



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS and APPEALS**



In the matter of:)
)
) ISCR Case No. 12-01590
)
Applicant for Security Clearance)

Appearances

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

06/17/2014

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. The Statement of Reasons (SOR) alleges 18 student loans, which are past due or in collection totaling \$180,000; 17 delinquent medical debts totaling more than \$32,000; and seven other debts totaling more than \$11,000. The medical debts were incurred in treating his son for cancer. He has documented insufficient payments on his delinquent debts. The financial consideration security concerns have not been mitigated. Clearance is denied.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on December 5, 2013, the DoD issued an SOR detailing security concerns. DoD adjudicators could not find that it is clearly consistent with the national interest to grant or continue Applicant’s security clearance. On January 12, 2014, Applicant answered the SOR and requested a

¹ 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 on September 1, 2006.

hearing. On March 13, 2014, I was assigned the case. On March 27, 2013, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for the hearing convened on April 15, 2014. I admitted Government's Exhibits (Ex) 1 through 5 and Applicant's Exhibits A through C, without objection. Applicant and a friend testified at the hearing. The record was held open to allow Applicant to submit additional information. No additional material was received. On April 23, 2014, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, he denied 20 debts and admitted the remaining factual allegations in the SOR. His admissions are incorporated herein. After a thorough review of the pleadings, testimony, and exhibits, I make the following findings of fact.

The SOR alleges 39 charged-off, collection, and unpaid debts, which total more than \$200,000. Additionally, three additional debts, which total more than \$60,000, were more than 120 days past due. Applicant denies owing the 17 medical debts, which total more than \$32,000. He admits owing the 18 in-collection and past-due student loans, which total more than \$180,000.² He denies two (SOR 1.v, \$1,209 and SOR 1.gg, \$478) of the remaining seven SOR debts, which total in excess of \$10,000, and he admitted the rest.

In December 2011, Applicant met with an investigator from the Office of Personnel Management (OPM) during which he was questioned about his delinquent debts. In June 2013, Applicant responded to written financial interrogatories concerning the delinquent obligations now listed in the SOR and certified the accuracy of a Personal Subject Interview (PSI) completed in December 2011.

Applicant is a 36-year-old program control analyst who has worked for a defense contractor since October 2011, and seeks to obtain a security clearance. (Ex. 1, Tr. 14, 22) He produced no work or character references. He had previously worked for his current employer from January 2006 through June 2008. (Ex. 1, Tr. 14) During this period, he attended school part time. He started working for the company as a graduate intern and transferred, with the company from one state to another. (Tr. 20) From August 2008 through November 2008, he worked for a DoD contractor in Kuwait and Baghdad, where he worked in finance. (Ex. 2, Tr. 20, 33) From November 2008 through October 2009, he was an accountant working for a different DoD contractor. (Ex. 2)

In October 2009, Applicant's son was diagnosed with rhabdomyosarcoma, a rare form of muscular cancer. Applicant had health insurance from his company, but the company asserted his son's condition was a pre-existing condition and refused to pay for the medical treatment. (Ex. 2, Tr. 40) His wife's insurance did pay for treatment, but there was a two-month period where the medical expenses were unpaid by insurance. (Tr. 39) His son died in April 2011. (Ex. C) From October 2009, when he was "let go"

² The same student loan obligations appear numerous times on Applicant's credit report. The true value that is owed on his student loans is between \$50,000 and \$60,000.

from his company, until April 2011, he took care of his son. (Tr. 14, 21) His annual income went from \$65,000 to \$20,000. (Ex. 2) He received approximately \$400 in weekly unemployment compensation. (Ex. A) During this time, his wife was working as a substance abuse counselor. (Tr. 39) His current annual salary is \$63,000. (Tr. 29)

The events leading to Applicant's son's death put extreme pressure on him and his spouse. (Ex. 2) They separated and in October 2012 divorced. They had three children. Applicant pays \$462 every two weeks in child support and is current on his support. (Ex. B, Tr. 32)

During Applicant's son's illness, numerous medical bills were incurred. He is not currently receiving calls or mail concerning the medical debts. (Tr. 29) He stated he had "not seen a medical bill in years, because they all go to my ex-wife, and to my knowledge, those [medical bills] are not being paid." (Tr. 24) He believes the total medical debt was "well into the six figures." (Tr. 25, 29). He knows of \$85,000 being owed on one account and more than \$30,000 owed on a different account. (Tr. 29)

The charged-off account in SOR 1.a (\$489) resulted when Applicant's then-wife, now ex-wife, emptied the checking account causing some checks to overdraw the account. He has had no recent contact with the creditor. (Tr. 25) The debt in SOR 1.v (\$1,209) was for an apartment lease where his ex-wife lived after their separation. (Tr. 27, 42) She moved to this location to be closer to her work. (Tr. 43) After two or three months at that location, she learned their son was sick, and she moved into a larger apartment to allow her son to have his own room. (Tr. 43) Applicant never lived at that location or signed any lease for that location. He never had a credit card or account with the department store that was 120 days past due (SOR 1.oo, \$478), and he believes it is his ex-wife's debt. In 2009, when he relocated, he failed to pay for the last month of cable service (SOR 1.gg, \$205). (Ex. 2) In December 2011, he was questioned about this debt. (Ex. 2) At the hearing, he stated he needed to contact the cable company concerning this debt. (Tr. 28)

