



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 11-12436 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

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

01/15/2014

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings and exhibits in this case, 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 Case

On March 12, 2010, Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP). On February 26, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing the 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.

Applicant provided a notarized answer to the SOR, dated March 15, 2013, and he requested that his case be determined on the written record. The Government compiled its File of Relevant Material (FORM) on April 4, 2013. The FORM contained documents identified as Items 1 through 9. By letter dated April 4, 2013, the Defense Office of Hearings and Appeals (DOHA) forwarded a copy of the FORM to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the file on October 30, 2013. His response was due on November 30, 2013. Applicant submitted additional information within the required time period. On December 9, 2013, the case was assigned to me for a decision. I marked Applicant's response to the FORM as Item A and admitted it to the record without objection.

Findings of Fact

The SOR contains 11 allegations of disqualifying conduct under Guideline F, Financial Considerations (SOR ¶¶ 1.a. through 1.k.). In his Answer to the SOR, Applicant admitted the allegations at SOR ¶¶ 1.b., 1.c., 1.d., 1.f., and 1.g. He denied the allegations at SOR ¶¶ 1.a., 1.e., 1.h., 1.i., 1.j., and 1.k. Applicant's admissions are entered as findings of fact. (Item 1; Item 2.)

The facts in this case are established by the record provided by the Government and by Applicant in his response to the FORM. The record evidence includes Applicant's answer to the SOR; his March 12, 2010, e-QIP; a summary of Applicant's personal subject interview, prepared by an authorized investigator from the U.S. Office of Personnel Management;¹ Applicant's responses to financial interrogatories; and his credit reports of March 26, 2010, July 28, 2011, and October 12, 2012. Absent any objections, all Items in the FORM are entered as evidence in this case. (See Items 2 and 4 through 9.)

Applicant, a high school graduate, is 56 years old, married, and employed by a government contractor as a mechanic. He is the father of two adult children. He seeks a security clearance for the first time. (Item 4.)

Between 1997 and 2007,² Applicant owned twelve residential properties and rented them. When the housing market suffered a downturn, he sold most of the properties. One property went into foreclosure. Applicant owes a deficiency balance on the property of \$46,999. This delinquent debt is alleged at SOR ¶ 1.c. Additionally, Applicant remains responsible for a \$3,164 judgment for unpaid homeowner's

¹ As a part of his investigation for a security clearance, Applicant was interviewed under oath by an authorized investigator from the U.S. Office of Personnel Management (OPM) on August 3, 2011. On December 4, 2012, he signed a notarized statement affirming that the summary of his interview was accurate. He made no changes or additions to the summary, nor did he, pursuant to ¶ E3.1.20 of the Directive, object to its admissibility. (Item 5.)

² Applicant also identified the time of his ownership of real property for commercial purposes as 1996 to 2005. (Item 2.)

association dues on the property. The judgment, which is alleged at SOR ¶ 1.b., was filed against Applicant in April 2005 and remains unsatisfied. (Item 1; Item 2; Item 5; Item A.)

From approximately November 2007 until August 2011, Applicant was employed overseas as a government contractor. During his last overseas assignment, he fell ill, returned to the United States, and was treated successfully for a serious disease. (Item 1; Item 2; Item 5.)

Applicant has a history of delinquent debt. The SOR alleges at ¶ 1.j. that Applicant owes a judgment of \$159 to an individual. The judgment was filed against Applicant in June 2003. Applicant denied the debt, which is listed on his credit bureau report of March 26, 2010. In response to DOHA interrogatories, he claimed it had been paid long ago. He provided no documentation to corroborate payment. (Item 1; Item 2; Item 6; Item 9.)

The SOR also alleges that Applicant is responsible for five delinquent accounts in collection status (SOR ¶¶ 1.a., 1.e., 1.f., 1.i., and 1.k.) and three accounts in charged-off status (SOR ¶¶ 1.d., 1.g., and 1.h.). In his answer to the SOR, Applicant denied the \$254 debt alleged at SOR ¶ 1.a. and reported that he had no record of it. When he was interviewed by an authorized investigator in August 2011, Applicant did not recognize the debt, but he stated he would investigate and attempt to resolve it. In response to DOHA interrogatories, Applicant stated that he had called the creditor, an energy company, and the creditor claimed it had no record of the debt. The debt is listed on his credit bureau reports of March 2010 and July 2011. It was reported as delinquent in 2009, and it was referred to a collection attorney. (Item 1; Item 2; Item 5; Item 6; Item 8; Item 9.)

Applicant also denied the \$17,435 debt in collection status alleged at SOR ¶ 1.e., and he asserted that the debt had been settled. As an attachment to his answer to the SOR, he provided documentation corroborating that the debt had been settled in August 2011. (Item 2.)

Applicant admitted a \$7,457 debt in collection status, alleged at SOR ¶ 1.f. In his interview with an authorized investigator, Applicant stated that the debt arose when he purchased an automobile for his daughter in 2003. In 2005, he fell behind in his monthly payments on the vehicle, and he stopped making payments in 2006. When he went overseas on assignment, he lost track of the debt. The debt appears on Applicant's credit bureau report of July 2011. In response to DOHA interrogatories, he provided a letter from the creditor, dated November 12, 2012, reporting that it had received a \$75 post-dated check from him which would be credited against the balance on the account. Applicant provided no other evidence of payment, and the debt has not been resolved. (Item 2; Item 6.)

Applicant denied a \$1,431 debt, in collection status, to a home-improvement store. The debt is alleged at SOR ¶ 1.i. In his interview with an authorized investigator,

Applicant stated that the debt was incurred for repairs on his rental property. He told the investigator that he thought he had paid the debt, but if he had not paid it, he would make arrangements to do so. The debt is alleged on Applicant's credit bureau reports of March 2010 and July 2011, and it remains unresolved. (Item 2; Item 5; Item 8; Item 9.)

