



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



In the matter of:)
)
) ISCR Case No. 12-02329
)
Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

05/19/2015

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On April 30, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense 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.

On November 22, 2014, and December 8, 2014, Applicant answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on March 30, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 3, 2015. I convened the hearing as scheduled on April 29,

2015. The Government offered exhibits (GE) 1 through 5, which were admitted into evidence without objection. Applicant testified, and he offered Applicant Exhibits (AE) A and B, which were admitted into evidence without objection. The record was held open until May 14, 2015, to allow Applicant to submit additional documents, which he did. They were marked as AE C and D and admitted into evidence without objection.¹ DOHA received the hearing transcript (Tr.) on May 7, 2015.

Findings of Fact

Applicant admitted the allegation in ¶¶ 1.c and 1.f of the SOR. He denied the remaining allegations. I have incorporated his admissions into the findings of fact. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 53 years old. He earned technical degrees after high school. He has been married four times. He has two grown children from his first marriage and one grown child from his third marriage. He last married in 2011 and is presently separated from his wife. He does not provide financial support to anyone. He has worked for his present employer since 1985 and has held a security clearance during his employment.²

Applicant stated that when he divorced his third wife in 2008 their settlement agreement provided that he was responsible for certain marital debts, and she was responsible for others. He did not have a copy of the settlement agreement that detailed which debts were his responsibility. He stated that in 2008 he provided his attorney about \$7,000 to pay the debts that were his responsibility. He does not know which debts were paid. He does not have documented proof of debts that were resolved. He stated his attorney has since died. Credit reports from October 2011, June 2013, and January 2015, detail Applicant's debts.³

Applicant stated he was suspended from his job, without pay, due to issues with his security clearance in January, February, April, May, and two weeks in June 2014. He has been suspended without pay since November 2014 until his security clearance issues are resolved. He indicated that when he goes back to work he will be entitled to six months of back pay and will be in a better financial situation to resolve debts. He and his son's family live together.⁴

Applicant does not believe the debt in SOR ¶ 1.a (\$279-communication services) belongs to him. He stated in his answer to the SOR that he believed his ex-wife

¹ Hearing Exhibit I is Department Counsel's memorandum.

² Tr. 13-14, 20-21, 24.

³ Tr. 54-56, 59-60; GE 3, 4, 5.

⁴ Tr. 23-24, 26-30, 83-84.

obtained this account in his name a long time ago and when they divorced he was not aware if she maintained the account. He stated he disputed it with the three credit bureaus when he sent each a letter sometime in January 2014. He did not provide copies of his dispute letters or evidence that the account was removed from his credit report or resolved.⁵

Applicant disputes the debt in SOR ¶ 1.b (\$343) owed for household utilities. He stated he lived in the residence in 2012 and paid a bill of \$72 when the electricity was turned off. He also stated that he paid the bill in January 2014, but does not have a receipt. He stated the receipt was illegible and he lost it.⁶

Applicant believed the debt in SOR ¶ 1.c (\$450) was for his corporate credit card provided by his employer. In his answer to the SOR, he indicated the debt had a zero balance. He indicated that this should have been paid through his employer. The debt is listed on his credit report as belonging to him, and it is delinquent. It is unresolved.⁷

Applicant disputes the account in SOR ¶ 1.d (\$4,459) stating he has never done business with this creditor. In his answer to his SOR, he stated that the account was opened a year after his 2008 divorce, and he did not know if perhaps his ex-wife opened it in his name. His answer also indicated that he wrote the creditor to get information about the bill, but the creditor closed their local offices a few years ago. He disputed it with the credit bureaus. He did not have copies of his dispute letters. The account was opened in January 2008 and is listed on all three credit reports.⁸

Applicant disputes the debt in SOR ¶ 1.e (\$402). He believed it belonged to his ex-wife and she was supposed to pay the debt as part of their settlement agreement. He does not have a copy of the settlement agreement. It is unresolved.⁹

Applicant acknowledged he owed the debt in SOR ¶ 1.f (\$15,545). It is for a credit card that he was to pay subsequent to his divorce in 2008. He stated that he contacted the creditor after his divorce and he had been making payments of \$500, but he got behind during the period he was going through his divorce. The creditor insisted he make payments that Applicant stated he could not afford. The creditor would not agree to lesser payments. He advised the creditor he was required to make child support payments and owed the Internal Revenue Service (IRS) because he withdrew funds from an account as part of his divorce settlement. His wages were garnished by the IRS for 10 months to resolve his tax debt. Applicant stated he contacted the creditor in 2010, but the debt was sold. He did not contact the new creditor until approximately

⁵ Tr. 35-37; Answer to SOR, GE 3 and 4.

