence from the creditor identifying the debt. He stated that he had not contacted the creditor because he had been busy with family matters. In a post-hearing submission, Applicant indicated he had satisfied the debt but had not yet received verification of payment from the creditor. The debt may be in the process of being resolved. (Answer to SOR; Ex. 2; Ex. A; Ex. H; Tr. 55-57.)

The SOR alleges at ¶ 1.h. that Applicant owes a \$120 debt, in collection status, to a creditor, and the debt remains unpaid. In his answer to the SOR, Applicant denied the debt and stated that he had not received correspondence from the creditor regarding the debt. In his June 2011 interview with the OPM investigator, Applicant admitted the debt but stated he had no money to pay it. At his hearing, Applicant acknowledged that he understood that even if a creditor does not write a letter and request payment, a debtor cannot conclude that he does not owe a debt. In a post-hearing submission, Applicant stated he had paid the debt but had not yet received verification of payment from the creditor. The debt may be in the process of being resolved. (Answer to SOR; Ex. 2; Ex. A; Ex. H; Tr. 57-58.)

The SOR alleges at ¶ 1.i. that Applicant is responsible for a medical debt of \$96, which was identified on his credit report of May 18, 2011. In his answer to the SOR, Applicant admitted the debt. At his hearing, he did not know if he had paid the debt. As a post-hearing submission, he provided a copy of his credit report which did not list the debt. The debt has not been resolved. (Answer to SOR; Ex. A; Ex. J; Tr. 57-58.)

The SOR alleges at ¶ 1.j. that Applicant owes \$2,800 to a local government for 16 delinquent accounts. In his answer to the SOR, Applicant denied the allegation and stated: "I have no idea what this debt is for." At his hearing, he admitted being stopped for traffic violations within the jurisdiction of the local government. He stated he had not contacted the local government to determine the nature of the accounts. At a post-hearing submission, Applicant submitted a ledger showing he owed 15 tickets for traffic violations. The total amount owed was \$2,550. He also reported that as a non-resident of the jurisdiction, he was not permitted to make installment payments on the debt. Applicant acknowledged that the debt remained unsatisfied. The debt has not been resolved. (Answer to SOR; Ex. A; Ex. H; Ex. I; Tr. 58-59.)

The SOR alleges at ¶ 1.k. that Applicant owes a creditor a delinquent debt of \$57 which has not been satisfied. In his answer to the SOR, Applicant denied the debt. When Applicant was interviewed by the OPM investigator in June 2011, he acknowledged the debt but stated it had been paid in full. At his hearing, Applicant admitted he had not been in contact with the creditor about the debt. In a post-hearing submission, Applicant provided documentation establishing that he owed no debt to the creditor. The debt has been resolved. (Answer to SOR; Ex. 2; Ex. A; Ex. K; Tr. 60-61.)

Applicant attributed some of his financial problems to procrastination and lack of diligence. As a post-hearing submission, he provided a personal financial statement dated April 23, 2013. He reported that his net monthly income is \$3,900. His wife's net monthly income is \$2,000. He also reported that his grandmother gives him \$600 every other month to help pay his child's school tuition and fees.¹ (Ex. L; Tr. 56-57, 64.)

Applicant reported the following fixed monthly living expenses: rent, \$1,550; groceries, \$400; clothing, \$200; utilities, \$300; car expense, \$800, life and other insurance, \$166; medical expenses, \$60; child's education, \$700; and miscellaneous, \$600. Each month he also has a debt payment of \$456 on an automobile purchase loan. At his hearing, Applicant reported that he also pays \$400 a month on his student loan debt, but he did not list that debt on his financial statement. He also reported that his wife will soon begin to pay \$400 a month on her student loan debt, but he did not list that obligation on his financial statement. Applicant's current debt and monthly living expenses, including his and his wife's student loan debt payments, total \$6,032. His monthly net remainder is approximately \$168. (Ex. L; Tr. 80-82.)

