



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



In the matter of:)	
)	
)	ISCR Case No. 12-02514
)	
Applicant for Security Clearance)	

Appearances

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

12/13/2013

Decision

DUFFY, James F., Administrative Judge:

Applicant mitigated the security concerns arising under Guideline F, financial considerations. Eligibility for access to classified information is granted.

Statement of the Case

On July 30, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. This action was taken under Executive Order (EO) 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) implemented on September 1, 2006.

On August 23, 2013, Applicant answered the SOR and requested a hearing. The case was assigned to me on October 11, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 28, 2013, and the hearing was convened as scheduled on November 20, 2013. At the hearing, Department Counsel

offered Government's Exhibits (GE) 1 through 5. Applicant testified and offered Applicant's Exhibits (AE) A through R. The record was left open until November 27, 2013, for Applicant to submit additional matters. He timely submitted additional documents that were marked as AE S through X. All offered exhibits were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on December 2, 2013.

Findings of Fact

Applicant is a 28-year-old employee of a defense contractor. He has worked for his current employer since October 2011. In May 2011, he earned a master's degree in industrial engineering. He has never been married and has no children. He has no military service and has not previously held a security clearance.¹

The SOR alleged that Applicant had 32 delinquent debts, totaling \$85,291. These delinquencies included \$17,924 in medical debts, \$65,348 in student loans, \$1,263 in consumer debts, and \$756 in state income taxes. In his answer to the SOR, Applicant admitted each allegation with comments. His admissions are incorporated as findings of fact.²

Applicant was a full-time college student from 2003 to 2007. During that period, he worked part-time jobs while at school and full-time jobs in the summers. He received some financial support from his grandmother. Following college, he took a semester off and worked full-time at a department store before beginning graduate school. From about August 2008 to May 2011, he was a full-time graduate student and worked part-time as a research assistant and in other jobs. His current job is his first full-time professional employment.³

SOR ¶ 1.a through 1.g – seven medical bills totaling \$17,924 that were placed for collection. In about April 2009, Applicant became ill with appendicitis. At that time, he thought that he was covered by his mother's medical insurance policy. He had previously provided information to his school about his mother's medical insurance policy so that he could waive coverage under a student medical insurance program. After his appendix surgery, he learned for the first time that he was not covered under his mother's medical insurance policy.⁴

Each of the seven alleged medical bills are related to his appendix surgery or the resulting aftercare. After receiving the medical bills, he contacted the healthcare providers in an attempt to get a reduced rate, but they wanted him to pay about 30

¹ Tr. at 4-5, 31-32; GE 1; AE K. Applicant's master's degree thesis was published and was presented as an exhibit. See AE L.

² SOR; Applicant's answer to the SOR.

³ Tr. at 32-33; GE 1; AE J.

⁴ Tr. at 34-36; GE 1, 2.

percent of what he owed, which he could not afford. He then attempted to get a loan from his company's retirement account so that he could pay the medical bills, but the hospital would not provide him with a bill that indicated he had no medical insurance. Without such a bill, he was unable to obtain the loan.⁵

After failing to obtain the loan, Applicant paid the \$93 medical bill in SOR ¶ 1.c. He also testified that he entered into a repayment agreement over the telephone with the collection agency handling the medical bills in SOR ¶¶ 1.e, 1.f, and 1.g, which total \$2,118, and made a payment of \$125 toward those bills on November 11, 2013. He agreed to continue to make monthly payments in that amount until those bills were paid.⁶

SOR 1.h – charged-off account for \$727. This was a credit card account that was opened in August 2003 and had a date of first delinquency/date of last activity of April 2007. Applicant testified that he contacted the creditor, was referred to a specific employee of the creditor, left voicemail messages for that employee, but has not yet received a response.⁷

SOR ¶¶ 1.i and 1.j – collection accounts for \$51 and \$111, respectively. These debts were returned checks. Applicant indicated that he thought he had enough money in this account to cover those checks when he wrote them. These accounts were opened in December 2007. At the hearing, Applicant provided letters from the creditor showing that these accounts were paid on September 12, 2013.⁸

SOR ¶ 1.k through 1.dd – 20 student loan totaling \$65,348 that were placed for collection. Applicant testified that his outstanding student loans totaled about \$83,000 and were acquired to fund his undergraduate and graduate education.⁹

Applicant's student loans were deferred until six months after he completed graduate school in May 2011. One credit report indicated those loans had dates of last activity of either November 2011 or January 2012. Applicant testified that he was not able to begin paying the student loans when they initially became due. He also stated that he had not received a bill for those loans and was first contacted by the collection agency in January 2013. He acknowledged that he was irresponsible in not contacting the creditor sooner, but also stated the he did not know what action was expected of him after he completed school.¹⁰

⁵ Tr. at 37-38, 74; GE 2.

