



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



In the matter of:)	
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)	ISCR Case No. 12-02912
Applicant for Security Clearance)	

Appearances

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

03/12/2014

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant mitigated the Government's security concerns under Guideline E, Personal Conduct, but failed to mitigate security concerns under Guideline F, Financial Considerations. Applicant's eligibility for a security clearance is denied.

Statement of the Case

The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), dated May 15, 2013, detailing security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). 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.

In a June 26, 2013, response to the SOR, Applicant admitted responsibility for 8 of the 13 allegations raised under Guideline F and, with narrative, the two allegations raised under Guideline E. He also requested an administrative decision based on the

record. The Government converted that request in favor of a hearing on July 22, 2013. The case was assigned to me on August 9, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 21, 2013, setting the hearing for September 25, 2013.

The hearing was convened as scheduled. The Government offered six documents, which were accepted as Exhibits (GX) 1-6 without objection. Applicant offered testimony and two documents, which were accepted without objection as Exhibits (AX) A-B. He was given until November 2, 2013, to submit any additional materials. The transcript of the proceeding was received on October 2, 2013. When no additional materials were timely received, the record was closed.

Findings of Fact

Applicant is a 52-year-old technician earning approximately \$62,000 to \$65,000 a year, after a recent across-the-board reduction in pay of \$3,000. (Tr. 64) He has an Associate's Degree in electronics. Applicant has been married for nearly 20 years. The couple has a teenage daughter.

Applicant was continuously employed by a series of defense contractors from 1994 to December 2010, when he was laid off because he could not obtain a required certification. This occurred around the same time Applicant and his wife reunited after a 2008 separation that lasted for about two years. During that period, Applicant contributed to the support of his estranged wife and daughter in their home, while he rented an apartment. Applicant remained unemployed until about September 2011, when he returned to the work force. In June 2012, Applicant's wife voluntarily left her \$76,000-a-year job, which has significantly contributed to Applicant's financial distress. (Tr. 14, 16) She resigned her position as a public school teacher after being given the choice of resigning or losing her state teaching license. (Tr. 11-12, 29) This choice was posed to her by the principal, who no longer wanted Applicant's wife working in her school. (Tr. 13) Because she resigned, she was unable to collect unemployment compensation. As of June 2013, his wife continued to be unemployed, despite her efforts to find a new teaching position. Taken together, Applicant attributes his current financial problems to his period of unemployment and his wife's lack of employment.

At issue in the SOR are 13 delinquent debts, which were noted in Applicant's credit report as delinquent. Those debts, and Applicant's comments regarding their current status, are as follows:

1.a: Medical collection, \$100. No evidence of payment. Applicant does not recall what type of medical service was provided for this charge. (Tr. 31) He maintains that this debt has been paid, but offered no evidence to that effect. (Tr. 21-22)

1.b-d, 1.f, 1.h, 1.m: A collection account on an apartment lease balance from when Applicant was first laid-off, \$1,836; a 2011 judgment based on a joint credit card balance, \$1,853; a collection account for a credit card, \$3,276; a past due amount of

about \$22,000 with a total approximate balance of \$367,000 on Applicant's 2003 home loan balance, which first became late during Applicant's separation; a charged-off second mortgage on their home, \$120,000; and acknowledgement of a Chapter 7 bankruptcy from 1998 for which debts were discharged in February 1999. (Answer to the SOR; Tr. 22-24) These admitted debts remain unpaid due to his reduction in household income.

1.e, 1.i, 1.l: A collection account, \$3,411; a collection account, \$277; and a collection account, \$558. Applicant disputes liability for these debts as currently reflected in his credit report and the SOR, but provided no documentary evidence of formal disputation with any of his creditors or any of the three major credit reporting bureaus. (Tr. 24-25) He later conceded that he recognized the debt at 1.e for \$3,411 and acknowledged that it was unpaid. (Tr. 48-49)

