



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



In the matter of:

ISCR Case No. 12-11993

Applicant for Security Clearance

Appearances

For Government: Jeff Nagel, Esq., Department Counsel

For Applicant: Charles Yengst, Personal Representative

August 10, 2016

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant failed to mitigate his long history of financial difficulties under the guideline for Financial Considerations. His request for a security clearance is denied.

Statement of the Case

On August 23, 2015, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective September 1, 2006.

Applicant answered the SOR on February 18, 2016 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on March 28, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 1, 2016, scheduling the hearing for May 9, 2016. The hearing was convened as

scheduled. The Government offered Exhibits (GE) 1 through 8, which were admitted without objection. Applicant offered Exhibits (AE) A through L, which were admitted without objection. Applicant testified. DOHA received the transcript of the hearing (Tr.) on May 19, 2016. The record was left open for Applicant to submit additional exhibits. On July 6, 2016, Applicant presented an additional 101-page exhibit marked AE M. Department Counsel had no objections to AE M and it was admitted. The record then closed.

Findings of Fact

Applicant is a 58-year-old employee of a defense contractor. He has worked for his employer for 15 years. He held a security clearance, without incident, since 2002. He is married to his second wife and has three children, two step-children, and 13 grandchildren. (GE 1; AE M; Tr. 45, 58.)

As stated in the SOR, Applicant was alleged to be indebted to the Federal government for a Federal tax lien entered against him in 2011, in the approximate amount of \$42,186. Additionally the SOR alleged that he had eight other delinquent debts totaling \$29,079. In his Answer, Applicant admitted SOR ¶¶ 1.b and 1.d. He denied SOR ¶¶ 1.a, 1.c, 1.e, 1.f, 1.g, 1.h, and 1.i. His debts are identified in the credit reports entered into evidence. (Answer; GE 5; GE 6; GE 7; GE 8.) After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant was indebted to a utility company in the amount of \$142, as alleged in SOR ¶ 1.a. This debt became delinquent in approximately 2014. (GE 6, at 1.) Applicant paid this delinquent debt in full on April 15, 2016. (AE C; AE M, at 5-14.) This debt is resolved.

Applicant is indebted on a tax lien entered against him in 2011, in the amount of \$42,186, as alleged in SOR ¶ 1.b. Applicant failed to file and pay his 2006 through 2009 Federal income taxes in a timely manner. (Tr. 46-47.) Records show he also failed to pay his Federal income taxes for 2011 and 2012. (AE B; AE K; AE M, at 17.) In August 2013 Applicant hired a certified public accountant (CPA) to help him file his back taxes and negotiate a payment plan. According to his CPA, Applicant has filed his outstanding returns and is current with his income tax filings. (AE B, at 2.) Applicant has had an installment agreement with the IRS since 2013. He pays \$615 on the 20th of each month, in accordance with that agreement. Applicant provided copies of his bank statements that show he successfully made monthly payments of \$615 from January through May 2016. (AE M, at 29-55.) His balance owed has been reduced to approximately \$ 12,532 (AE B; AE M, at 23.) Applicant is resolving this debt.

Applicant was indebted on a judgment against him for a delinquent credit card account in the amount of \$6,416, as alleged in SOR ¶ 1.c. This debt had been delinquent since at least 2009. (GE 5.) Applicant testified that he called the company and the creditor was unable to find a record of this debt. (AE L; Tr. 38-39.) However, in his post-hearing documentation, Applicant provided a letter from this creditor showing

the debt was paid, and an acknowledgement of satisfaction of judgment showing that this debt was satisfied in full as of June 10, 2016. (AE M, at 58-64.) This debt is resolved.

Applicant is indebted on a delinquent account in the amount of \$16,866, as alleged in SOR ¶ 1.d. This debt has been delinquent since at least 2012. (GE 5.) Applicant testified that he spoke with a representative of this company a week prior to the hearing and “arranged an installment plan of \$50 per month”. (AE L; Tr. 39.) However, his post-hearing documentation indicated he arranged to pay a “\$25 monthly installment payment”. (AE M at 65.) He provided a copy of his bank statement showing he made \$25 payments to this creditor on June 2, 2016, and June 15, 2016. (AE M at 66-67.)

