



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



In the matter of:)
)
) ISCR Case No. 12-03193
)
Applicant for Security Clearance)

Appearances

For Government: Gregg A. Cervi, Esq., Department Counsel
For Applicant: *Pro se*

02/06/2014

Decision

ANTHONY, Joan Caton, Administrative Judge:

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

Statement of Case

On November 8, 2011, Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP). On August 1, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. DOD acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant provided a notarized answer to the SOR, along with an affidavit attesting to his good-faith completion of answers to allegations on the SOR. These documents were dated September 18, 2013. Applicant also declined a hearing and

requested that his case be determined on the written record. His case was then transmitted to the Defense Office of Hearings and Appeals (DOHA). A DOHA attorney compiled a File of Relevant Material (FORM) on December 11, 2013. The FORM contained documents identified as Items 1 through 9. By letter dated December 18, 2013, DOHA forwarded a copy of the FORM to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt.¹ Applicant received the file on December 24, 2013. His response was due on January 24, 2014. Applicant submitted a one-page commentary within the required time period. On January 29, 2014, the case was assigned to me for a decision. I marked Applicant's one-page commentary as Item A and entered it in the record without objection.

Findings of Fact

The SOR contains seven allegations of disqualifying conduct under Guideline F, Financial Considerations (SOR ¶¶ 1.a. through 1.g.). In his Answer to the SOR, Applicant admitted the allegation at SOR ¶ 1.a. He denied the allegations at SOR ¶¶ 1.b. through 1.g. Applicant's admission is entered as a finding of fact. (Item 1; Item 4.)

The facts in this case are established by the record provided by the Government and by information provided by Applicant. The record evidence includes Applicant's November 8, 2011 e-QIP; official investigation and agency records; Applicant's correspondence with DOHA and his responses to DOHA interrogatories;² Applicant's credit reports of November 23, 2011, June 24, 2013, and December 5, 2013; and Applicant's response to the FORM. (See Items 4 through 9; Item A.)

Applicant is 47 years old and, since October 2010, he has been employed as a government contractor. He earned a high school diploma in 1986. In 1985, he enlisted in the U.S. military, was awarded a security clearance, and served on active duty until 1993. From 1993 until 1997, he served sequentially in two National Guard units. He was then released from the National Guard to serve on active duty again in the military, where he served from 1997 until 2010. In May 2010, he received an honorable discharge and retired from the military. (Item 5; Item 6.)

Applicant married his wife, a citizen of Mexico, in 1997. He and his wife are the parents of one child. He is also the father of two stepchildren. Applicant's child and stepchildren are now adults. (Ex. 5.)

¹ DOHA's communication with Applicant is designated as Hearing Exhibit (HE) 1.

² Applicant was interviewed by authorized investigators from the U.S. Office of Personnel Management (OPM) on January 9, 2012 and January 30, 2012. In response to DOHA interrogatories, Applicant reviewed the investigators' reports and provided no additional information. On July 23, 2013, Applicant signed a notarized statement after reviewing the investigators' summaries of his interviews and stated that he found the reports to accurately reflect the information he provided to the authorized investigators. (Item 6.)

On his e-QIP, Applicant reported a brief episode of unemployment after his retirement from military service. He listed unemployment from June until August 2010. From August until October 2010, he was employed by a municipality; he then resigned from that position to take his current job as a federal contractor (Item 5.)

The SOR alleges that Applicant owes seven delinquent debts totaling approximately \$23,229. The SOR alleges at ¶ 1.a. that Applicant owes a creditor \$12,909 on a vehicle debt in charged-off status. Applicant told an authorized investigator that when he was unemployed in 2010, he was unable to make payments on his truck. In November 2010, the truck was repossessed. Applicant admitted the debt and stated that he had contacted the creditor in December 2011 and made arrangements to pay \$200 each month on the debt. His undated personal financial statement lists a monthly \$200 payment to the creditor. In response to DOD interrogatories,³ Applicant did not provide documentation to support a payment plan or monthly payments on the debt. (Item 1; Item 6.)

The SOR also alleges that Applicant is responsible for the following three debts in collection status: SOR ¶ 1.b. (\$300); SOR ¶ 1.c. (\$2,613); and SOR ¶ 1.f. (\$472). These three debts are listed on Applicant's credit bureau reports. Applicant denied the debts. In his responses to DOD interrogatories, he asserted that the three debts had been paid. However, he failed to provide documentation to establish payment. (Item 1; Item 6; Item 7; Item 8; Item 9.)

The SOR also alleges that Applicant is responsible for two debts in charged-off status: SOR ¶ 1.d. (\$6,239) and SOR ¶ 1.e. (\$70). In his answer to the SOR, Applicant denied both debts, which are listed on his credit bureau reports. In response to DOD interrogatories, he stated that both debts were paid. He failed to provide documentation establishing payment. However, his most recent credit bureau report, dated December 5, 2013, lists the debt alleged at SOR ¶ 1.e. as paid. (Item. 1; Item 4; Item 7; Item 8; Item 9.)

