



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



In the matter of:)
)
) ISCR Case No. 12-02559
)
Applicant for Security Clearance)

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

04/17/2015

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant has rehabilitated around \$15,294 in student loan debt. He settled for less than the full balance two credit card debts of \$7,547 and \$3,426 in collection. Clearance is granted.

Statement of the Case

On July 31, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, Financial Considerations, and explaining why it was unable to find it clearly consistent with the national interest to grant or continue his security clearance eligibility. The DOD CAF took the action under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (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.

Applicant responded to the SOR allegations on August 25, 2014. He requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On October 2, 2014, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On October 27, 2014, I issued a Notice of Hearing scheduling the hearing for November 20, 2014.

I convened the hearing as scheduled. The Government submitted five exhibits (GEs 1-5) and the Applicant submitted 11 exhibits (AEs A-K), all of which were admitted without any objections. A chart, which was prepared by Department Counsel as a supplement to his oral closing argument, was marked as a hearing exhibit, but not accepted as a formal exhibit in the record. Applicant testified, as reflected in a transcript (Tr.) received on December 5, 2014.

At Applicant's request, I held the record open until December 4, 2014, for him to submit additional documentary evidence. On December 2, 2014, Applicant submitted three exhibits. Department Counsel filed no objections by the December 12, 2014 deadline for comment, so the record closed on December 12, 2014. Applicant's submissions were marked and received as AEs L-N.

Summary of SOR Allegations

The SOR alleges under Guideline F that, as of July 31, 2014, Applicant owed a delinquent state tax debt of \$879 from a May 2009 tax lien (SOR 1.a); \$15,294 in student loan debt in collection (SOR 1.b); and consumer credit card collection balances of \$7,547 (SOR 1.c), \$3,379 (SOR 1.d), and \$2,950 (SOR 1.e). In his Answer to the SOR allegations, Applicant admitted the student loan debt in SOR 1.b and the credit card debt in SOR 1.e. He denied the debts in SOR 1.a, 1.c, and 1.d without any explanation. Documents submitted by Applicant with his Answer were returned to him at the hearing for possible submission.

Findings of Fact

After considering the pleadings, exhibits, and transcript, I make the following findings of fact:

Applicant is a 48-year-old electronics technician, who began working in the defense industry in December 2006. (GE 1.) He has been with his current employer since February 2008. (GE 5.) Applicant served on active duty in a branch of the United States military from January 1986 to January 2006. He was denied access to sensitive compartmented information in 2004 because of financial issues. (GEs 1, 5; Tr. 63-64.) In late January 2006, Applicant retired honorably as a chief petty officer (E-7). (AE H; Tr. 22.) Since then, he has received a military pension of \$1,500 per month. (Tr. 23.)

Applicant and his spouse have been married since July 1986. They have a son, who was born in 1989. (GE 1; Tr. 23.) They bought their home in June 2004, taking on a

\$239,000 conventional 30-year mortgage. Monthly payments were around \$2,000. In August 2005, Applicant bought a 2005 model-year truck, taking on a loan of \$32,502, to be repaid at \$571 per month. (GE 3.)

Applicant worked part time in sales at a local trading post when he was still on active duty. After he retired from the military in late January 2006, he transitioned to full time. (GE 1; Tr. 24.) In December 2006, Applicant began working as a full-time senior technician for a large defense contractor. Applicant's annual income was approximately \$20,000 less than what he had earned on active duty. (Tr. 25-26.)

Applicant's spouse had always handled the family's finances when he was on active duty. In 2007, she had some mental health issues around the death of her sister. Applicant "did know about some sort of a situation, but because [his spouse] had always [paid the bills], it wasn't something that [he] was willing to take from her." (Tr. 78-79.) They fell behind 30 days on his truck loan in February 2007, March 2007, and again in May 2007. (GE 3.) Sometime in 2007, he took over the household finances. (Tr. 78-79.) His credit record shows that he brought his truck loan current. In December 2007, he refinanced through a new loan of \$24,368. His monthly truck payments dropped to \$477. (GEs 3, 5; Tr. 51.)