Applicant did not report any bank savings on his financial statement. He reported he had approximately \$15,000 in his 401(k) account. He filed his 2012 federal income tax return and received a refund of \$2,200. He stated that he used some of his tax refund to pay his student loans. At his hearing, Applicant stated that he and his wife have not participated in financial credit counseling. However, in a post-hearing submission, he stated that he was working with a financial advisor. He also provided documentation establishing that he purchased a life insurance policy paying a death benefit of approximately \$1.5 million. (Ex. A; Ex. M; Ex. N; Tr. 82-83, 86-87.)

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

¹ Because Applicant pays \$700 each month for his child's school tuition and fees and is assisted every other month by his grandmother who pays \$600 toward the child's tuition and fees, Applicant's average total net monthly income is \$6,200 and not \$6,500, as reported on his financial statement. (Ex. L.)

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 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. 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 been steadily employed since graduating from college in 2005. His financial delinquencies occurred in the past and continue to the present time. He did not address most of his delinquencies until after his security clearance hearing.

Applicant admitted a history of financial difficulties, which he attributed to lack of diligence and procrastination. To his credit, he provided documentation establishing that he paid the \$9,430 debt alleged at SOR ¶ 1.e. However, the debt alleged at SOR ¶ 1.d. was resolved by garnishment and not by Applicant's own action. By setting up payment plans for most of his debts after his hearing, Applicant essentially made promises to pay his delinquent debts at some future time. In determining an individual's security

worthiness, the Government cannot rely on the possibility that an applicant might resolve his or her outstanding debts at some future date. ISCR Case No. 98-0614 at 5 (App. Bd. Jul. 12, 1999).

Moreover, Applicant's post-hearing actions to address his delinquencies reflect a lack of good faith in resolving his obligations to his creditors. DOHA's Appeal Board has explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good-faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option . . . in order to claim the benefit of [the "good-faith" mitigating condition.]

(ISCR Case No. 02-30304 at 3 (App. Bd. April 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

Before his hearing, Applicant was inattentive to his financial responsibilities. By his own admission, he procrastinated and avoided his obligations to his creditors. When he was interviewed by an OPM investigator in June 2011, he asserted he would contact his creditors and address his debts. He failed to do so. After his hearing, he took steps to contact his creditors and address his delinquent debts. His last-minute efforts only when faced with the possible denial of his security clearance reflect a lack of good faith.

Applicant's personal financial statement and his testimony suggest he allocates nearly all of his monthly income to current expenses and debts and has little money left over to pay his long-term financial delinquencies or to address unforeseen financial emergencies. Five of the debts alleged on the SOR are for amounts of less than \$150. Three of those debts are for amounts of less than \$100, and yet Applicant failed to address those delinquencies, suggesting that after he meets his basic living expenses, he has few remaining financial resources.

The record is ambiguous about Applicant's exposure to financial credit counseling. At his hearing, he denied that he and his wife had had received credit counseling. In a post-hearing submission, however, he provided a statement from a financial advisor. Applicant's current financial situation raises security concerns about his reliability, trustworthiness, and good judgment.

Because Applicant resolved the large delinquent debt alleged at SOR ¶ 1.e. in 2011, I conclude AG ¶ 20(d) applies in part to his case. However, Applicant does not

appear to have the financial resources to resolve his remaining debts and meet his monthly living expenses. After carefully weighing the facts of Applicant's case, I conclude that 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 30 years. His financial problems began several years ago and are ongoing. Despite a steady income since graduating from college in 2005, he has failed to budget his income to meet his ongoing obligations and to satisfy his delinquent debts. His last-minute efforts to establish payment plans for his delinquent debts raise concerns about his judgment, maturity, reliability, 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
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	For Applicant
Subparagraph 1.c.:	Against Applicant
Subparagraphs 1.d.-1.f.:	For Applicant
Subparagraphs 1.g.-1.j.:	Against Applicant

Subparagraph 1.k.: For 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