⁶ Tr. 32-34, 40-41; GE 4.

⁷ Tr. 46-52; GE 3 and 4; AE B.

⁸ Tr. 44-45; GE 3, 4, 5.

⁹ Tr. 40-46, 52-54.

two to three months ago. He indicated he is in negotiations with the creditor to resolve the debt. The debt is unresolved.¹⁰

Applicant disputes the debt in SOR ¶ 1.g (\$1,336). He stated he has never done business with this creditor. He disputed the debt with the credit bureaus, but did not provide proof of his dispute. He believes he is a victim of identity theft for this debt. He stated he attempted to file a report with the police department, but they referred him to the state's attorney general's office. When he contacted the state's attorney general's office, he was told to go to the police. He did not contact the creditor directly.¹¹

Applicant disputed the two medical debts alleged in SOR ¶¶ 1.h and 1.i (\$27; \$214). He stated that his medical bills are consistent and the dollar amount reflected do not correspond to co-payments he is familiar with. He was unable to determine the actual medical creditors due to insufficient information on the credit bureau reports. He does not believe these are his debts. I find in his favor for these two debts.¹²

Applicant disputes the debts in SOR ¶¶ 1.j (\$2,090), 1.k (\$75), and 1.l (\$1,773). He stated he sent the credit bureaus dispute letters in January 2014. He did not provide copies of the letters. He stated he has never done business with these creditors.¹³

Regarding the debts that Applicant disputes, he stated he sent handwritten letters to the credit bureaus in January 2014. He stated he never received a response back from any of them. He did not follow up on his disputes. He did not contact the individual creditors. He received a letter from a credit card company in April 2015 advising him that it believed an account may have been fraudulently opened in his name. This credit card company is not the same as any of the above mentioned delinquent debts.¹⁴

Applicant indicated that his checking account is overdrawn because someone has obtained his account information and fraudulently withdrew funds. He stated this has happened before, and he closed the account. He has not closed his current account because it takes a couple of months to arrange an automatic deposit of his pay and he wants to have an active account. He stated he has completed a report of fraud with his bank indicating his account has been tampered with. Applicant has not had credit counseling since the mid-1990s. He has not contacted any of the creditors directly.¹⁵

¹⁰ Tr. 25-32, 79.

¹¹ Tr. 41-53, 60; GE 4.

¹² Tr. 37-40; GE 3, 4, and 5.

¹³ Tr. 52-60; GE 3, 4, and 5.

¹⁴ Tr. 42-44, 60-71; AE A.

¹⁵ Tr. 81-87, 91-92.

On December 1, 2011, Applicant was interviewed by a government investigator. At that time he was confronted with numerous debts, including those listed on the SOR. He indicated he had no knowledge about any of the delinquent debts, and he was greatly concerned. He did not realize at the time that the debts were on his credit report and believed his ex-wife may have been responsible for them. He also indicated that he had not retrieved a copy of his credit report since 1999. He indicated he would order a new credit report and possibly seek legal counsel. In January 2014 his daughter-in-law helped him retrieve a credit report.¹⁶

Applicant had his wages garnished for 10 months by the IRS in 2010. His tax debt was satisfied. He has filed his 2014 federal income tax returns and expects a refund.¹⁷

Applicant indicated his desire to resolve the alleged debts even though he believes most of them do not belong to him. He believes he is a victim of identity theft and stated that no one wants to help him. He indicated that he received three packets of information from the DOD and that he took care of many things and the allegations in the SOR were all that remained. He is hopeful that if he can go back to work he will be able to hire an attorney to help him. He stated he has good moral character and would never do anything wrong. He stated these allegations were the result of circumstances beyond his control.¹⁸

Applicant provided documents after his hearing that reflect on May 10, 2015, he applied for a hardship loan from his 401(k) retirement account for the total amount of the debts alleged in the SOR. He provided a statement indicating he would use the loan money to pay all of the debts rather than addressing them the “proper way” by disputing them. He stated he has researched the debts to obtain the names of the creditors and their addresses.¹⁹

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 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, these guidelines are applied in conjunction with the

¹⁶ Tr. 60.

