



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



In the matter of:)
)
) ISCR Case No. 12-04270
)
)
Applicant for Security Clearance)

Appearances

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

11/26/2014

Decision

MASON, Paul J., Administrative Judge:

Applicants' claim of paying some of the listed past-due debts in January 2012 finds no support in the record. His claim of not having to pay some other delinquent accounts because they were charged off does not relieve him of responsibility for the debts. The absence of corroborated evidence to support his various claims in mitigation necessitates a finding against Applicant under the financial considerations guideline. He has mitigated the security concerns generated under the personal conduct guideline. Eligibility for access to classified information is denied.

Statement of the Case

On December 6, 2011, Applicant signed and certified an electronic questionnaire for investigations processing (e-QIP). On January 11, 2012, Applicant was interviewed by an investigator from the Office of Personnel Management (OPM). The interview summary appears in Item 4 (interrogatory answers), notarized by Applicant on September 13, 2013. Applicant agreed with the accuracy of the summary.

On April 25, 2014, the Department of Defense (DOD) issued the Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F) and personal conduct (Guideline E). 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) implemented by DOD on September 1, 2006.

Applicant furnished his notarized answer to the SOR on May 29, 2014. He chose to have his case decided on the administrative record. A copy of the Government's File of Relevant Material (FORM), the Government's evidence in support of the allegations of the SOR, was sent to Applicant on August 22, 2014.¹ In an attachment to the FORM, Applicant was advised he could object to the information in the FORM or submit additional information in explanation, mitigation, or extenuation. He received the FORM on August 27, 2014. His response was due by September 26, 2014. No response was received by DOHA. The case was assigned to me on November 4, 2014.

Findings of Fact

The SOR is based on three government credit reports, Applicant's interview summary, and his September 13, 2013 credit report. The SOR lists nine delinquent accounts totaling \$51,910. Applicant denied some of the accounts and disputed others, claiming that he paid a few of the accounts in January 2012, around the time he applied for a security clearance. His position on a few of the other accounts is that he was no longer responsible because the account had been "charged off."

Applicant is 50 years old. He has been married to his second wife since November 2005. He has two stepdaughters, who are 29 and 27 years old. He also has two daughters, 26 and 24 years old, and a son 22 years old. He was granted his first security clearance in September 1982 while serving in the United States Army (USA). After serving an additional four years in the National Guard, Applicant received an honorable discharge in February 1992. He has been employed as a systems administrator since December 2011. From April 2010 to December 2011, Applicant worked as a help desk technician.

Applicant explained that his financial problems occurred after he moved to another state in October 2008, to accept a job that did not materialize. He was unemployed for four months between October 2008 and February 2009. He worked the next three months as a help desk technician; Applicant was fired in May 2009 for poor job performance because he could not meet speed standards for incoming calls. His unemployment for the next nine months from May 2009 to April 2010, combined with the real estate market crash, were major reasons why his truck was repossessed and

¹ On the seventh page of the FORM, Department Counsel cites criminal conduct (Guideline J) as the second paragraph of the SOR. That reference is incorrect. The correct guideline is personal conduct (Guideline E).

his home foreclosed. During this time, Applicant was injured and received medical attention, but had no insurance. He was not eligible for Medicaid because a former employer officially declared that he had voluntarily left a job. Even with the former employer's decision, an employment agency still granted him unemployment benefits. The listed medical bills have not been paid because he did not have insurance for a period in 2009 or 2010. Applicant stated he would pay the delinquent medical bills with his next tax refund. He was paying his other bills in a timely fashion. The credit reports show that he paid some unlisted medical bills after they were transferred for collection.

The delinquent accounts will be discussed in the order they appear in the SOR:

SOR 1.a is a state tax lien for \$5,227. The tax lien was filed against Applicant in January 2011. He denied that he owes the lien, claiming that he paid the lien off with his 2012 federal tax refund. The record contains no documentation to support Applicant's claim. **Unresolved.**

SOR 1.b is a medical account for \$740 which became delinquent in August 2009 and was transferred to a collection agency. Applicant admitted the debt. In his answer to the SOR, he provided sequential copies of two money orders. (AE K) Both undated money orders contain figures that are not recognizable or legible. Applicant's credit report, dated August 13, 2013, shows the account is unpaid. **Unresolved.**

SOR 1.c is a mortgage for \$37,869. The account became delinquent in June 2010 and was charged off. Applicant denied the debt and furnished ten legal documents, including warranty deeds, a quit claim deed, and a motion for relief from the mortgage, in an effort to show the mortgage was no longer his responsibility. The government credit reports and Applicant's September 2013 credit report show the delinquent mortgage remains his responsibility. **Unresolved.**