Applicant was unemployed while attending school from: May 2001 through August 2002, May 2003 through December 2003, February 2004 through May 2005, and July 2005 through January 2006. (Ex. 2) In December 2005, he obtained his bachelor's degree. To attend school, he obtained numerous student loans. In his December 2011 PSI, he stated he thought his student loans were in deferment, but learned the day before his interview that the loans were in collection. At that time, between \$50,000 and \$60,000 was owed on his student loans. He arranged to make \$470 monthly payments for nine months to bring the student loan account out of default status. (Ex. 2) Monthly payments were to commence on December 18, 2011. (Ex. 2) He made no payments under this arrangement. (Tr. 46)

In late 2013, Applicant received notice that garnishment would start on the student loans. (Tr. 44) At the hearing, Applicant stated he had made payment on his student loans for several months and was trying to establish a plan to get his student loans out of default. (Tr. 22, 27) He said he had a repayment agreement and would provide a copy following the hearing. (Tr. 46) No student loan documentation was

received following the hearing. His numerous student loans have not been consolidated into a single loan. (Tr. 23) He asserts he pays \$488 monthly on some of his student loans and an additional \$136 is garnished from his pay every two weeks. (Ex. B, Tr. 23, 45)

In August 2008, Applicant obtained a \$10,000 loan with \$234 monthly payments. (Ex. 3, 4) By November 2009, the loan balance had been reduced to \$7,000. At that time, he was unable to continue his payments and the loan was turned over to a collection agency (SOR 1.e, \$6,758). In his December 2011 PSI, he stated he had arranged a repayment agreement to settle the \$7,000 debt for \$5,600. (Item 2) He agreed to make \$237 monthly payments 24 months. (Ex. 2) At the hearing, he stated he has had no recent contact with the creditor. (Tr. 26) He said the collection firm wanted a \$4,000 lump-sum payment or \$6,000 paid in three monthly payments. (Tr. 48) He was unable to accept either offer. (Tr. 48)

In June 2008, Applicant purchased a home for \$147,682. (Ex. 3) He attempted to sell the home when he relocated. He was unable to keep current on his monthly mortgage payments and in October 2009, the lender started foreclosure proceedings. (Ex. 2) The foreclosure proceedings ended when the home sold. (Ex. 2)

Applicant and his wife had joint credit cards. (Tr. 26) In November 2009, payments became delinquent resulting in two collection accounts: one for \$1,199 (SOR 1.d) and the other for \$1,702 (SOR 1.f). (Tr. 25, 26) He has not had any recent contact with either creditor. (Tr. 26)

Applicant paid for his 2007 truck and no longer has the \$470 monthly payment reported on his PFS. (EX. 2, Tr. 30) The PSI listed his monthly net remainder (net income less monthly expenses and monthly debt payment) as \$214. (Ex. 2) This amount has increased now that he no longer has to make truck payments. (Tr. 31) He has not received any financial or debt counseling. (Tr. 31)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's 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 interests of security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order (EO) 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

Applicant has more than \$30,000 in delinquent medical debts, is in default or past due on student loans totaling more than \$60,000, and has more than \$10,000 in other collection accounts. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

(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

(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.

The majority of Applicant's delinquent accounts were medical bills related to his son's illness or student loans. There is no evidence of frivolous spending or living beyond one's means. A few of the delinquent obligations are not his, but are his ex-wife's debts. However, he has documented minimal payments on some of his debts.

Applicant was questioned about his delinquent obligations during his December 2011 OPM interview. He asserted he had arranged a repayment plan on his student loans. However, he never made payment in accord with that plan. He now asserts he had a repayment agreement and was making \$488 monthly payments to bring his

student loans out of default. He said he would provide a copy of the agreement following the hearing. No documentation on his student loans or payment thereon was received. He documented that \$137 was being garnished from his wages every two weeks. He asserts this garnishment was to pay his student loans. He never provided any documentation showing who received the garnishment payments. No other delinquent obligations discussed during the December 2011 interview have been paid. Even the \$205 cable bill, incurred in 2009, remains unpaid.

None of the mitigating conditions fully mitigate Applicant's financial considerations security concerns. In 2009, his son was diagnosed with cancer that took his son's life in April 2011. Applicant had insurance, but his insurance provider refused to pay, saying the condition was a pre-existing condition. For two months, prior to Applicant's wife's insurance paying the medical bills, there was no insurance to cover medical expenses. This is a condition beyond his control, and I find for him as to the unpaid medical bills.