¹⁷ Tr. 25-32, 79. Applicant’s past tax debt is not considered for disqualifying purposes but will be considered when analyzing the “whole person,” his financial situation, and his credibility.

¹⁸ Tr. 76-78, 93.

¹⁹ AE C, D.

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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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 and 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 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 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. I have considered all of the disqualifying conditions under AG ¶ 19, and the following two are potentially applicable:

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

The SOR alleged 12 delinquent debts totaling approximately \$26,993. Applicant admitted the debt in SOR ¶ 1.f (\$15,545) and denied the remaining debts. Sufficient evidence supports the validity of the debts. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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.

Applicant attributed his financial problems to his ex-wife, believing she may have opened accounts in his name, and to identity theft. He has been aware of the DOD's concerns about delinquent debts detailed on his credit reports since he was interviewed by an investigator in December 2011. He admits he owes the largest debt in SOR ¶ 1.f.

He is negotiating with the creditor, but has not made payments toward resolving it. He disputed the other debts with the credit bureaus, but has not provided documented proof to substantiate the basis of the dispute or evidence of actions to resolve the issues. He claims he paid his divorce attorney \$7,000 after his 2008 divorce to resolve certain debts, but was unable to detail the debts that were paid, or provide a copy of his settlement agreement with his ex-wife. He did not keep copies of any of his dispute letters. He did not provide an updated copy of his credit report to show if any of the debts were released.

Applicant's numerous debts remain unresolved and therefore are recent. He has not presented evidence to conclude the debts were incurred under unique circumstances and are unlikely to recur. AG ¶ 20(a) does not apply. Applicant's financial problems may have occurred due to his divorce, which occurred in 2008, or identity theft. This was somewhat beyond his control and AG ¶ 20(b) partially applies. In order for the complete application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. He has not. His divorce was seven years ago. He became aware of the DOD's concerns about his finances in at least December 2011 when he was interviewed. He believes the debts may have been incurred by his ex-wife, but did not provide evidence to support his supposition. He believes he may be the victim of identity theft, but did not provide documents to support his actions to address the issue. He stated he disputed the debts with the credit bureaus, but did not provide copies of his letters, or a copy of a credit report that shows the matter was investigated. Applicant has not provided any documented proof to substantiate the basis of his disputes or evidence of actions he has taken to resolve the issue. AG ¶ 20(e) does not apply.

There is evidence that Applicant had financial counseling in the 1990s. There is insufficient evidence to conclude that his financial problems are under control or being resolved. There is no evidence he has initiated a good-faith effort to repay his creditors. Although he is negotiating with the creditor in SOR ¶ 1.f he has not yet made payments toward this debt. He has not contacted any of the other creditors directly to inquire about the validity of the remaining debts. Applicant provided post-hearing documents that he has applied for a loan from his retirement account to address the alleged debts. At this point, it is too early to conclude the debts are being resolved. AG ¶ 20(c) partially applies. AG ¶ 20(d) does not apply.

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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 53 years old. He has been employed with the same employer since 1985. He has delinquent debts totaling approximately \$26,993. He has been aware since 2011 that his finances were a concern to the DOD. He attributed his financial problems to his divorce in 2008 and identity theft. He did not offer evidence to substantiate actions he has taken to resolve his financial problems. He has not made any recent payments to resolve the one debt he admitted he owed. After his hearing, Applicant applied for a loan from his retirement account to address the debts. It is too early to conclude the debts are no longer a security concern. Applicant failed to mitigate the financial considerations security concerns. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the financial considerations guideline.

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
Subparagraphs 1.a-1.g:	Against Applicant
Subparagraphs 1.h-1.i:	For Applicant
Subparagraphs 1.j-1.l:	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 a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge