DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
----------	)	ISCR Case No. 11-12921
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Tovah A. Minster, Esq., Department Counsel
For Applicant: *Pro se*

06/27/2013

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

On March 12, 2013, the Department of Defense (DOD) issued to the above-referenced Applicant a Statement of Reasons (SOR). The SOR enumerated security concerns arising under Guideline F (Financial Considerations). DOD took action 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) implemented by the DOD on September 1, 2006.

Applicant submitted a timely response to the SOR and requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. The case was assigned to me on May 14, 2013. The parties agreed to a hearing date of June 13, 2013. A notice setting the hearing for that date was issued on May 16, 2013.

The hearing was convened as scheduled. Applicant gave testimony and offered one document, which was accepted without objection as exhibit (Ex.) A. The Government offered five documents, which were accepted into the record without objection as Exs. 1-5. The transcript of the proceeding (Tr.) was received on June 21, 2013, and the record was closed. Based on a review of the testimony, official case file,

and exhibits, I find Applicant failed to meet his burden of mitigating security concerns related to financial considerations. Clearance is denied.

Findings of Fact

Applicant is a 58-year-old senior operations analyst who has worked for the same defense contractor for the past three-and-a-half years. He served in the U.S. Air Force for 30 years and has maintained a security clearance without incident since he was 18 years old. Applicant earned a bachelor of science degree. He is married and has two grown children from a prior marriage. Those children do not live with Applicant. Applicant lives within his means. The only debts at issue are the delinquent debts noted in the SOR, none of which were recently acquired.

In 1997, Applicant's wife moved to another part of the country to further her career. The separation was hard on the marriage. In 2003, Applicant and his wife of 27 years divorced. Applicant started his own business in 2005, moved to another state in 2007, and relocated to his present home region in 2010. In the interim, from 2005 to 2009, Applicant faced some financial difficulties and had to borrow money from family.[1] In 2010, Applicant began working for his current employer. He has enjoyed a stable career as a contractor and has not suffered any notable periods of unemployment in over a decade.

In April 2013, Applicant consulted a bankruptcy attorney regarding the debts at issue. He decided not to file for bankruptcy because he did not feel he was liable for them and because most of them were poised for deletion from his credit report due to their age.[2] In June 2013, he enlisted the aid of a law firm to help him dispute the related credit report entries and improve his credit.

At issue in the March 12, 2013, SOR are the following debts:

1.a and 1.f – Collection accounts for $19,326 and $21,951, respectively. Documentary Evidence Debt May Not Be Applicant's Responsibility. When Applicant's former wife moved to another state in 1997, Applicant gave her a power of attorney to purchase a residence. She purchased a specified property, acquired two or three additional properties, then rolled them over under mortgages held by this creditor. This delinquent account represents one of those properties.[3] Applicant was not aware that she had purchased multiple properties or acquired multiple mortgages until their divorce proceedings. Pursuant to their divorce decree, Applicant's former wife is responsible for

[1] Tr. 52-53. In starting his own business, Applicant cashed in all of his savings. This included a property going into foreclosure, although final action on that foreclosure was diverted through the help of an efficient realtor. Otherwise, family loans helped him face his fiscal needs while his business was starting to generate income.

[2] Tr. 55-57.

[3] Tr. 26-27.

the properties purchased in that state. Consequently, Applicant argues that he has been relieved of financial responsibility for those properties. His law firm is poised to dispute these credit report entries on his behalf.[4]

1.b – Medical collection account for $890. Unaddressed. Applicant believes that this balance is related to pre-operative procedures related to a back surgery performed a little over two years ago. Applicant testified that he has had difficulty contacting this medical provider. He believes that "with this [law firm] that I have right now, more than likely, that will get paid, if it is my bill, which I'm certain it probably is."[5] There is no evidence that it is presently poised for addressing by the law firm.

1.c – Telecommunications collection account for $385. Unaddressed. When Applicant moved in 2007, he noted this his telecommunications bill had drastically increased. It appeared that the company had been double charging him.[6] He requested the company make a credit adjustment, but it refused. No attempts to resolve the issue have been initiated by Applicant since that time. He is now prepared to have the law firm address this delinquent account on his behalf. There is no evidence that the firm is presently poised for addressing by the law firm.

1.d – Collection account for $52. Unaddressed. When Applicant cancelled an insurance policy in 2009, he requested that a roadside assistance option also be cancelled. When it was not, this balance accrued. Applicant testified that he then asked that the matter be resolved. It is still reflected on his credit report. No further action has been taken to dispute or resolve this account. It is unclear whether Applicant's law firm will include this account in its efforts on Applicant's behalf.[7]

1.e – Collection account for $542. Unaddressed. When Applicant relocated from one state in 2007, he thought he had paid his final water bill. A subsequent charge was reflected, which Applicant brought to the utility's attention. The matter was never resolved or further pursued. It is unclear whether Applicant's law firm will include this account in its efforts on Applicant's behalf.[8]

1.g – Collection account for $9,300. Unaddressed. This credit card was opened in the 1980s and used in 2001 to help pay for some of Applicant's son's expenses related to a rehabilitation program. Applicant testified that he paid off the card in 2004, when he was refinancing his home mortgage. He stated that a few months later, he was surprised to see the card was still open and with a balance of nearly $10,000. He did not believe he

[4] Tr. 31-32.

