



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



In the matter of:)	
)	
)	ISCR Case No. 12-01737
)	
Applicant for Security Clearance)	

Appearances

For Government: Philip J. Katauskas, Esq., Department Counsel
For Applicant: *Pro se*

01/14/2014

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings, testimony, and exhibits, I conclude that Applicant failed to rebut or mitigate the Government’s security concerns under Guideline F, Financial Considerations. His eligibility for a security clearance is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on October 27, 2011. On July 31, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. DOD acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

On September 16, 2013, Applicant provided a notarized answer to the SOR and requested a hearing before an administrative judge at the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on October 11, 2013. I convened a hearing on November 6, 2013, to consider whether it is clearly consistent with the

national interest to grant or continue a security clearance for Applicant. The Government called no witnesses and introduced four exhibits, which were marked Ex. 1 through Ex. 4 and entered in the record without objection. Applicant testified, called one witness, and introduced 13 exhibits, which were identified and marked as Applicant's Exs. A through M. Applicant's exhibits were entered in the record without objection. At the conclusion of the hearing, I left the record open so that Applicant could provide additional information. Applicant timely filed four post-hearing submissions, which I marked as Ex. N through Ex. Q. The Government did not object to the admission of Applicant's post-hearing submissions.¹ DOHA received the hearing transcript (Tr.) on November 13, 2013. Department Counsel filed one additional document on December 5, 2013. I have marked that document as HE 2.

Findings of Fact

The SOR contains 17 allegations of financial conduct that raise security concerns under Guideline F, Financial Considerations.² The financial delinquencies alleged in the SOR total approximately \$24,182.

In his Answer to the SOR, Applicant admitted the debts alleged at SOR 1.a. and 1.o. and asserted that they had been paid in full. He denied the remaining 15 allegations of delinquent debt (SOR ¶¶ 1.b. to 1.n. and SOR ¶¶ 1.p. and 1.q.) Applicant's admissions are entered as findings of fact.

Applicant, a high school graduate, is married and 49 years old. In 1982, he enlisted in the military, served for 25 years, and rose to the rate of E-7. He received an honorable discharge in 2007, and he has since been steadily employed as a government contractor. He was first granted a security clearance in 2005. (Ex. 1; Tr. 84.)

Applicant and his wife have been married for 21 years, and they are the parents of five children. In carrying out his military assignments, Applicant was regularly away from his family approximately six months every year. He delegated the management of the family finances to his wife, who is not employed outside the home. (Ex. 1; Ex. 2; Tr. 62, 83.)

After completing his e-QIP in October 2011, Applicant was interviewed twice in December 2011 by an authorized investigator from the U.S. Office of Personnel Management (OPM). At the initial interview, the OPM investigator confronted Applicant with over 20 delinquent debts which appeared on his November 2011 credit bureau report. Applicant told the investigator that the only debt he recognized was his automobile loan. After discussing these debts with his wife and reviewing his credit

¹ The Government's e-mail of no objection is identified in the record as Hearing Exhibit (HE) 1.

² The debts alleged on the SOR include one judgment, two in charged-off status, and 14 in collection status.

bureau report, Applicant called the investigator and requested a second meeting. At that meeting, he acknowledged that he was responsible for the 17 debts that were later alleged on the SOR. He told the investigator that he had not been previously aware of the financial delinquencies, since they occurred when he was on military assignments and his wife was responsible for managing their financial obligations. Applicant told the investigator he planned to contact each of the creditors to arrange payment. (Ex. 2.)

The SOR alleges at ¶ 1.a. that Applicant was indebted to a creditor on a \$1,659 judgment filed against him in December 2007, and, as of July 31, 2013, the judgment had not been satisfied. Applicant admitted the debt and provided documentation showing that the judgment had been satisfied in full on August 9, 2013. (Ex. A.)