In February 2008, Applicant began working for his current employer at approximately \$15 an hour (Tr. 27), which was apparently an increase over his wage in his previous defense contractor job. (GE 5.) Even so, Applicant and his spouse underpaid their state income taxes for tax year 2007 and could not afford to pay the taxes owed when they filed their return in April 2008. (GE 5; Tr. 28.) On May 19, 2009, the state filed an \$879.87 lien against them (SOR 1.a). (GEs 2, 4, 5.) Applicant paid the tax debt, and the lien was released on April 20, 2010. (AE G.)

In May 2007, Applicant purchased on credit a \$4,377 computer for his son. He made the monthly minimum payment of \$100 until August 2008, and a \$2,950 past-due balance was placed for collection (SOR 1.e). (GEs 3, 5.) Around late January 2012, the original debt of \$4,377 was sold to the collection agency identified in SOR 1.c (same debt as SOR 1.e).

By May 2008, Applicant had stopped paying on a joint revolving debt for a mattress purchased in June 2006. (Tr. 43.) In October 2008, the account was charged off for \$2,733. A \$3,164 debt balance was placed with the assignee identified in SOR 1.d in September 2011. (GEs 2, 3.)

Applicant had taken out student loan debt of \$22,027 in his own name for his son's education. He was to repay the debt at \$300 a month. Applicant defaulted on the student loans because his mortgage and heating bills took priority. (GE 5.) Applicant was also confused about whether his son was going to continue with his education, which would have led to the loan being deferred. (Tr. 34-35.) In June 2010, the student loan account was placed for collection for \$25,994 (SOR 1.b). (GEs 2, 3, 5.)

In 2011, Applicant underwent a background investigation for a security clearance for his duties with his current employer. He had completed an Electronic Questionnaire for Investigations Processing (e-QIP) on March 2, 2007, for a previous employer (GE 1), which apparently was sufficient to initiate the investigation in 2011. A check of Applicant's credit record on September 27, 2011, failed to show the release of the tax lien (SOR 1.a). Applicant and his spouse were \$6,465 past due on their mortgage. Applicant reportedly owed \$27,060 on the student loan taken out for his son's college (SOR 1.b). No progress was reported on the collection debts in SOR 1.c or SOR 1.d (duplicated in SOR 1.e). Applicant was making payments as agreed for his truck loan with a \$16,968 balance, on a \$9,873 credit card balance, and on his and his spouse's installment loan balance of \$8,378. (GE 3.)

On November 15, 2011, Applicant was interviewed about his finances by an authorized investigator for the Office of Personnel Management (OPM). Applicant indicated that he paid the delinquent state income tax debt for 2007 as soon as he was notified of the tax lien, although he did not recall receiving confirmation of his payment. About the student loan for his son, Applicant explained that he was supposed to make \$200 payments starting in late 2010, about six months after his son's college enrollment ended. He made only one or two payments because of the lack of funds. He gave priority to paying his mortgage and heating bills. Around July 2011, he was informed that his wages would be garnished at \$300 every two weeks starting in August 2011. Applicant admitted that he had missed his \$2,117 monthly mortgage payments in June and July 2011 because of insufficient funds. He requested a modification of his mortgage, and on the advice of his mortgage company, he made no payments through October 2011, when his loan modification was approved. The \$6,465 past due was added to the end of his modified loan, which he is required to repay \$1,730 per month. About the debt for the computer, Applicant admitted that he owed a \$2,950 balance in collection. He expressed his intent to resume payments on the account in the next few months, given the reduction in his monthly mortgage obligation. Applicant denied knowledge of any other delinquencies, including the credit card debt alleged in SOR 1.c. He expressed his intent to investigate the account in SOR 1.c and to pay it, if it was shown to be valid. Applicant estimated that he and his spouse have combined monthly net income of \$5,155, monthly expenses of \$1,740, and monthly debt obligations of \$3,298, leaving them with \$117 in monthly discretionary income. He reported only \$5 in checking account and \$500 in savings account deposits. Applicant added that he and his spouse were attempting to better budget their funds and to purchase items only when they have the cash to pay for them. He had not received any financial counseling. (GE 5.)

As of February 11, 2014, Equifax Information Services was reporting a \$15,294 collection balance on Applicant's student loan for his son. The state tax lien was still on his record as outstanding. The assignees holding the debts in SOR 1.c (duplicated in SOR 1.e) and SOR 1.d were reporting past-due collection balances of \$7,547 and \$3,379 as of January 2014. Applicant was making timely payments on a \$5,998 credit card debt, on his modified mortgage (balance \$229,945), and on his truck loan balance of \$8,664. (GE 2.)