[5] Tr. 36.

[6] Tr. 38-39.

[7] Tr. 41.

[8] Tr. 42.

owed the sum for the charges noted: "They did not want to work with me what so ever, on this, whatever, and I had told them, you know, I paid it off. I closed the account, so, what is going on here, and so, even talking to supervisors, they wouldn't do anything with that. . . . I just said, 'Okay, now, it's your's.'"[9] He let the account go into delinquent status due to the creditor's refusal to work with him.[10] He never disputed this account with any of the major credit reporting bureaus because he "really never had a need for credit."[11] To date, the balance first noted in 2004 has not been disputed. He is now prepared to have his law firm dispute the account during their process of correcting and repairing his credit report.[12] There is no evidence that it is presently poised for addressing by the law firm.

Applicant submitted a copy of his agreement with the law firm (Ex. A) at the June 13, 2013, hearing. He stated that the law firm's time frame for addressing the cited debts is from six months to a year.[13] The agreement is comprised of multiple parts. It is electronically signed and dated (June 3, 2013) on the line for acknowledgment that he had an opportunity to review a copy of the disclosure statement. It is similarly signed at the end of the package regarding an information statement required by law and information regarding cancellation of the agreement. It is not, however, signed on page 6 on the pivotal line reserved for "Signature. I have received and had the opportunity to review the [law firm] Engagement Agreement and Limited Designation of agency, which I understand is a binding contract, and agree to all its terms." The document does not have a list of the creditors or accounts to be addressed by the firm on Applicant's behalf. Applicant admits that the law firm agreement is sufficiently recent that no progress has yet been made.[14] He stated that he recently made the first monthly payment of $99 on the plan, but did not provide evidence that payment was transacted.

Applicant has no debts of note other than those set forth in the SOR. He does not have any active credit cards.[15] He takes home approximately $5,400 every four weeks.[16] After monthly expenses and a recent $400 reduction in housing expenses, Applicant retains approximately $2,900 a month. Other recent savings may increase

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[9] Tr. 35.

[10] Tr. 34-35.

[11] Tr. 35.

[12] Tr. 35-36.

[13] Tr. 51.

[14] Tr. 59. ("You've just started with [the law firm]. You've had one month, I guess, with them." "Yes." "So obviously, nothing really has happened yet." "Yes." " And you predict that this will be -- that they will be done with their process within about six months to a year." "Yes, Sir.")

[15] Tr. 50.

[16] Tr. 45. This reflects a recent reduction of about 8% caused by the current sequestration and roll-backs in government contracts, Previously, Applicant took home about $2,900 every two weeks.

this sum by $100 to $200.[17] A new and additional expenditure is a monthly payment to Applicant's law firm of $99. Payment on this arrangement started about a week or two before the June 2013 hearing. To date, one payment on the plan has been made. Applicant's net monthly savings go either into a savings account or toward investments in precious metal (silver). In the past year, he started providing his daughter and her family with about $500 to $600 a month in financial support. Since January 2013, he has helped provide financial assistance to his late brother's children, thus far amounting to about $4,500.[18]

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions. 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 overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all 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.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ."[19] The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.[20]

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

[17] Tr. 45-48. Recent reductions raise Applicant's net income to about what it was before the recent 8% salary decrease.

[18] Besides his brother, Applicant also lost his mother, and his wife lost her father and two aunts in the past couple of years.

[19] *See also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

[20] ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

Government reposes a high degree of trust and confidence in those 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 about potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order (EO) 10865 states 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified/sensitive information). "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."[21] Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.[22]

Based upon consideration of the evidence, Guideline F (Financial Considerations) is the most pertinent to this case. Conditions pertaining to this AG that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

Analysis

Guideline F - Financial Considerations

Under Guideline F, failure or an 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.[23] Here, the Government introduced evidence indicating Applicant has significant delinquent debt he has failed to satisfy. This fact is sufficient to raise Financial Considerations Disqualifying Conditions AG ¶ 19(a) *(inability or unwillingness to satisfy debts*) and AG ¶ 19(c) (*a history of not meeting financial obligations*). With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

The individual debts at issue were acquired between 1997 and 2009. Applicant disputes and disavows responsibility for all the debts except for the one cited in SOR allegation 1.b ($890), which he concedes may be legitimately owed. He provided documentary evidence from his divorce indicating that he was relieved of the obligations noted in SOR allegations 1.a and 1.f. ($19,326 and $21,951). This represents the majority of the debt at issue. However, there is no similar documentary evidence offered that shows he is not responsible for the debts at SOR 1.c ($385), 1.d

[21] *Id*.