The SOR alleges at ¶ 1.b. that Applicant owed a creditor \$555 on an account that had been charged off and remained unpaid as of July 31, 2013. Applicant denied the debt, which appeared on his credit bureau reports of November 2011 and March 2013. He stated that he had disputed the debt as fraudulent. At his hearing, he submitted documentation from the credit bureau confirming a debt to the creditor to be fraudulent. However, the account number of the debt determined as fraudulent was not the same as the account number of the debt alleged at SOR ¶ 1.b. (Ex. 3; Ex. 4; Ex. B)

The SOR alleges at ¶ 1.c. that Applicant owes \$1,261 on a separate account to the same creditor identified in SOR ¶ 1.b. The debt was unsatisfied as of July 31, 2013. Applicant denied the debt, which appeared on his credit bureau reports of November 2011 and March 2013, and he stated that he had disputed the debt as fraudulent. At his hearing, he submitted documentation from the credit bureau confirming a debt to the creditor to be fraudulent. However, the account number of the debt determined to be fraudulent was not the same as the account number of the debt alleged at SOR ¶ 1.c. (Ex. 3; Ex. 4; Ex. C)

The SOR alleges at ¶ 1.d. that Applicant owes \$3,290 to a creditor on a collection account that was not satisfied as of July 31, 2013. Applicant denied the debt. He explained that a successor creditor brought a warrant-in-debt action against him in July 2013. At a pretrial conference, Applicant protested that he had not been given notice of the successor creditor's identity. At trial, to establish the debt, the successor creditor produced documents signed by Applicant and his wife when they incurred the debt. The court entered a "non-suit judgment," which provided the plaintiff with the right to file the suit again within six months. The debt has not been satisfied. (Ex. 3; Ex. 4; Ex. Q; Tr. 64-68, 85-86.)

Applicant also denied a \$2,924 delinquent debt alleged at SOR ¶ 1.h. and asserted that it was a duplicate of the debt alleged at SOR ¶ 1.d. Applicant's credit reports of November 2011 and March 2013 corroborate Applicant's assertion and confirm that the debts have a common account number. (Ex. 3; Ex. 4.)

Applicant denied the debts alleged at SOR ¶ 1.e. (\$466); SOR ¶ 1.g. (\$194); SOR ¶ 1.k. (\$899); and SOR ¶ 1.m. (\$1,050).³ In his Answer to the SOR, he stated that he had disputed these debts and was awaiting a response from the credit reporting agencies. The four debts appear on his November 2011 credit bureau report. As an attachment to his answer to the SOR, he provided a creditor's response acknowledging his allegation that the debt alleged at SOR ¶ 1.g. resulted from unauthorized use of the account and asking him to file a complaint of identity theft with his local law enforcement authority. In post-hearing submissions, Applicant provided undated and unsigned letters to the creditors identified at SOR ¶¶ 1.e., 1.k., and 1.m. requesting that the creditors investigate the validity of the debts and report the results to him. (Ex. 3; Ex. E; Ex. N; Ex. O; Ex. P; Tr. 69-71.)

Applicant denied a \$1,163 credit card debt, in collection status, alleged at SOR ¶ 1.f. In his answer to the SOR, he stated that he had disputed the debt, and an investigation established that the debt was not valid and should no longer be reported on his credit report. To support his assertion, he provided a document from the creditor stating that "the account referenced . . . is no longer reporting on the relevant major consumer reporting agencies as of [August 30, 2013.]" Applicant's credit bureau report of November 2011 showed that the account had been opened in May 2003 and reported delinquent in February 2006, suggesting that the debt had been removed from his credit report because of its age. The debt has not been satisfied. (Ex. D; Ex. 3.)

The SOR alleges at ¶ 1.i. that Applicant owed a \$1,176 delinquent debt to a creditor, and the debt had not been satisfied as of July 31, 2013. Applicant stated that he had disputed the debt, and the creditor had informed him that it had been unable to locate the debt. He provided a letter from the creditor, which stated, in pertinent part: "Unfortunately, we were not able to locate account information on file with [the original creditor]. If your account has been inactive for more than 36 months, the account may have been purged from our system." The debt has not been satisfied. (Answer to SOR; Ex. F.)