Applicant has received no credit or financial counseling. He has not demonstrated that his financial problems are under control or that he has a plan to bring them under control. His evidence is insufficient to show he has made a good-faith effort to satisfy his debts. He asserts he is making payments to bring his student loans out of default, but failed to document his claim. He was made aware of the Government's concern about his finances during his December 2011 PSI, in the June 2013 written financial interrogatories, and by the December 2013 SOR. Applicant has documented a monthly garnishment, but failed to establish who is paid by the garnishment.

Because Applicant has multiple delinquent debts and his financial problems are ongoing in nature, the mitigating condition listed in AG ¶ 20(a) does not apply. Applicant's handling of his finances, under the circumstances, casts doubt on his current reliability, trustworthiness, or good judgment. Likewise, he receives only partial application of the mitigating condition listed in AG ¶ 20(b), for in 2009, his son began medical treatment and in 2011, he was divorced. There is little evidence of the effect these events have on Applicant's current ability to address his delinquent debts other than his \$463 bi-weekly child support payments. The large medical bills incurred would only affect his ability to address his other delinquent obligations if he was making payment on those medical bills, which he is not.

Applicant has been employed in his current job since October 2011. He has had a sufficient opportunity to address his financial delinquencies. He has failed to act timely or responsibly under the circumstances and has failed to resolve his debts or significantly reduce his delinquent debts.

Good-faith requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances

outside his control, it must still be considered whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties.³

The mitigating condition listed in AG ¶ 20(c) does not apply because Applicant has not received financial counseling, nor is there an indication he has resolved his delinquent obligations. The mitigating condition listed in AG ¶ 20(d) applies to his ex-wife's apartment debt (SOR 1.v, \$1,209) and the department store account (SOR 1.oo), which is 120 days past due. It does not apply to the other debts because, to date, Applicant's efforts to address his delinquent accounts have been minimal. In addition to his student loans, presently in default, those debts include two credit card debt -- SOR 1.d (\$1,199) and SOR 1.f (1,072), a delinquent loan -- SOR 1.e (\$6,758), a \$205 cable bill (SOR 1.gg), and bank debts -- SOR 1.a (\$489) incurred on his checking account. There is no evidence to show he has had recent contact with his creditors or evidence he has tried to establish repayment plans. Applicant has failed to act aggressively, timely, or responsibly to resolve his delinquent debts.

The mitigating condition listed in AG ¶ 20(e) does not apply because Applicant has not provided documented proof to substantiate the basis of any disputed account.

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. The debts incurred were not the type that indicates poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. Money was not spent frivolously. The debts set forth in the SOR were

³ ISCR Case No. 05-11366 at 4 n.9 (App. Bd. January 12, 2007) (citing ISCR Case No. 03-13096 at 4 (App. Bd. November 29, 2005); ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. December 1, 1999).

not incurred on luxuries, but were for medical treatment and student loans. Additionally, his son died in 2011, following a long illness and that same year he was divorced. He is not living beyond his means. He drives a 2007 truck.

The disqualifying evidence under the whole-person concept is more substantial. While his son's illness and death and his divorce were circumstances beyond Applicant's control, he has done little to address his long-standing delinquent accounts. Even the \$205 cable bill he was questioned about in December 2011 has yet to be paid. The only documented payment is the \$137 bi-weekly garnishment. His long-standing failure to repay his creditors or to arrange repayment plans reflects traits which raise concerns about his fitness to hold a security clearance.

The concept of "meaningful track record" includes evidence of actual debt reduction through payment of debts. However, an applicant is not required to establish that he has paid off each and every debt listed in the SOR. All that is required is for him to demonstrate he has established a plan to resolve his delinquent debt and has taken significant action to implement that plan. I must reasonably consider the entirety of Applicant's financial situation and his actions in evaluating the extent to which that plan is credible and realistic. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan may provide for payment on such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a security clearance. The awarding of a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under Applicant's current circumstances, a clearance is not recommended. In the future, if Applicant brings his student loan payments current and paid the other delinquent obligations, established compliance with a repayment plan, or otherwise substantially addressed his past-due obligations, he may well demonstrate persuasive evidence of his security worthiness. However, a clearance at this time is not warranted.

The issue is not simply whether all Applicant's debts have been paid – they have not – it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(a)(1).) Overall, the record evidence leaves questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial considerations.

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, Financial Considerations: **AGAINST APPLICANT**

Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b and 1.c:	For Applicant
Subparagraphs 1.d – 1.t:	Against Applicant
Subparagraph 1.u:	For Applicant
Subparagraph 1.v:	Against Applicant
Subparagraphs 1.w – 1.y:	For Applicant
Subparagraph 1.z:	Against Applicant
Subparagraphs 1.aa – 1.ff:	For Applicant
Subparagraph 1.gg:	Against Applicant
Subparagraphs 1.hh – 1.ll:	For Applicant
Subparagraphs 1.mm and 1.nn:	Against Applicant
Subparagraph 1.oo and 1.pp:	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 a security clearance. Eligibility for access to classified information is denied.

CLAUDE R. HEINY II
Administrative Judge