Applicant is indebted on a delinquent account in the amount of \$598, as alleged in SOR ¶ 1.e. This debt has been delinquent since at least 2009. (GE 5.) Applicant testified that at the time of the hearing, he had not yet contacted this creditor to arrange payments. (AE L; Tr. 39-40.) After the hearing, Applicant submitted a statement that he had arranged to make monthly payments of \$50 to this creditor. He presented a copy of his bank statement and documents from the creditor showing that he made payments of \$50 on both May 13, 2016, and June 13, 2016. (AE M, at 69-83.)

Applicant is indebted on a delinquent account in the amount of \$702, as alleged in SOR ¶ 1.f. This debt has been delinquent since at least 2012. (GE 5.) Applicant testified that the week prior to the hearing he had arranged to make monthly payments of \$50 to this creditor on the 13th of each month. (AE L; Tr. 40.) Applicant presented documentation that he made a payment of \$25 under this agreement on June 27, 2016. (AE M, at 85-86.) It is unclear why his payment was only for \$25, as opposed to the \$50 he testified he would pay.

Applicant is indebted on a delinquent account in the amount of \$1,708, as alleged in SOR ¶ 1.g. This debt has been delinquent since at least 2012. (GE 5.) Applicant testified that he “made the arrangement to pay \$50 monthly, but that won’t be until the 27th of this month.” (AE L; Tr. 41.) His post-hearing documentation pertaining to this debt reflects he “arranged \$25 monthly installment payments” on the last day of each month. (AE M at 84.) Applicant presented documentation showing he submitted one \$25 cashier’s check to this creditor on June 27, 2016. (AE M, at 85.)

Applicant is indebted on a delinquent account in the amount of \$1,479, as alleged in SOR ¶ 1.h. This debt has been delinquent since at least 2012. (GE 5.) Applicant made a payment of \$100 to this creditor on June 10, 2016. He intends to make monthly payments of \$50 to this creditor in accordance with their written payment agreement. (AE M, at 86-90.)

Applicant is indebted on a delinquent account in the amount of \$1,168, as alleged in SOR ¶ 1.i. This debt has been delinquent since at least 2012. (GE 5.) Applicant testified that he had an arrangement to pay this creditor \$25.22 each month.

He made payments on May 16, 2016, and June 13, 2016, under this agreement. (AE M, at 99-101.)

Applicant attributed his delinquent debts to a number of factors, including a costly custody battle with his ex-wife and under employment in 2012. (AE A; AE F; AE G; AE M, at 1-2; Tr. 30-31, 34-35.) However, records show that Applicant has an extended history of financial delinquencies. For instance, in a signed statement Applicant made to an agent of the Defense Security Service in 2002, he discussed several accounts that were delinquent at that time. (GE 2.) In 2007, Applicant lost a home to foreclosure. (GE 3.) He was subject to a garnishment for unpaid state income taxes in 2010 in the amount of \$8,875. (GE 4.) Although these debts were not alleged in the SOR as facts raising a disqualifying condition, they are relevant concerning potentially mitigating conditions and the whole-person analysis.

Applicant testified that he has no savings, but that he is not creating additional debt. He does not have credit cards. He intends to utilize credit counseling services offered by his employer. (Tr. 44, 52-55.) He recently received a salary increase. (AE H.) Additionally, he supplements his income by teaching martial arts. He is active as a volunteer in his community. (AE M, at 1.)