The SOR alleges at ¶ 1.j. that Applicant owes a \$6,408 delinquent debt, in collection status, to a creditor, and the debt had not been satisfied as of July 31, 2013. Applicant denied the debt and stated that he had disputed it with the creditor, who had reported that the debt was no longer being reported to the three credit-reporting agencies as his debt. Applicant's credit bureau report of November 2011 identifies the debt as belonging to him. His credit bureau report of March 2013 also lists the debt with the following notation: "Closed or paid account/zero balance." Applicant provided information on a loan with the same creditor, with a different account number, showing a zero balance. (Ex. 3; Ex. 4; Ex. G; Ex. H.)

The SOR alleges at ¶ 1.n. that Applicant owes a bank creditor \$1,659 on a delinquent account in collection status. Applicant denied the debt and asserted that it

³ Applicant's dispute regarding the allegation at SOR ¶ 1.m. included denying that he ever opened the account identified as delinquent. (Answer to SOR.)

was identical to the debt alleged at SOR ¶ 1.a. While each debt was listed at \$1,659, Applicant failed to provide documentation to support his assertion that debts alleged at SOR ¶¶ 1.a. and 1.n. were one and the same. (Answer to SOR.)

Applicant denied the debts alleged at SOR ¶ 1.l. (\$641), SOR ¶ 1.p. (\$350), and SOR ¶ 1.q. (\$390). He asserted that these were his wife's debts and not his. His wife, who appeared as a witness at the hearing, stated that she did not have an independent income and served as the family money manager. She testified that she incurred the debts to the three creditors for home furnishing items while Applicant was assigned overseas on military duty. (Answer to SOR; Tr. 47-58.)

The SOR alleged at ¶ 1.o. that Applicant owed a creditor \$107 on an account placed for collection. Applicant admitted the debt. He provided documentation showing the creditor's acknowledgment of his credit card payment of the debt in full in August 2013. (Ex. J.)

Applicant acknowledged financial difficulties in the past. He stated that he filed for bankruptcy in 1999. In about 2005, Applicant was assigned to duty in a state with a high cost of living, and he was accordingly awarded a high housing allowance to compensate him while stationed in the high-cost state. When he transferred to a lower-cost state, he continued to be paid the higher housing rate for over a year. After an audit, his military employer brought this overpayment to his attention, and notified him that he would have to repay the amount he owed before his retirement. Applicant told the OPM investigator that he owed the Government approximately \$22,000. At Applicant's hearing, his witness testified that the amount owed was \$10,000. (Ex. 2; Tr. 37-39, 86.)

Applicant told the OPM investigator that during calendar year 2006, the military employer deducted approximately \$1,100 from his pay to repay the unauthorized higher housing allowance that he had received. During this time, Applicant was assigned overseas, his wife was trying to manage the household on the remainder of his pay, and she experienced stress and health issues. She was unable to meet all of their expenses and pay their existing debts with the reduced pay. Applicant told the investigator that his wife took out loans and used credit cards to "keep the family going." Not wishing to worry her husband while he was away on duty, Applicant's wife did not tell him of the family's financial distress. She sought help from debt settlement companies, but several of their creditors had a policy of not cooperating with debt consolidation firms. (Ex. 2; Tr. 37-51.)

In 2007, Applicant retired from the military and began employment as a government contractor. He stated that 16 of the 17 debts alleged on the SOR occurred before 2007. One additional debt, alleged at SOR ¶ 1.h. occurred in 2008. Applicant stated that he did not deny the debts were his, but he didn't want to pay creditors or successor creditors until they approached him and established themselves as the owners of his debts. (Ex. 1; Tr. 84-85, 93-98.)