SOR 1.d is a medical account for \$1,825 which became delinquent in June 2010 and was transferred to a collection agency. Applicant admitted the debt, and referred to the two money orders (AE K), which are undated and illegible, as representing payments under a payment plan that does not appear in the record. **Unresolved.**

SOR 1.e is a medical account for \$293 which became delinquent in December 2011. Applicant denied this debt claiming that he paid it on January 6, 2012, with his bank card. He indicated he provided this information in his September 2013 interrogatory answers. In his September 2013 interrogatory answers, he indicated, "this [SOR 1.e] has not been paid yet due to insufficient amount of fund[s] to pay it yet - hoping to pay off with my next tax return." **Unresolved.**

SOR 1.f is an auto installment loan for \$5,368. The account became delinquent in April 2009. Applicant admitted this debt, but indicated, "the account was charged off - payment due 0.00." As with SOR 1.c, the charged-off debt status does not relieve Applicant's responsibility for the debt. **Unresolved.**

SOR 1.g is an unknown loan for \$137 which became delinquent in February 2011. Applicant denied the account claiming that he paid the account in January 2012, when he was applying for a security clearance. He supplied no documentation to support his claim. **Unresolved.**

SOR 1.h is a cellular phone bill for \$116 which became delinquent in April 2011. Applicant denied responsibility for the debt because he paid it in January 2012, when he was applying for a security clearance. He produced no documentation to verify that he paid the bill. **Unresolved.**

SOR 1.i is a cellular phone bill for \$335 which became delinquent in October 2011. He denied the account because he indicated he paid it in January 2012, when he was applying for a security clearance. The account no longer appears on his credit report. He never had any problems with the account. The delinquent bill appears on the government's August 2011 credit report. **Unresolved.**

In his September 2013 financial interrogatory answers, Applicant prepared a personal financial statement (PFS) dated August 27, 2013. His net monthly salary is \$2,814 a month. He calculated his total monthly expenses (\$2,215 [rent , groceries, car expense, etc.] plus \$459 [credit card debt and car payment]) at \$2,674 per month, with a monthly remainder of \$140. The PFS reflects that Applicant's wife is unemployed. His September 2013 credit report indicated that several of his accounts were current and several listed accounts were in a charged-off or a collection status, two categories of delinquent debts that are the responsibility of the debtor. Applicant has never had financial counseling.

SOR 2.a. In his answer to the SOR, Applicant admitted that he was charged with assault by his daughter's former boyfriend (victim) after threatening to shoot out the boyfriend's car light with a BB gun. Applicant indicated the former boyfriend had beaten his daughter several times and had been stalking her, motivating her to move back into Applicant's home. One night in March 2013, the boyfriend appeared at Applicant's house playing his car stereo very loud. At Applicant's urging, his wife called the police and made a complaint, believing that the police would stop and arrest the victim after discovering he had multiple warrants for his arrest. The police came and prepared a police report. They left and returned with a complaint from the victim accusing Applicant of shooting the victim with the BB gun. Applicant claims he did not shoot the BB gun. His explanation of events is essentially the same in his September 2013 interrogatory answers. The charge was *nolle prosequi* when the victim did not appear in court.

Applicant provided no character evidence from his employer regarding his job performance, honesty, and trustworthiness. He provided no character evidence from individuals in his community about his trustworthiness, reliability or his job performance.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the guidelines in the AG. Each guideline lists potentially disqualifying conditions and mitigating conditions that are useful in evaluating an applicant's eligibility for access to classified information.

The administrative judge's ultimate goal is to reach a fair and impartial decision that is based on sound and prudent judgment. The decision should also include a careful, thorough evaluation of a number of variables known as the "whole-person concept" that brings together all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. 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 the potential, rather than actual, risk of compromise of classified information.

Under Directive ¶ E3.I.14., the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.I.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. . . ." Because this case is decided on the administrative record, credibility assessments of Applicant are limited to his statements and interview summaries. The applicant bears the ultimate burden of persuasion in demonstrating that he warrants a favorable security clearance decision.

Analysis

Financial Considerations

The security concern for financial considerations is set forth 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

The two pertinent disqualifying conditions that are potentially applicable: AG ¶ 19(a) (*inability or unwillingness to satisfy debts*); and AG ¶ 19(c) (*a history of not meeting financial obligations*).

Applicant began incurring delinquent debt in April 2009, when his auto installment loan became delinquent. By the time the SOR was published in April 2014, Applicant accumulated nine delinquent accounts totaling \$51,910. The five-year history of not meeting financial obligations falls within the purview of §§ 19(a) and 19(c).