1.g: A charged-off account, \$1,703. Applicant testified that the amount alleged must be erroneous because the limit on the credit card was \$400. The limit on the card is shown on Ex. 3 as \$500; that same credit card indicates that the card was past due on more than one occasion before being charged off, including at least once being over 120 days past due. (Tr. 25; Ex. 3 at 4, which is marked as page 8) Applicant testified that he brought this discrepancy to the creditor's attention. He said he was told the increase reflected interest. He provided no documentation showing that his liability on the card was limited to the card's credit limit for purchases. (Tr. 25-26; 51)

1.j: A charged-off account, \$1,870. This amount is related to property taxes owed on an automobile lease. There is no evidence that property taxes are owed on leased vehicles in Applicant's state. Applicant was not familiar with this practice and he orally disputed this debt. He provided no documentary evidence, however, of such dispute or that the imposition of a property tax was in error. (Tr. 27-28, 52)

1.k: A collection account, \$92. Applicant indicated that the \$92 utility debt at 1.k was paid, but had no documentary evidence showing it had been satisfied. (Tr. 45-46) He also disputes the debt, which is for a telecommunication provider, because it does not reflect an amount that was part of his home plan with that provider (Tr. 50) He provided no documentation corroborating his statement that he disputed this credit report entry. (Tr. 50)

Additionally, Applicant's wife has maintained contact with their mortgagors regarding the debts at 1.f and 1.h, apprising them of her lack of employment. (Tr. 38-39, 44) Financial problems with the mortgages appear to date back to 2010, which would appear to have begun before Applicant was laid off in December 2010. (Tr. 72) Applicant is not currently able to make the required monthly payment of \$2,400 on the mortgage. (Tr. 39-42) His wife has stressed to the mortgagor that they are maintaining the house in good repair. (Tr. 43)

On October 27, 2011, Applicant completed a security clearance application (SCA). Under Section 26, he answered “no” to questions inquiring whether, in the preceding seven years, he had a judgment entered against him; had bills or debts turned over to a collection agency; had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed; or been over 120 days delinquent on any debt. Applicant speaks English as a second language. (Tr. 55) He admits that, due to confusion, he did not answer these questions “completely and accurately.” (Tr. 53) He had difficulty understanding some of the questions posed under Section 26. (Tr. 55-56) For example, he does not understand the term “judgment,” in terms of a legal action as opposed to a confiscation. (Tr. 56) His erroneous answers are the result of a mistake, not intentional falsification. (Tr. 58-59)

Although Applicant is currently unable to pay his mortgage payments, he is able to pay for his current utilities. He and his family live modestly. The couple’s leased car was returned to the dealer and they currently do not have a car. He is timely with his tax filings and obligations. (Tr. 61) He has no garnishments on his pay. He has had recurrent problems with debt in the past. There is no documentary evidence showing that Applicant or his wife timely initiated contact with their creditors either when Applicant was laid-off or when Applicant’s wife resigned from her teaching position. (Tr. 71-72) Pending his wife’s return to work, Applicant is living paycheck to paycheck and he has no savings. (Tr. 65-66) He has never had any previous issues maintaining a security clearance. (Tr. 64) He has not received financial counseling. (Tr. 64-65) Going forward, Applicant is not incurring any new debts, but he is unable to make notable progress on the debts remaining at issue or to resume mortgage payments. (Tr. 67-68) He has been forgoing workplace meals to help make ends meet. (Tr. 67)

At work, Applicant is highly regarded as a “dependable, reliable, hard-working, conscientious, honest, and courteous” employee. (Ex. A) He is known to be flexible and dedicated to his work, where he is noted as an asset. (Ex. A) He has an impressive list of references, both supervisory and peer. (Ex. B)

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 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.

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

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 engaging in illegal acts to generate funds.

Here, the Government introduced credible evidence showing Applicant has a history of financial distress, starting with a 1998 bankruptcy. He recently had had delinquent debts and an adverse judgment. By his own admission, Applicant lives paycheck to paycheck. He is clearly unable, not unwilling, to satisfy the debts at issue. Such facts are sufficient to raise two of the financial considerations disqualifying conditions:

AG ¶ 19(a): inability or unwillingness to satisfy debts, and

AG ¶ 19(c): a history of not meeting financial obligations.

