



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



In the matter of:)	
)	
)	ISCR Case No. 11-14242
)	
Applicant for Security Clearance)	

Appearances

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

07/29/2013

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, I conclude that Applicant failed to mitigate security concerns raised under the guideline for financial considerations. His request for a security clearance is denied.

Statement of the Case

On March 15, 2013, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) citing security concerns under Guideline F (financial considerations) of the Adjudicative Guidelines (AG).¹ In his Answer to the SOR, notarized on April 8, 2013, Applicant admitted 6 of the 17 allegations regarding his unpaid debts. He requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On May 17, 2013, DOHA issued a Notice of

¹ Adjudication of the case is controlled by Executive Order 10865, as amended; DOD Directive 5220.6 (Directive), as amended; and the Adjudicative Guidelines, which supersede the guidelines listed in Enclosure 2 to the Directive. They apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

Hearing, and I convened the hearing on June 11, 2013. I admitted four Government exhibits (GE 1-4), and eight Applicant exhibits (AE A-H). DOHA received the transcript on February 6, 2013.

Findings of Fact

Applicant's admissions to the SOR allegations are incorporated as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the record evidence, I make the following additional findings of fact.

Applicant is 33 years old. He will complete a bachelor's degree in cyber security in about one year. He has worked as an engineer for defense contractors since 2007. He worked for employer A from March 2009 to May 2012. It appears from Applicant's testimony that he was unemployed from June to August 2012. From September to November 2012, he worked for a county government. He then returned to employer A, where he currently works. During his security interview, Applicant listed three other periods of unemployment: August 2006 to January 2007, after his military discharge; July to September 2007; and January to March 2009. Applicant married his first wife in 1999. They were separated for several years, and divorced in 2008. He married his current wife in 2008. He has four biological children and two step-children, ranging in age from 6 to 15. His two step-children and one biological child reside with him, and he also has intermittent custody of one biological child. (GE 1, 2; Tr. 19-21, 24-27)

Applicant served in the army from 1999 until his discharge in 2006 at pay grade E-4. He held a security clearance since about 2000, while serving in the Army. He served in Korea from 2003 to 2004. After Applicant deployed to Korea, his wife told him she wanted a divorce. Applicant served in Iraq from 2004 to 2005. When he returned to the United States, he found his wife was involved with illegal drugs. He was having marital and financial problems, and wanted to leave the military.² During his August 2011 security interview, he stated that he purposefully missed one week of formations to "get back at" the army. In 2005-2006, Applicant received an Article 15. He was administratively separated for patterns of misconduct including missed formations and lack of timeliness. His discharge was characterized as general, under honorable conditions. (GE 1, 2; Tr. 21-24, 27, 69-70, 75-76)

At his security interview, Applicant stated his financial difficulties stemmed from his divorce and his deployments. His ex-wife handled his finances while he was deployed from 2003 to 2005, but failed to meet their obligations. Applicant testified that he has ". . . never been the one in my household that handles . . ." the finances. He also testified that when he was discharged, and at the time of his 2011 security interview, he was ". . . somewhat ignorant to my credit standing at that point." Applicant's current spouse sought assistance to pay past-due debts from a financial counseling firm in early 2011. She set up a three-year payment plan, which she will complete within a few

² Applicant received a summary of his security interview, and signed a notarized statement that the summary was "true and correct to the best of my knowledge and belief." (GE 2)

months. Applicant talked once with his wife's financial counselor, but did not retain the company's services because he decided he could handle his debts on his own. He was advised, however, to dispute any debt which he was ". . .not absolutely sure of. . . ." (GE 2; Tr. 32, 42, 45, 58-59, 70-72)

Applicant's February 2013 personal financial statement (PFS) shows he and his wife earn a net monthly income of \$5,867, or approximately \$70,000 net annually. With monthly expenses of \$4,076, and debt payments of \$1,027, their monthly net remainder (MNR) is \$764. He testified that he is putting most of the MNR into a savings account to put toward a settlement of his largest debt, the auto loan alleged at SOR ¶1.c. His savings account balance is approximately \$4,200. He said he will also use it to pay for unexpected expenses. In his December 2012 interrogatory response, Applicant included a prospective plan that he devised for paying seven SOR debts between March and August 2013. (GE 2, Tr. 35, 59-66)