Applicant denied a \$192 debt to an energy company in collection status, and he claimed he did not recognize the debt. The debt is alleged at SOR ¶ 1.k. The record reflects that the debt was reported as delinquent on February 2006, and it is reported on his March 2010 credit bureau report. (Item 2; Item 9.)

Applicant admitted that he owed a \$2,383 debt, in charged-off status. The debt is alleged at SOR ¶ 1.d. He reported that the debt was for a motorcycle repossessed in 2005 or 2006. He listed the debt on his e-QIP and told the authorized investigator he would contact the creditor to arrange for payment. The debt has not been resolved. (Item 4; Item 5; Item 8; Item 9.)

Applicant also admitted a \$17,000 debt, in charged-off status, alleged at SOR ¶ 1.g. He reported that the debt arose when he failed to make payments, as agreed, on an automobile. The automobile was repossessed in 2005. He listed the debt on his e-QIP. In response to DOHA interrogatories, Applicant stated that he was negotiating a settlement agreement. The debt has not been satisfied. (Item 4; Item 6.)

In 2005, Applicant took a truck-driving course. As a part of the training agreement, tuition for the course was waived if Applicant completed the six-month training period. Applicant told the authorized investigator that he left the course before the end of the training period, and he made no payments on the course. He told the investigator he would contact the truck-driving school to arrange payment. In response to DOHA interrogatories, he stated that he was negotiating a settlement agreement with the creditor. The SOR alleges at ¶ 1.h. that Applicant owes an educational creditor \$3,884 on a debt in charged-off status. In his answer to the SOR, Applicant denied the debt, which the record identifies as the debt owed for the truck-driving course. (Item 1; Item 5.)

In response to DOHA interrogatories, Applicant provided a copy of a statement, dated December 3, 2012, from the educational creditor, which identified the creditor's address. The original debt was identified as \$3,809, with additional accrued interest of approximately \$4,803. A hand-written notation on the statement indicated monthly payments of \$75, with interest waived if the debt was settled. Applicant's credit report of July 2011 shows the debt as belonging to an educational creditor under a different name at the same address as the original creditor. The record contains no evidence that the original creditor or the successor creditor has been paid.³ (Item 5; Item 6; Item 8.)

³ Applicant's personal financial statement, dated December 3, 2012, identified a debt to the educational creditor and listed a \$75 monthly payment. (Item 6.)

Applicant provided a personal financial statement, dated December 3, 2012. He listed a net monthly income of \$3,718,⁴ monthly expenses of \$1,350, and payments made on existing debt of \$1,834. His monthly net remainder was \$534. The record does not reflect that Applicant has had financial credit counseling. (Item 6.)

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.

When evaluating an applicant’s suitability for a security clearance, an 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 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

⁴ Included in Applicant’s monthly income is \$1,100 derived from a rental property. (Item 6.)

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 in this case. 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 has a history of delinquent debt dating to at least 2003. He has not resolved many of his old debts. Accordingly, I conclude that AG ¶¶ 19(a) and 19(c) apply to the facts of his case.

In his answer to the SOR, Applicant denied responsibility for five debts, totaling approximately \$23,355. He provided evidence to corroborate settlement of the delinquent debt alleged at SOR ¶ 1.e., and I conclude that allegation for Applicant.

The remaining four debts denied by Applicant appear on his three credit reports. In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), DOHA’s Appeal Board

explained: “It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government’s obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.” (Internal citation omitted).

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 initiated a good faith effort to repay overdue creditors or otherwise resolve debts” (AG ¶ 20 (d)). Finally, security concerns related to financial delinquencies might be mitigated 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 actions to resolve the issue.” (AG ¶ 20 (e)).

Applicant has a history of financial delinquencies. In 2003, he purchased an automobile for his daughter as a graduation gift. In 2005, he fell behind in his payments, and in 2006, he stopped making payments altogether. Additionally, he owes deficiencies on an automobile and a motorcycle that were repossessed in 2005 or 2006 for failure to pay as agreed. He failed to provide documentation to establish that he is no longer responsible for those debts.

In 2005, Applicant enrolled in a truck-driving course and training program. He understood that tuition would be waived if he completed the training program, but he abandoned the course before the training program ended. His debt to the educational institution for the training course remains unresolved.

Applicant experienced some financial reversals when the downturn in the housing market affected his twelve rental properties. Additionally, he has suffered a serious health condition, which has been treated successfully. The record does not support a conclusion that these setbacks prevented Applicant from meeting his financial obligations. It is worth noting that his delinquencies involving two automobiles, a motorcycle, and a truck-driving course occurred before the reversal in the real estate industry.

Applicant's failure to address his delinquencies reflects 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. 06-14521 at 2 (App. Bd. Oct. 15, 2007) (quoting ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)).

Applicant failed to demonstrate a credible good-faith effort to satisfy his delinquent debts. There is no evidence that his financial situation is under control. The record does not reflect that Applicant has had financial credit counseling. I conclude that AG ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(e) do not apply in mitigation in Applicant's case.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an 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 adult. His

financial delinquencies are significant and have existed for several years. While he denied six delinquent debts, he provided documentation to corroborate payment of only one of them. Despite steady employment, he failed to address and to accept responsibility for his debts. His unwillingness to resolve his long-standing delinquencies raises concerns about his trustworthiness, judgment, reliability, and ability to protect classified information.

Overall, the record evidence leaves me with doubts about Applicant's eligibility and suitability for a security clearance. I conclude that 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:

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| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 1.a. - 1.d.: | Against Applicant |
| Subparagraph 1.e.: | For Applicant |
| Subparagraphs 1.f. - 1.k.: | 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