Applicant stated that his gross yearly income was \$105,000, including his military retirement. He stated that his net monthly salary was \$5,162, and his net monthly retirement pay was \$2,245. He listed monthly household and living expenses of \$5,535, and he listed current debt payments of \$1,370. He reported a net monthly remainder of \$502. When he was interviewed by an OPM investigator, Applicant stated that he had not sought financial credit counseling. (Ex. 2; Tr. 82-84.)

Applicant provided four letters of character reference from his current managers and coworkers. The individuals writing on Applicant's behalf valued him as a professional and described him as intelligent, competent, dependable, and highly skilled. They consider him to be a team player and an asset in accomplishing their mission. Additionally, Applicant provided his performance evaluations for 2010, 2011, and 2012. Each evaluation rated his work performance as satisfactory. (Ex. K.)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant Applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider and apply the 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 applicant has the ultimate burden of persuasion in seeking to obtain a favorable security decision.

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

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

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly, under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Between 2005 and 2008, Applicant accumulated substantial delinquent debt and was unable or unwilling to pay his creditors. These debts are

alleged on the SOR. This evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant's financial delinquencies. Unresolved financial delinquency might be mitigated if it "happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment." (AG ¶ 20(a)) Additionally, unresolved financial delinquency might be mitigated if "the conditions that resulted in the financial problem were largely beyond the person's control, (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation), and the individual acted responsibly under the circumstances." (AG ¶ 20(b)) Still other mitigating circumstances that might be applicable include evidence that "the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control" (AG ¶ 20(c)) or "the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." (AG ¶ 20(d)) Finally, if "the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of options to resolve the issue," then AG ¶ 20(e) might apply.

Applicant has a history of financial difficulties and inattention to his financial responsibilities. While his debts arose in the past, many of them are ongoing, and they occurred under circumstances that are likely to recur. Applicant has been steadily employed since 2007, and he has not experienced circumstances beyond his control that caused his financial difficulties.

When he was initially interviewed by an OPM investigator in December 2011 and confronted with the debts later listed in the SOR, Applicant stated that he did not recognize them. Later, after consulting with his wife and reviewing his credit bureau report, Applicant requested another meeting with the investigator. At that meeting, he acknowledged that all of the debts were his, and he further stated that he would begin paying them.

The debts were not paid. Later, Applicant disputed the debts and explained that he did so because the debts were listed as belonging to successor creditors. At his hearing, he stated that he would pay the debts if the successor creditors established their legal authority to collect them. To his credit, Applicant has paid two of the delinquent debts alleged on the SOR. However, both debts were paid recently, in August 2013, after the SOR was issued.

Applicant has not had financial credit counseling. Additionally, what is missing from his record is consistent payment of his debts over time. He has not established a track record that demonstrates that he can be relied upon to allocate his financial resources to satisfy his many financial delinquencies. It is worth noting, moreover, that

three of the unresolved debts on the SOR are for less than \$500, the amount Applicant reports as his monthly remainder after he pays his monthly expenses and current financial obligations. I conclude that while AG ¶¶ 20(d) and 20(e) have limited applicability in this case, AG ¶¶ 20(a), 20(b), and 20(c) do not apply in mitigation.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is a mature person of 49 years. His managers and co-workers regard him as a valued employee. His financial problems began several years ago and are ongoing. After admitting his debts and asserting he would pay them, he failed to pay them and disputed their validity.

Applicant's efforts to address his financial delinquencies are minimal and recent. He does not have a reliable history of timely and consistent payment of his financial obligations. Despite a steady income for several years, he has failed to budget his income to satisfy his delinquent debts.

The record evidence leaves me with questions and doubts about Applicant's judgment as well as his eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising from his financial delinquencies.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a.:	For Applicant
Subparagraphs 1.b. - 1.f.:	Against Applicant
Subparagraphs 1.g. - 1.j.:	For Applicant
Subparagraphs 1.k. - 1.n.:	Against Applicant
Subparagraph 1.o.:	For Applicant
Subparagraphs 1.p. - 1.q.:	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