In February 2014, Applicant had a change in title at work, which came with added responsibility, but also a raise to \$32.01 per hour, about double his previous wage. (Tr. 26, 37-38.) He began making \$525 monthly payments to rehabilitate his student loan (SOR 1.b). (Tr. 35.) After nine consecutive timely payments, his student loan was no longer considered to be in default as of mid-November 2014. (Tr. 32-33.) The balance of the student loan was \$11,140.88, inclusive of collection fees and interest. (AEs I, L; Tr. 35.)

On July 31, 2014, the creditor in SOR 1.d offered to settle Applicant's \$3,426.58 debt for \$513.99. (AE N.) Applicant paid the reduced settlement amount in August 2014. (AE J; Tr. 44.) On August 20, 2014, Applicant paid \$5,511.91 to settle the debt in SOR 1.c (duplicated in SOR 1.e). (AEs K, M; Tr. 41-42.) The funds to settle the debts came from his 401(k). Applicant took out a loan of \$13,000 that he is repaying at \$200 every two weeks. (Tr. 41-43.) Applicant waited to take action to resolve the debts until he had enough accumulated in his 401(k) to borrow the amount needed. (Tr. 45-46.) About \$4,000 of the 401(k) funds went to pay property and vehicle taxes that came due. (Tr. 47.) The remaining \$3,000 went for a down payment on a car for his spouse. Her vehicle was totaled in an accident in January 2014, and their insurance claim has not been settled. (Tr. 46, 65.) Applicant and his spouse pay \$525 per month for her 2014 model-year car. He still drives his 2005 pickup truck. (Tr. 50-51.)

Applicant handles their family's finances. (Tr. 48.) He does not operate according to a set budget. (Tr. 58-59.) His spouse works part time, 25 hours a week, as a cook at a school. (Tr. 27, 60.) She earns \$15 an hour. (Tr. 65.) Applicant's take-home pay is \$2,000 every two weeks, and he still receives \$1,500 each month in retirement pay from the military. Applicant and his spouse pay \$1,729 for their mortgage, \$1,002 for their two car loans, \$525 for his student loan for their son, \$500 in cable/Internet/telephone costs,¹ \$150 for cell phone service, and \$200 for car insurance. (Tr. 35, 50, 52, 55-56.) Applicant is making monthly payments on one credit card with a balance around \$5,000. (Tr. 58.) He estimates that he and his spouse have about \$500 left after they pay their monthly expenses. They had \$1,800 in checking and \$500 in savings deposits as of mid-November 2014. (Tr. 59.) Applicant has had no formal financial counseling. (Tr. 80.)

Applicant's performance reviews and expressions of appreciation from management show Applicant has been dedicated to his work for his current employer. (AEs A-F.) For his outstanding support on a project, Applicant received a monetary award of \$100 in August 2010. (AE F.) He received an overall rating of exceptional for his work as an engineer II in August 2011 (AE C) and in March 2013. (AE B.) As an engineer technician V, he again received an overall exceptional rating in February 2014. (AE A.) He does not have any supervisory duties, but he travels for his job. (Tr. 27-28.)

¹ Applicant admitted that he pays for some movie channels and all of the sports channels. About his efforts to reduce his monthly cable costs, Applicant responded that he has contacted his provider, "And each time I get the—okay you get the nickel and dime—but nothing that ever makes any sense of it." (Tr. 53.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to 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 overall 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 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 that 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 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 about financial considerations is articulated 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 evidence establishes that a state tax lien for \$879 was filed against Applicant and his spouse in May 2009 for delinquent state income taxes for 2007 (SOR 1.a). Additionally, Applicant defaulted on \$22,027 in student loan debt taken out in his name for his son's education (SOR 1.b). Two of his consumer credit debts, for a mattress (SOR 1.d) and for a computer for his son (SOR 1.c, duplicated in SOR 1.e), were placed for collection. Two disqualifying conditions under AG ¶ 19 apply because of Applicant's record of delinquent accounts:

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

Yet, the evidence also shows that Applicant satisfied the tax lien in April 2010, well before the SOR was issued, and that the debt in SOR 1.c is an updated collection balance of the debt in SOR 1.e. Mitigating condition AG ¶ 20(e) applies in part:

- (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.