The 17 debts listed in the SOR total more than \$55,000. At his August 2011 security interview, Applicant stated he had not had financial counseling, but he planned to repair his finances. In his December 2012 interrogatory response, he stated that several debts were paid, but did not attach supporting documentation.³ His April 2013 credit report shows a credit rating between 513 and 544, which the credit agency describes as "poor." His delinquencies appear in credit reports dated July 2011, December 2012, and April and June 2013. (GE 2, 3, 4; AE E, H) The status of the SOR debts follows.

- **State income tax liens: (allegations 1.a, \$4,896; 1.b, \$3,036; 1.o, \$5,036) RELEASED.** Applicant owed a total of \$12,968 in unpaid state income taxes for tax years 2007, 2010, and 2011. He had income from several different states in 2007, and did not know how to prepare his return. In his security interview, he stated he did not file the return for the 2007 tax year. He admits that the 2007 tax problem ". . . went unhandled for a lot longer than it should have." Applicant testified that he owed the 2010 and 2011 taxes because his ex-wife did not honor their agreement about how they would allocate their dependents on their separate returns. He made payment arrangements for the liens related to tax years 2010 and 2011. However, he testified that when he was unemployed in 2012, he "defaulted on the payment plan." He provided documentation showing the three liens were paid and released in March and April 2013. He also testified that paying the three liens ". . . was a huge hit to my finances and it took every bit of any – of any contingency savings we had." (GE 2; AE A, C; F; Tr. 28-31, 66)
- **Auto loan (allegation 1.c, \$14,128) DISPUTED.** Applicant purchased a car in 2005. He made payments while in the army, but it became delinquent in 2006

³ Applicant was granted an extension of time to gather documentation to attach to his interrogatory response, but he noted that, "I have not been able to collect all required documentation for the accounts listed in this interrogatory. I will continue my efforts to collect this documentation for my records." (GE 2)

after he was discharged and he was unemployed. When he moved in 2007, he left the car with his girlfriend. He sent her money and thought she was making the payments. He thought the car was then repossessed, but the company does not have the car. In his December 2012 interrogatory response, he stated he was not making payments on this debt. He testified he disagrees with the balance. However, his June 2013 credit report does not indicate a dispute; it lists the account as a profit and loss write off or charged off account. Applicant has contacted the lender to negotiate a settlement, but he provided no evidence of his contacts or of a settlement offer. When he pays off another car loan in September 2013, he hopes to use the resulting \$404 per month to start paying this debt. (Answer; GE 2; AE H; Tr. 31-38)

- **Government agency (allegations 1.d, \$2,119; 1.e, \$2,297) IN PAYMENT.** These two debts represent overpayment of government benefits. Applicant's college tuition was paid by a government agency. He failed some classes and withdrew from others. He was required to refund the tuition. His June 2013 credit report shows both accounts in collection status. Applicant currently receives benefits while he is attending school. The government agency is withholding funds from his benefits to pay the delinquencies. As of May 2013, one debt had been reduced to \$686, and the other had been reduced to \$451. (AE B, G, H; Tr. 39-41)
- **Credit card accounts (allegations 1.f, \$2,817; 1.h, \$6,022; 1.n, \$1,436)** The credit card account at ¶ 1.f was opened in late 2003 or early 2004, while Applicant was in Korea and his wife was handling the finances. In his 2011 security interview, Applicant stated he had made no payments because he believed he did not owe the debt based on the statute of limitations. However, at the hearing, he testified his ex-wife paid the debt at ¶ 1.f. He provided no documentation to support his claim. The debt appears in his 2011 credit report, but not in the 2012 or 2013 reports. (GE 2, 4; AE E, H; Tr. 42-43)

In his December 2012 interrogatory response, Applicant listed the debt at ¶ 1.h as "Paid," but did not provide supporting evidence. However, at the hearing, he testified he does not recognize the debt. He disputed it with the credit agencies and it does not appear on his June 2013 credit report. (GE 2, 3, 4; AE E, H; Tr. 41-43, 46-47; 53-55)