As proof of payment, Applicant entered several monthly bank statements from two different checking accounts into evidence. While they establish some payments to his creditors, they also provide insight into Applicant's financial status. Applicant's bank statement from December 17, 2015, through January 20, 2016, reflects a negative \$471.63 beginning balance and a negative \$21.94 ending balance, while the second account has a beginning balance of \$449.69 and an ending balance of \$39.14. (AE M, at 25.) Applicant's bank statement from February 18, 2016, through March 16, 2016, reflects ending balances of \$14.23 and \$87.23. (AE M, at 31.) His statement from March 17, 2016, to April 18, 2016, reflects one account had an ending balance of \$4.65, while the other account had an ending balance of \$747.25. (AE M, at 8, 37.) His ending balances were \$0.51 and \$490.31 for the period April 19, 2016, through May 17, 2016. (AE M, at 44.) From May 18, 2016, through June 16, 2016, his ending balances were \$35.15 and \$505.59. (AE M, at 50.) These same documents show a history of fees charged to Applicant for insufficient funds in his accounts. For instance, Applicant incurred fees (totaling \$102) three times between May 18, 2016, through June 16, 2016. (AE M, at 51-52.)

Applicant is well respected by those that know him. He is known by his friends and colleagues to be trustworthy and reliable. His supervisor considers him "an honest, dedicated and responsible man" and praises Applicant's work performance. Applicant's work performance review reflects he is a "key player" and "exceeded all expectations." (AE I; AE J.)

Policies

When evaluating an applicant's suitability for a security clearance, the 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 to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing 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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable clearance 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 EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18, as follows:

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

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

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

Applicant's alleged delinquencies began in 2007, when he failed to pay his 2006 Federal income taxes, which eventually culminated in the 2011 tax lien against him. From 2006 to 2013, he did little to address his numerous delinquencies. In 2013 he hired a CPA to assist him with his Federal tax debt and he began making payments on that debt. However, he failed to contact the creditors on any of his other eight debts, totaling \$29,079, until the week prior to the hearing. The evidence raises security concerns under both of these conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

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

(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's financial problems are ongoing. Of the nine SOR allegations, only two of the debts are fully resolved (§§ 1.a and 1.c). Applicant has a documented history of making his monthly IRS payments (§1.b). However, he has only recently begun to address the other six SOR-listed debts. Given his lack of savings and low monthly account balances, he has a long way to go to demonstrate that future financial problems are unlikely. Mitigation under AG § 20(a) has not been established.

Applicant blamed his financial problems on underemployment in 2012, and his costly custody battle. These may have been circumstances beyond his control. However, he failed to establish that he has acted responsibly under those circumstances, and has not demonstrated that he addressed his debts in a timely manner. Mitigation under AG § 20(b) has not been fully established.

Applicant provided evidence that he has had assistance from a CPA. He also intends to complete financial counseling offered by his employer. However, there is no documentation supporting completion of any formal financial counseling. Further, there are no clear indications that his financial problems are being resolved or are under control. His recent efforts to make payments on his remaining debts do not establish a good-faith effort to repay overdue creditors because: the payments are minor; they do not appear sustainable given the record of funds available in his accounts; and they appear to be a last ditch effort to retain his security clearance, as opposed to a good-faith desire to repay his obligations after at least four years of remaining in a delinquent status. Mitigation under AG §§ 20(c) and 20(d) has not been established.

AG § 20(e) requires Applicant to provide documented proof to substantiate the basis of the dispute or provide evidence of actions to resolve the issue. Applicant has not provided evidence of any formal dispute or a basis for one. Mitigation under AG § 20(e) has not been established.

Whole-Person Concept

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

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

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

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

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant is an honest, hard-working employee. He is an asset to his workplace, his family, and his community. Despite his good reputation, his financial difficulties are significant and have continued over an extended period of time. He appears to be starting on a path to rectify his delinquencies. He has made small payments to all of his remaining creditors. However, he regularly overdraws his checking account and did not present a budget showing how he will be able to afford all of the payments he has arranged. If he continues to slowly resolve these delinquencies and establishes a documented track record of payments, he may be eligible for a security clearance in the future. However, the record evidence does not support granting access at this time.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the Financial Considerations security concerns.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	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.

Jennifer I. Goldstein
Administrative Judge