[22] *Id*.

[23] AG ¶ 18.

($52), 1.e ($542), and 1.g ($9,300), which account for over $10,000 in delinquent debt. Nor is there documented evidence that he has persisted in attempts to dispute the accounts with one of the leading credit reporting bureaus or seek corrective action by the designated creditors. Therefore, Financial Consideration Mitigating Condition 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 for the dispute or provides evidence of actions to resolve the issue*) only applies to SOR allegations 1.a and 1.f.

With the exception of the debts noted at SOR allegations 1.a and 1.f, the remaining debts appear to be the result of oversight by Applicant or error by his creditors. For the most part, Applicant argued that he tried to rectify these errors by disputing these accounts as they came to his attention. Although he provided no documentary evidence of such attempts, Applicant was credible in his testimony. However, more than a single token gesture is needed to show that an earnest and diligent attempt has been made to address, dispute, or validate a questionable account. This is particularly true for debts which continue on one's credit reports for multiple years. For example, Applicant testified that in about 2004, he contacted the creditor for the credit card debt noted at SOR allegation 1.g for $9,300, yet there is no indication he followed up on his dispute of this substantial balance. Applicant has held a security clearance for a number of years. He should be aware that finances do pose an issue. Consequently, to simply dispute a debt once, using only one method (direct dispute with the creditor), and then ignore it until it poses a security concern, reflects questionable judgment and poor reliability. AG § 20(b) (*the conditions that resulted in the behavior 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*) does not apply.

Applicant enlisted the assistance of a law firm to help him contest disputed accounts and correct his credit report. Unfortunately, he waited until only a week or two before the hearing to make an agreement to have that firm act on his behalf. Therefore, the behavior at issue is recent. Moreover, Applicant has a demonstrated pattern of simply neglecting accounts that are not successfully disputed on the first attempt, and he concedes he has not utilized the accepted process of disputing a debt through one of the major credit reporting bureaus. Furthermore, although he testified that, to date, he has paid for the first month of the law firm's services, he failed to provide evidence that such payment was made. The lack of a proven and established record of timely payments on a plan that is expected to last for six months to a year is troublesome. Of more concern is the fact that all facets of the engagement agreement are not signed, which, in tandem with the lack of proof that the first month's payment to the firm was transacted, raises questions as to whether a good-faith effort to address the debts at issue has yet been initiated. In addition, there is no indication in the agreement as to what debts are covered by the agreement for the firm to address. Of equal concern is the fact that the law firm has yet to commence action or make any progress on the debts at issue, and the fact there is no evidence Applicant has received formal financial counseling. Therefore, neither 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) and AG ¶ 20(c) (*the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control*) nor AG ¶ 20(d) (*the individual indicated a good-faith effort to repay overdue creditors or otherwise resolve debts*) apply.

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 the circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2 (a). Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept. In addition, what constitutes reasonable behavor in such cases, as contemplated by FC MC ¶ 20(b), depends on the specific facts in a given case.

I considered the specific facts and circumstances in this case. Applicant is a mature and direct man who has honorably served this country both in the military and in the private sector. He has maintained a security clearance since he was 18 without incident. He is educated, has raised two children, is currently settled with his wife, and is living within his means.

Applicant disputes all but one of the debts at issue. He only provided evidence indicating that the debts at SOR allegations 1.a and 1.f have a documented basis for reasonable dispute. Moreover, having decided to forego bankruptcy protection with regard to the debts at issue, citing to the fact that he denies the debts cited are his and because those debts will soon be removed from his credit reports due to their age, Applicant recently enlisted the assistance of a credit counselor. Through that service, he hopes to successfully challenge the debts at issue. Their agreement, however, is unclear: The agreement does not seem to be fully executed; there is no evidence that the first monthly payment of $99 was transacted; and Applicant concedes that the firm has yet to make any progress toward addressing his disputed accounts. Even if evidence had been introduced showing the law firm had made some form of initial progress on the debts, there is no established track record showing that Applicant is fully committed to a properly executed plan that could continue for up to a year.

This process does not demand that every debt at issue be addressed. It does, however, require that there be evidence of a workable plan to address the debts at issue, and documented evidence that the plan has been successfully implemented. Here, evidence of an incomplete agreement with a law firm acting as a credit repair service on unspecified accounts, and one month's worth of paid services on that plan, do not meet that standard. Therefore, it is premature to conclude that Applicant's recent enlistment of a law firm meets the standards demanded by this process. Consequently, financial considerations security concerns remain unmitigated. Clearance is denied.

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:	For Applicant
Subparagraphs 1.b-1.e.:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant a security clearance. Clearance is denied.

ARTHUR E. MARSHALL, JR.
Administrative Judge