Mitigating condition AG ¶ 20(a), "the behavior happened so long ago, was so infrequent, or occurred under circumstances that it is unlikely to recur and does not cast doubt on the individual's current, reliability, or good judgment," applies only in that the debts became delinquent more than five years ago, and Applicant paid the tax debt in April 2010. AG ¶ 20(a) does not mitigate Applicant's failure to address his past-due debts more proactively. Through involuntary wage garnishment, his student loan debt of \$25,994 had been reduced to \$15,294 as of February 1, 2014, when he then began payments to rehabilitate the loan. However, he made no effort to resolve the revolving charge collection debts before August 2014.

Applicant's spouse had some mental health issues that led her to neglect some bill payments in the past, but Applicant was handling the household finances when the accounts in the SOR became delinquent. At his interview with the OPM investigator in November 2011 and at his security clearance hearing in November 2014, he admitted that he did not budget for some expenses after he transitioned from the military to civilian life. Even assuming some uncertainty about whether his son was going to continue his education, Applicant would have known whether the student loan was in deferment status,

given the loan was in his name and not his son's name. His large cable television debt of \$500 a month when he was earning only \$15 an hour is evidence of poor financial judgment. The evidence does not establish that the debts were incurred largely because of factors outside of his control. AG ¶ 20(b) is not satisfied:

(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.

However, Applicant's payment in April 2010 of his past-due state taxes, his payments for nine consecutive months to bring his student loan into good standing as of mid-November 2014, and his August 2014 settlement of his two consumer credit delinquencies, implicate AG ¶ 20(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, to a lesser extent, AG ¶ 20(d)," the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Applicant settled the revolving charge debts after the SOR was issued and on terms very advantageous to him. In particular, the creditor in SOR 1.d accepted in settlement a mere 15% of Applicant's balance.

Satisfaction of the debts does not necessarily eliminate the financial considerations concerns, especially where Applicant borrowed from his 401(k) for the funds to repay the debts. When he contacted his cable provider to reduce his monthly costs from \$500, he was persuaded to make little to no change in his cable service. Yet, his financial situation going forward is positive. Due to the substantial increase in his hourly wage since February 2014, Applicant is meeting his monthly obligations on time, even with monthly car payments around \$1,000. There is no evidence of any new delinquency. Applicant is not likely to jeopardize his security clearance eligibility and possibly his job by ignoring debt obligations in the future, to include his student loan, which had a balance of \$11,140 as of mid-November 2014.

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 his conduct and all the 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.

The financial analysis under Guideline F is incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant spent 20 years in the U.S. military, and he relied on his spouse to pay their bills on time. He had some difficulty transitioning to civilian life, especially on annual income that was approximately \$20,000 less than his military pay. Day-to-day expenses took priority over his student loan and the two consumer credit debts in the SOR. When he began to struggle with his mortgage, he contacted his lender and obtained a modification, lowering his monthly payment to a more affordable \$1,729. Applicant probably could have done more to reduce his expenses, especially his cable costs, to free up income to make payments on the debts in the SOR. Even so, he did not allow his financial stress to impair his performance with his current employer. He was rewarded for his dedication by a change in his job title and a doubling of his hourly wage in February 2014. With that extra income, he took steps to rehabilitate his student loan.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases, stating:

[A]n applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has . . . established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of 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.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted). Applicant has addressed the debts of concern. He understands the importance of meeting his financial obligations, as shown by his timely payments of his credit card debt, his mortgage, his utilities, and his car loans. With respect to his day-to-day expenses, Applicant has no serious record of delinquency. The Government can re-validate Applicant's financial status at any time through credit reports, investigation, or interrogatories. Approval of classified access to Applicant now would not bar the Government from revoking it, if required.² After considering all the evidence of record in light of the adjudicative guidelines,

² The DOHA Appeal Board has held that the Government has the right to reconsider the security significance

I conclude that it is clearly consistent with the national interest to grant Applicant security clearance eligibility at this time.

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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	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.

Elizabeth M. Matchinski
Administrative Judge

of past conduct or circumstances in light of more recent conduct that has negative security significance. See ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012).