The SOR alleges at ¶ 1.g. that Applicant owes approximately \$626 on a past-due account. Applicant also denied this debt, which appears on his credit bureau report. In response to DOD interrogatories, Applicant stated that the debt had not been paid. He also indicated that he had a payment arrangement with the creditor. His personal financial statement, which is not dated, indicates that he pays the creditor \$40 each

³ DOD's financial interrogatory instructs respondents to provide documentation "verifying the current payment status of each debt." The instructions also include the following statement: "* * IMPORTANT: A written statement that you are making payments on a debt or that a debt was paid, disputed, repossessed, charged off or otherwise is not your responsibility, is NOT sufficient documentation. You must provide valid PROOF of whatever claims you are making concerning each account." The instructions also identify the following as acceptable verifying documentation: "[r]ecent statements or vouchers from creditors indicating date, account number, amount of payment and reduction of total indebtedness or remaining outstanding balance;" [and] "[c]opies of cancelled checks, and/or a bank statement reflecting creditor name, account number, and payment amount[.]" (Item 6.)

month on the debt. However, he provided no documentation to support his assertion of payment. (Item 1; Item 4; Item 6; Item 9.)

In June 2013, in response to DOHA interrogatories, Applicant filed an undated personal financial statement showing his income, fixed monthly expenses, and payments made on debts. Applicant's total net monthly income is \$3,951. His fixed monthly expenses equal \$740. Each month, he pays approximately \$1,457 in debt payments. His net monthly remainder is approximately \$1,734. Applicant reported no savings or other assets, and the record does not reflect that he has had financial credit counseling. (Item 6.)

In transmitting the FORM to Applicant, a DOHA paralegal stated: "Before the file is sent to the Administrative Judge, you have an opportunity to review the attached copy of that complete file and submit any material you wish the Administrative Judge to consider or to make any objections you may have as to the information in the file." (HE 1.)

Applicant filed a one-sentence response to the FORM. He stated: "I have reviewed the forms and have nothing to add at this time." (Item A.)

Policies

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

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, the administrative judge applies these guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all

available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion in seeking to obtain a favorable security decision.

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

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

Analysis

Guideline F, Financial Considerations

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

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

The guideline notes two conditions that could raise security concerns in this case. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns.

The record establishes that the debt alleged at SOR ¶ 1.e. has been paid. Accordingly, I find for Applicant on that debt.

However, the record also establishes that Applicant is responsible for the six additional debts alleged on the SOR. This evidence is sufficient to raise security concerns under AG ¶¶ 19(a) and 19(c).

Applicant admitted the debt at SOR ¶ 1.a. and asserted that he was making payments of \$200 each month on the debt. However, in response to DOD requests to provide documentary evidence of payment, Applicant declined. His financial statement indicates that he is also making payments on the debt alleged at SOR ¶ 1.g., but he also declined to provide documentary evidence to corroborate payment of that debt.

In his answer to the SOR, Applicant denied responsibility for six of the seven delinquent debts alleged on the SOR. All of the debts alleged on the SOR appeared on Applicant’s credit reports of 2011 and 2013. In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), DOHA’s Appeal Board explained: “It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government’s obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.” (Internal citation omitted).

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

Applicant has a history of financial delinquencies, and six of the seven delinquencies alleged on the SOR remain unresolved. Applicant suggested that his two months of unemployment in 2010 impacted his ability to meet his financial obligations. Applicant's unemployment may have been a condition beyond his control, but the facts suggest that he has not acted responsibly to resolve his financial delinquencies. Applicant has been steadily employed with his current employer since October 2010, and he reports a monthly net remainder of approximately \$1,750. It would appear that even though he was unemployed for a time approximately three and one-half years ago, he has subsequently attained sufficient financial stability to resolve his financial delinquencies.

Applicant failed to provide documentation to support his assertions that he had made good-faith efforts to pay or resolve his financial delinquencies. DOHA's Appeal Board has explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good-faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good-faith" mitigating condition].

(ISCR Case No. 06-14521 at 2 (App. Bd. Oct. 15, 2007) (quoting ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)).

The majority of Applicant's debts remain unresolved. While he deserves some credit for the resolution of the debt alleged at SOR ¶ 1.e., he failed to provide documentation to establish that he was paying or had paid his other creditors. There is no evidence that his financial situation is under control. I conclude that none of the Guideline F mitigating conditions fully applies to the facts of Applicant's case.

Whole-Person Concept

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

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the

individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

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

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is a mature adult. His financial delinquencies are significant in number and in duration. He has been aware of them since at least January of 2012, when he was interviewed by authorized OPM investigators. He appears to have a monthly net remainder that he could use to pay the delinquent debts alleged in the SOR. Applicant's inability or unwillingness to resolve his debts raises concerns about his trustworthiness, judgment, reliability, and ability to protect classified information.

Overall, the record evidence leaves me with doubts about Applicant's eligibility and suitability for a security clearance. I conclude that Applicant failed to mitigate the security concerns arising from his financial delinquencies.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a. - 1.d.:	Against Applicant
Subparagraph 1.e.:	For Applicant
Subparagraphs 1.f. - 1.g.:	Against Applicant

Conclusion

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

Joan Caton Anthony
Administrative Judge