Four mitigating conditions are potentially applicable: 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 reliability, trustworthiness, and good judgment*); AG § 20(b) (*the conditions that resulted in the financial problem were largely beyond the person's control 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*); and AG § 20(d) (*a good-faith effort to repay overdue creditors or otherwise resolve debts*).

Applicant's financial issues began more than five years ago when the auto installment loan became delinquent. Eight additional accounts have become delinquent since 2014, including a mortgage that has been delinquent for almost four years, and a tax lien that has been delinquent for more than three years. The listed accounts, which are still unresolved, continue to raise doubt about Applicant's trustworthiness and judgment. AG § 20(a) is inapplicable.

AG § 20(b) applies when the conditions that resulted in the financial problem were beyond the person's control, and the individual acted responsibly under the circumstances. Applicant's financial difficulties surfaced during his unemployment in late 2008 to February 2009, and from May 2009 to April 2010. A downturn in the real estate market contributed to his financial stress. However, according to his e-QIP, Applicant has been steadily employed since April 2010. While he made several claims that he paid a few of the listed debts and eliminated his tax lien with his 2012 tax return, those claims have not been documented and have no probative weight. Given his consistent employment since April 2010, Applicant has not demonstrated that he acted responsibly in addressing the delinquent debts. AG § 20(b) applies on a limited basis because of Applicant's periods of unemployment.

Applicant told the OPM investigator that he had never had financial counseling. With no substantiating documents, e.g., bank ledgers, legible money order receipts, state tax agency correspondence, to show that the listed debts were paid, Applicant has failed to show that he is making a good-faith effort to bring his delinquent accounts under control. AG §§ 20(c) and 20(d) are not applicable.

Personal Conduct

The security concern for personal conduct is set forth in AG § 15:

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.

AG ¶ 16 contains one disqualifying condition that are relevant to Applicant's conduct: AG ¶ 16(c) (*credible adverse information in several adjudicative areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard classified information*).

Applicant's boyfriend had no right to beat and stalk Applicant's daughter. He had no right to create a noise annoyance for Applicant's family. However, Applicant had no right to simply take the law into his own hands by discharging the BB gun and vandalizing or attempting to vandalize the victim's property. AG ¶¶ 16(c) and (d) apply.

There are two mitigating conditions under AG ¶ 17 that are potentially applicable to the circumstances in this case. Those conditions are: AG ¶ 17(c) (*the offense was so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment*); and AG ¶ 17(d) (*the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate stressors, circumstances, or factors that caused untrustworthy, unreliable or other inappropriate behavior, and such behavior is unlikely to recur*).

In March 2013, Applicant exercised poor judgment by discharging the BB gun. While the offense was not minor, the behavior was isolated in nature. The charges were *nolle prosequi*. Applicant's credible explanation of his poor conduct convinces me that he comprehends that his behavior was wrong and he will not repeat this type of conduct in the future. AG ¶¶ 17(c) and (d) apply.

Whole-Person Concept

I have examined the evidence under the disqualifying and mitigating conditions of the financial considerations guideline. I have also weighed the circumstances within the context of nine variables of the whole-person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors listed in 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 the participation was 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 final security clearance decision must be an overall commonsense judgment based upon careful consideration of the specific guidelines, each of which is to be evaluated in the context of the whole person. (AG ¶ 2(c))

Applicant is 50 years old and has been married since November 2005. He has five grown children and stepchildren. He was honorably discharged after six years of active duty in the USA and four years of service in the National Guard. He has been working as a systems administrator for his current employer since December 2011.

Under the Directive, the favorable evidence cannot be viewed by itself, but with all the other evidence in the record. Applicant has accumulated nine delinquent debts totaling almost \$52,000. Although he claims he paid his state tax lien with his 2012 federal tax refund, he provided no proof. The fact that two other debts have been charged off by two other creditors does not mean that Applicant is relieved from responsibility for the accounts. Applicant has been on notice since December 2011 that his financial debts were a security concern. At his January 2012 OPM interview, he initiated his claims of having paid some accounts and not having to pay others because they were charged off. In April 2014, he received the SOR listing the delinquent accounts. The documentation that Applicant supplied with his SOR answer does not show that any of the listed accounts have been satisfied or settled. Having weighed and balanced the evidence for and against Applicant's security clearance eligibility in the context of the whole-person concept, he has failed to overcome the security concerns engendered by the financial considerations guideline. Conversely, he has mitigated the personal conduct security concerns. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

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.i:	Against Applicant
Paragraph 2 (Personal Conduct):	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

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

Paul J. Mason
Administrative Judge