Five conditions could mitigate the finance-related security concerns in this case:

AG ¶ 20(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;

AG ¶ 20(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;

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;

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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 has faced financial difficulty intermittently for some time. He filed for bankruptcy protection in 1998. His finances were strained when he helped support two households during his 2008 to 2010 separation, then during his period of unemployment from December 2010 to September 2011. They were again strained after his wife was given the limited option in June 2012 of resigning from her teaching job or losing her teaching license, which qualified her for a teaching position. Since June 2012, Applicant and his family have lived solely on his income, which was recently reduced by \$3,000. Such facts establish that much of Applicant's current financial distress is the result of conditions outside of his control.

Applicant provided no documentation corroborating his testimony regarding progress on some of his debts or documenting contact he or his wife has made with his creditor to keep them apprised of their financial situation. Without such documentation, it cannot be concluded that Applicant behaved reasonably in his times of uncontrollable distress. He has not received financial counseling. He has not provided any documentation showing progress on any of the debts at issue. Further, he has not set forth a reasonable plan for addressing his debts in the near future – not because he is

unwilling to address his debts, but because he is simply not financially able to at this time. While Applicant's testimony was highly credible, this process demands documentary evidence to corroborate progress claimed. Given these considerations, I find that none of the mitigating conditions available apply.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Applicant's answers to Section 26 of his October 2011 SCA indicated that he had not, in the preceding seven years, had a judgment entered against him; had bills or debts turned over to a collection agency; had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed; or been over 120 days delinquent on any debt. If his denial was made in an attempt to deliberately falsify or mislead, the following disqualifying condition under AG ¶ 16 would be relevant:

AG ¶ 16 (a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

For AG ¶¶ 16(a) to apply, Applicant's omissions must be deliberate. The Government established that Applicant's answers were incorrect and that Applicant, in his response to the SOR, acknowledged that his answers were incorrect. In his responses at the hearing, Applicant credibly demonstrated that he answers questions as directly as he can. He concedes that English is his second language and that he has some linguistic difficulty with technical terms such as "judgment," and with the concept of state property tax on a certain types of vehicles. Applicant attributed his incorrect answers to mistake. He adamantly testified that he did not intend to falsify. His explanation is highly plausible given the circumstances, especially in the absence of additional evidence that he intended to lie.

Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's intent or state of mind at the time the omission occurred. (See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 1, 2004)(explaining ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)). In light of his

testimony and demeanor at the hearing, I conclude that Applicant did not intend to falsify his SCA Section 26 answers. AG ¶¶16(a) is not established and Personal Conduct concerns are mitigated.

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

Applicant is a 52-year-old technician earning approximately \$62,000 to \$65,000 a year, after a recent across-the-board reduction in pay of \$3,000. He has an Associate's Degree in electronics. Married for nearly 20 years, Applicant and his wife have a teenage daughter.

Applicant first had financial difficulties in the 1990s, when he filed for bankruptcy protection under Chapter 7. A marital separation, a significant period of unemployment, and his wife's loss of her job have led to significant financial distress. At issue is over \$150,000 in debt, based on delinquent collection, charged-off, and past-due accounts, as well as an adverse judgment. Applicant testified that he or his wife have maintained contact with some of their creditors regarding their financial situation. He also testified that he has disputed some of the cited debts and paid others. His proffered documentary evidence, however, fails to corroborate these assertions. Although Applicant is highly credible, this process demands more substantial evidence than oral testimony as to progress made.

It is clear that Applicant is unable, not unwilling, to address his debts presently. Unfortunately, he is currently living paycheck to paycheck, foregoing workplace meals to help meet his financial needs. It seems clear that this situation will continue until his wife finds work and starts contributing to the family coffers as she has in the past. While Applicant may no longer be acquiring new debt by generally living within his means, those parameters have not enabled him to resume payments on his significantly past-due mortgage. In the interim, it can be assumed that his mortgage-related debt is growing larger.

In these cases, the burden is placed on an applicant to mitigate security concerns raised in the SOR. Here, Applicant has failed to provide adequate documentation tending to mitigate the financial considerations security concerns raised. Consequently, clearance is denied.

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.m:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a-2.b:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Arthur E. Marshall, Jr.
Administrative Judge