The account at ¶ 1.n was opened in 2004, while Applicant was in Korea. In his security interview, he stated he would pay the account if it was not resolved based on the statute of limitations. He listed the debt as "Paid," in his interrogatory response, but did not provide supporting evidence. However, it appears he later disputed it, because his June 2013 credit report shows it is disputed. (GE 2, 4; AE H; Tr. 53-55)

- **Auto loan (allegation 1.g, \$8,941) DISPUTED.** Applicant and his ex-wife bought a car in 2002. He believes she made payments when he deployed. However, the account became delinquent. In his security interview, Applicant stated he might not be responsible for the debt based on the statute of limitations. The July 2011 credit report shows that Applicant disputed the account. It does not appear on his 2012 or 2013 credit reports. (GE 2, 3, 4; Tr. 43-45)
- **Communications (allegations 1.i, \$190; 1.l, \$929; 1.m, \$282) DISPUTED.** Applicant testified that the cable debt at allegation 1.i was paid in April 2013, but did not provide documentation. In his December 2012 interrogatory response, Applicant stated the cell phone debts at allegations 1.l. and 1.m were paid. However, he testified at the hearing that he never had an account with the creditor at allegation 1.l. He disputed the two cell phone debts with the credit agencies. They do not appear in his June 2013 credit report. (GE 2; Tr. 47-48, 50-53)
- **Retail (allegation 1.j, \$34) UNRESOLVED.** This account was opened in 2010. The last activity occurred in May 2011, and it subsequently became a collections account. Applicant testified that he paid it by electronic check; however, he did not provide documentation. It does not appear in his June 2013 credit report. (GE 4; Tr. 48; AE H)
- **Rent (allegation 1.k, \$1,894) UNRESOLVED.** Applicant lived in this apartment from August 2006 to May 2007, after his discharge from the army. In his December 2012 interrogatory response, he listed it as unpaid, with no payment arrangements in place. He testified at the hearing that this debt was settled for about \$950, and it was paid by the telephone via electronic check in April 2013. He did not provide documentation to support his claim. (GE 2, 4; Tr. 48-50)
- **State collections unit (allegation 1.p, \$1,316). UNRESOLVED.** Applicant was taking classes paid for by the federal government agency listed at ¶¶ 1.d and 1.e. He was required to repay the cost of classes he either failed or from which he withdrew. The debt was forwarded to his state's collection unit. Applicant has spoken with the creditor by telephone. Sometime in fall 2013, he plans to start paying this debt with the funds that become available after he pays the two debts owed to the same government agency listed in allegations 1.d and 1.e. (Tr. 55-57)
- **Medical debt (allegation 1.q, \$221) PAID.** Applicant opened this medical account in September 2012. He provided a copy of a cancelled check showing that he paid it on March 7, 2013. (AE D; Tr. 57)

Policies

Each security clearance decision must be a fair, commonsense determination based on all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.⁴ Decisions must also reflect consideration of the “whole-person” factors listed in ¶ 2(a) of the guidelines. The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the adjudicative factors addressed under Guideline F.

A security clearance decision is intended only to resolve the questions of whether it is clearly consistent with the national interest⁵ for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the decision to deny or revoke a security clearance for an applicant. Additionally, the Government must prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the Government’s case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.⁶ A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness to protect the national interest as her or his own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government.⁷

Analysis

Guideline F (Financial Considerations)

AG ¶18 expresses the security concern pertaining to financial considerations:

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

⁴ Directive. 6.3.

⁵ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁶ See *Egan*, 484 U.S. at 528, 531.

⁷ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially over-extended is at risk of having to engage in illegal acts to generate funds.