⁶ Tr. at 39-43; GE 2; AE B, E.

⁷ Tr. at 65-66; GE 2-5.

⁸ Tr. at 66-67; GE 2-5; AE C, D.

⁹ Tr. at 43-44; AE P.

¹⁰ Tr. at 44-48; GE 4.

When Applicant was contacted by the collection agency in January 2013, it offered him the opportunity to participate in a rehabilitation program. Applicant agreed to participate in that program. If Applicant successfully made nine monthly payments under that rehabilitation program, the loans would no longer be reported as delinquent on his credit report and they would be returned to the Department of Education for future payment purposes. After examining Applicant's financial situation, the collection agency advised him the monthly rehabilitation payments would be \$166. He agreed to those payments, and they were initially deducted from his account. In April 2013, Applicant noticed his account was not deducted for that payment. He contacted the collection agency and was informed that the agency had not received all of his student loans when it set up the rehabilitation program. The collection agency indicated that, due to the additional loans, it had to modify the program. The collection agency advised him that he would now have to pay an additional \$800 per month. He could not afford to pay that new amount. At that point, he became disenchanted with the collection agency due to the manner in which it handled his loans and treated him. Consequently, he then sought to deal with the Department of Education, instead of the collection agency, in the handling of these loans.¹¹

Applicant requested a Department of Education hearing to determine the amount of his payments. As a result of the hearing, a decision dated October 31, 2013, was issued that concluded 15 percent of Applicant's disposable pay was subject to garnishment, which amounted to \$562 per month. Those garnishment payments started in November 2013. Applicant was separately advised that he could also participate in the rehabilitation program with the collection agency, but those monthly payments of about \$500 would be in addition to the garnishment payments. At the time of the hearing, he stated that he would like to participate in the rehabilitation program, but did not know whether he could afford to do so. He intended to contact the collection agency to determine whether he could obtain a lower monthly rehabilitation amount. At the close of the record, he was not participating in the rehabilitation program.¹²

SOR ¶ 1.ee – collection account for \$374. This was a department store charge account that was opened in November 2004 and had a date of last activity of October 2005. At the hearing, Applicant provided a check stub indicating that he made a payment to the creditor of \$150 on November 1, 2013. He has two payments remaining on this account.¹³

SOR ¶ 1.ff – overdue state income taxes for \$756. These taxes were for 2008. After he graduated from college, he began working in another state and thought he did not owe taxes to the state where he graduated from college. He disputed this debt unsuccessfully. In June 2013, he entered into a repayment agreement. He now pays

¹¹ Tr. at 48-52; GE 2.

¹² Tr. at 52-63, 65; AE P-S.

¹³ Tr. at 68; GE 2, 3; AE F.

\$65 per month toward this debt. At the hearing, he indicated that he has so far paid \$325 and owes a balance of \$431.¹⁴

At the hearing, Applicant was open and forthcoming about his debts and finances. I found him to be a credible witness. He testified that he was trying his best to pay his debts and that he would work on them one-by-one. Once he pays off one, he intended to work on resolving another one. With the exception of the student loans, his most recent credit reports reflect that he has not incurred any new delinquent debts since obtaining his current job.¹⁵

In June 2013, Applicant submitted a personal financial statement (PFS) that reflected his total net monthly income was \$3,313, his total monthly expenses were \$2,271, his total monthly debt payments were \$753, and his net monthly remainder was \$289. At the hearing, he indicated that he had obtained a second, part-time job in which he earned about \$400 per month. Taking into consideration changes to his income, expenses, and debt payments since submission of the PFS, he estimated that his net monthly remainder was \$50 at the time of the hearing. He also indicated that he had \$11,811 in his company's retirement program, \$1,000 in a savings account, and \$500 in a checking account. He stated that he filed his state and federal income tax returns for 2010 to 2012.¹⁶

Applicant was scheduled to meet with a financial counselor after the hearing. In his post-hearing submission, he provided a Spending and Savings Plan Calculator (SSPC) that was prepared with the assistance of the financial counselor. According to the SSPC, his annual income is \$65,650 with a projected bonus of \$4,171, his annual total taxes are \$18,448, his annual total expenses are \$52,147, and his annual total savings are \$1,000, which left him a net deficit of \$1,774. The annual expenses included student loan payments of \$6,300 and medical debt payments of \$1,500, plus continued monthly payments toward the debts in SOR ¶¶ 1.h (\$150/month), 1.ee (\$150/month), and 1.ff (\$65/month). The SSPC also reflected that the financial counselor recommended a number of reductions to his expenses so that his total annual savings would increase to \$2,400 and his annual remainder would be a net surplus of \$7,826.¹⁷

In his post-hearing submission, Applicant stated that his "plan of attack" included:

- a. Eliminating his 401(k) contributions for one year;
- b. Focusing first on paying the smaller debts;
- c. Reducing, setting, and adhering to spending limits for certain things such as

¹⁴ Tr. at 68-69; GE 1, 2; AE A.