The concern under Guideline F is broader than the possibility that an applicant might knowingly compromise classified information in order to obtain money. It encompasses concerns about an individual's reliability, judgment, and other qualities essential to protecting classified information. One who is financially irresponsible might also be irresponsible, negligent, or unconcerned in handling and safeguarding sensitive information.⁸

Over the past ten years, Applicant had numerous debts that became delinquent and were written off or sold to collection agencies. He also failed to timely file his state tax return in 2007. Until recently, he owed approximately \$13,000 for state income tax delinquencies for tax years 2007, 2010, and 2011. The record supports application of the following disqualifying conditions under AG ¶19:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

The financial considerations guideline also contains factors that can mitigate security concerns. I have considered the mitigating factors under AG ¶ 20, especially the following:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

⁸ ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's delinquencies are numerous. Although they became delinquent up to ten years ago, they are recent because many are still unpaid. The debts did not result from unusual circumstances that would be unlikely to recur. Applicant's lack of action for the past several years casts doubt on his trustworthiness and reliability. AG ¶ 20(a) cannot be applied.

AG ¶ 20(b) applies where an individual experiences events over which he had no control, and which affected his finances. Applicant receives some mitigation because several debts became delinquent while he was deployed and his ex-wife was handling the finances. However, for full mitigation, an applicant must act responsibly in regard to the unforeseen circumstance. Applicant returned to the United States in 2005, and could have taken steps between 2006 and 2012 to deal with his delinquencies. However, he failed to do so until 2013. He did not act responsibly, and receives only partial mitigation under AG ¶ 20(b).

Applicant had one talk with a financial counselor, but did not retain him, preferring to handle his debts on his own. Applicant receives some mitigation for payment of four debts, totaling almost \$13,000. However, he has not brought his finances under control. Applicant's current debt load is approximately \$42,000, and he has no concrete payment plan in place to resolve it. Of the remaining debts, he testified that he paid five; however, without supporting documentation, these debts cannot be considered resolved. He has made no payments toward the largest debt, the \$14,128 auto loan. The payments to the government agency for tuition are being withheld by the agency, rather than voluntarily paid by Applicant, and are thus "not the same as, or similar to, a good-faith initiation of repayment by the debtor."⁹ The debts that Applicant paid were resolved in March and April 2013, about two months before the hearing. Evidence of past irresponsibility is not mitigated by payment of debts motivated primarily by the pressure of qualifying for a security clearance. AG ¶¶ 20(c) does not apply, and AG ¶ 20(d) applies in part.

Applicant disputed numerous debts, although the basis of his disputes is unclear. It is clear from the conflicting information he provided during his security interview, interrogatory, and his admissions at the hearing, that he was not sufficiently familiar with his finances to know the status of his accounts. He may have had legitimate grounds for dispute on some debts, because several were deleted from his credit report. However, he did not provide "documented proof to substantiate the basis of the dispute." Applicant receives partial credit under AG ¶ 20(e).

⁹ ISCR Case No. 09-5700 (App. Bd. Feb. 24, 2011).

Whole-Person Analysis

Under the whole-person concept, an administrative judge must evaluate the Applicant's security eligibility by considering the totality of the Applicant's conduct and all the circumstances. An 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) 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant's history includes positive factors, such as his service in the army and deployments to Korea and Iraq. He also made some recent efforts to resolve his financial obligations. He no longer owes back taxes to the state government, and he has paid a medical debt. He took steps to remove debts he thought were inaccurate from his credit report. However, the negative factors are more substantial. He has a long history of financial problems, some of his debts going back almost a decade. His debt to a federal government agency for failed or withdrawn classes is being paid by withholding part of his benefits. He provided no evidence to support his claim that he paid some of the debts, even though he had notice that documentation was required since he completed his interrogatory four months before the hearing. Applicant failed to file his state tax return in 2007, and owed income taxes for three tax years until three months before the hearing. He did not take substantial action to deal with his debts until 2013, when he realized they would negatively affect his application for a security clearance. Doubts remain about Applicant's reliability and good judgment based on his failure for years to meet his financial obligations.

Overall, the evidence fails to satisfy the doubts raised about Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns raised by the financial considerations guideline.

Formal Findings

Paragraph 1, Guideline F	AGAINST APPLICANT
Subparagraphs 1.a – 1.b	For Applicant
Subparagraphs 1.c – 1.n	Against Applicant
Subparagraphs 1.o	For Applicant
Subparagraph 1.p	Against Applicant
Subparagraph 1.q	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to allow Applicant access to classified information. Applicant's request for a security clearance is denied.

RITA C. O'BRIEN
Administrative Judge