¹⁵ Tr. at 66, 73-74, 77-78, 83-84; AE I.

¹⁶ Tr. at 69-75; GE 2; AE G, H, R.

¹⁷ Tr. at 63-65, AE T-X.

- food, entertainment, etc;
- d. Eliminating unnecessary costs and putting that money towards the debts;
- e. Paying more attention to smaller miscellaneous purchases and eliminating them to increase funds for debt payment;
- f. Putting extra money toward debts for quicker repayment; once a debt is paid, allocating that money toward other debts;
- g. Reconsidering participation in student loan rehabilitation program after six months of maintaining his new budget; and
- i. Reviewing and re-computing his plan after one month.¹⁸

Applicant's company generally promotes employees on their second anniversary with the company. Applicant received his promotion about seven months early. His performance appraisal for 2011 indicated that he met all expectations. His performance appraisal for 2012 indicated that he met expectations in four work categories, exceeded expectations in eight categories, and far exceeded expectations in one. He has received a number of certificates of recognition from his employer.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 that are to be 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, administrative judges apply the 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,

¹⁸ AE S.

¹⁹ Tr. at 76-78; AE M-O.

or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable 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 about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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* Executive Order 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 as follows:

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. Two are potentially applicable in this case:

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

Applicant accumulated delinquent debts over an extended period that he was unable or unwilling to satisfy. This evidence is sufficient to raise the above disqualifying conditions.

Several 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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

A security clearance adjudication is not a debt collection procedure. Instead, it is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness.²⁰ An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take sufficient action to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first.²¹

As a graduate student in April 2009, Applicant was afflicted with appendicitis and underwent surgery. At that time, he thought he was covered by his mother's medical insurance policy, but later learned that he was not covered. His illness was a condition beyond his control that resulted in significant medical bills. He completed graduate school in May 2011 and obtained his first professional employment in October 2011. No evidence was presented to show that Applicant made any significant attempts to resolve his medical debts before issuance of the SOR. Since the issuance of the SOR, he has paid one medical debt and entered into a repayment plan for three others. Due to the delay in addressing these debts, I cannot find that Applicant acted responsibly under the circumstances. AG ¶ 20(b) partially applies.

Applicant did not contact the Department of Education when he completed graduate school and his student loan became delinquent. A collection agency contacted him in early 2013, and he entered into a rehabilitation program agreement for his student loans. Under that agreement, \$166 per month was deducted from his account. Without notifying him, the collection agency stopped those deductions in April 2013. Unbeknownst to him, the collection agency did not have all of his student loans when it proposed the rehabilitation program. Upon receiving all his student loans, the collection

²⁰ See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

²¹ See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

agency proposed significantly increasing the amount of his monthly payments. He could not afford the proposed payments. After becoming disenchanted with the collection agency, Applicant requested a Department of Education hearing to review his case. The hearing concluded that \$562 of Applicant's monthly pay should be garnished. The garnishment has started, and he is now meeting his legal obligation to pay those student loans.

Applicant paid two of his consumer debts, SOR ¶¶ 1.i and 1.j, and entered into a repayment agreement for a third, SOR 1.ee. He has attempted to contact a fourth creditor (SOR ¶ 1.h), but has been unable to reach the employee handling his debt. He has established a repayment plan for his past-due state taxes (SOR ¶ 1.ff) and has been making regular payments on that debt.

Applicant incurred no new delinquent debts since obtaining his current job. He is living within his means. He has obtained a second job to assist in paying his delinquent debts. He received financial counseling after the hearing. He has developed a plan for attacking his debts. Even though his track record of making payments on his delinquent debts is limited to the past year, he has shown a commitment to resolving his financial problems. He is just starting out professionally and is trying his best to take care of these problems. I found credible his statement that he intends to resolve these problems in a systematic manner. AG ¶ 20(a) does not apply because his debts are ongoing and significant. AG ¶¶ 20(c) and 20(d) apply due to his efforts to get his financial problems under control and to institute a plan to resolve them.

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 relevant 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 a young, hard-working professional. He is a valued employee and is just starting what appears to be a promising career. While he failed to take prompt action to address his debts after obtaining his current job, he has taken reasonable steps within the past year to resolve his debts. He is currently living within his means and is committed to satisfying these debts.

Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guideline F.

Formal Findings

Formal findings 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: FOR APPLICANT

Subparagraphs 1.a – 1.ff: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

James F. Duffy
Administrative Judge