



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



In the matter of:)	
)	
Redacted)	ISCR Case No. 14-03745
)	
Applicant for Security Clearance)	

Appearances

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

02/23/2017

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

As of late June 2016, Applicant had paid \$21,102 under a Chapter 13 bankruptcy plan confirmed in early February 2015. A \$4,863 medical debt in collection had been cancelled by the creditor and reported by Applicant as income on his 2013 federal income tax return. While his bankruptcy will not be completed until mid-January 2020, his consistent payments provide adequate assurance that he will continue with his plan, provided he has the income. Clearance is granted.

Statement of the Case

On November 30, 2015, 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 security clearance eligibility for him. The DOD CAF took the action under Executive Order (EO) 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 for*

Determining Eligibility for Access to Classified Information (AG) effective within the DOD on September 1, 2006.

On December 31, 2015, Applicant answered the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On April 22, 2016, the case was assigned to a DOHA administrative judge 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 May 23, 2016, the case was transferred to me because of my jurisdictional responsibilities. On May 31, 2016, I scheduled a hearing for July 11, 2016.

I convened the hearing as scheduled. Six Government exhibits (GEs 1-6) and two Applicant exhibits (AEs A-B) were admitted into evidence without objection, and Applicant testified, as reflected in a transcript (Tr.) received on July 15, 2016. I held the record open for two weeks after the hearing for Applicant to supplement the record. On July 22, 2016, Applicant submitted by electronic mail two documents (AEs C-D) that I was unable to print. At my request, Applicant mailed copies on July 29, 2016. On August 2, 2016, I gave Department Counsel a deadline of August 12, 2016, for any comments. The deadline passed without any objection from the Government. AEs C and D were admitted into the record.

Findings of Fact

The SOR alleges that, as of November 30, 2015, Applicant had a Chapter 13 bankruptcy case pending (SOR ¶ 1.a), and he owed a medical collection debt of \$4,863 (SOR ¶ 1.b). In his response to the SOR, Applicant admitted the bankruptcy case filed in July 2014 to help him and his spouse satisfy their outstanding debt. He indicated that they were current on all payments under a confirmed plan. Applicant also admitted the medical collection debt, but added that he was “currently setting up a payment plan with them.” After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 40-year-old high school graduate, who started working for his present employer in March 2003 as a painter. He had served honorably in the National Guard from approximately September 1994 to October 2000. He has held a DOD secret clearance for his defense contractor duties since March 2004. (GE 1; Tr. 24-25.)

Applicant and his spouse married in July 2002. They have two sons, now ages 7 and 11. (GE 1.) In May 2004, he moved the family to another state for a three-year road job with his current employer. It did not work out as expected in that he was laid off in November 2006 because of a lack of work. They moved back to their previous locale. In January 2007, Applicant was recalled to work by the defense contractor. (GEs 1, 6; Tr. 24-26.)

After years of renting, Applicant and his spouse bought a home in September 2010.¹ (GE 1.) They obtained a mortgage loan of \$219,000 solely on his income as she was unemployed. (GE 4; Tr. 24, 28.) In June 2011, Applicant transferred to a new job with his employer to avoid being laid off. He took a pay cut from \$27 to \$19 an hour, but he kept his health insurance for his family. (GEs 1, 2, 6; Tr. 20-29.) His spouse was unemployed until 2013, when she began working for a landscaping company. (Tr. 20-21, 30.) It took two years for Applicant to regain his previous wage. (Tr. 20, 27.)

On December 18, 2013, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86) to renew his security clearance eligibility. In response to financial record inquiries concerning delinquency involving routine accounts, Applicant listed only one debt: a credit charge of \$5,000 in collection for dental services that he indicated he never received (SOR ¶ 1.b). (GE 1.) At his hearing, he elaborated that the dental provider ran a check of his credit and prequalified him for \$5,000 in planned dental work that he chose not to have done. He claimed to not have known that he had been charged for the services until the DOD advised him that the debt was on his credit report. (Tr. 31-32.)

As of January 15, 2014, Applicant and his spouse's joint mortgage loan was \$46,085 past due on a \$246,146 balance with no payments since June 2011. (GE 4.) Applicant reportedly owed a \$218 medical collection debt from June 2012. The dental debt from 2011 (SOR ¶ 1.b) was still on his credit record with a \$4,863 balance as of November 2013. (GEs 2, 4.) Other evidence shows that the account was charged off for \$5,858 (GE 2); that the creditor had cancelled debt of \$4,006 on September 25, 2013 (AE B); and that Applicant and his spouse had reported the amount cancelled as income on their 2013 federal income tax return.² (AE D.) Applicant never disputed the charge with the creditor. (Tr. 54-55.)

On February 5, 2014, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). He explained that he was behind on his mortgage loan due to repercussions from having been laid off from November 2006 to January 2007, although the evidence shows that he and his spouse did not buy their home until 2010. He was unable to provide any specific information about the mortgage loan because his spouse handles the bills. Concerning the dental debt previously disclosed, Applicant explained that he consulted a dentist in September 2011, and that he was charged \$5,000 for dental services that he chose not to have done. He could not provide the current status of the debt, again because his spouse handles their finances, but he did not believe the debt had been resolved. Applicant indicated that he was able to pay his

¹ Applicant was still living in the marital residence as of his hearing, but he and his spouse were in the process of a marital separation, and he indicated that he would be moving soon, likely into his parents' home. (Tr. 41, 45.) He expected that he would not be required to pay rent. (Tr. 45.) On August 2, 2016, he confirmed that he had a new address, which is the same address listed for his parents on his security clearance application.

² The debt was still on Applicant's credit report as of March 2016 (GE 2), but the information was from 2013. The Government stipulated at the hearing that the debt in SOR ¶ 1.b was the same account that was cancelled by the creditor in 2013. (Tr. 19.)

current bills in part because he was working third shift and his spouse was working two jobs. (GE 6.)

On July 31, 2014, Applicant and his spouse filed a joint bankruptcy petition under Chapter 13 to save their home from foreclosure. (GE 5; Tr. 22-23.) They had completed the credit counseling required for filing. On August 3, 2014, they filed a Chapter 13 wage-earner's plan. They made five payments of \$1,147 between September 3, 2014, and January 16, 2015. On January 29, 2015, they filed an amended plan, which was confirmed on February 3, 2015, to address their delinquent mortgage. (GE 5.) Applicant testified that their mortgage arrearage is the only debt included in the bankruptcy. (Tr. 22, 40.) Neither their bankruptcy petition nor their original or amended plans were made available for review. However, court docket and accounting information for the bankruptcy show that under the amended plan, Applicant and his spouse are required to pay \$216 per week for 60 months through payroll deduction from Applicant's pay. (GE 5; AE C; Tr. 43.) The bankruptcy trustee's record of accounting shows that, as of June 28, 2016, they had paid \$21,103 of the \$61,136 to be paid into the bankruptcy by January 18, 2020.³ Applicant missed four weeks of payments after he broke his leg in a dirt bike accident in early July 2015 and was out of work on short-term disability. He and his spouse paid \$865 on August 10, 2015, to bring their payments current. (AE A; Tr. 36-37.) While on short-term disability through October 2015, Applicant was paid 40% of his salary. (Tr. 37.) His spouse was fully employed during that time. (Tr. 38.)

In approximately May 2016, Applicant and his spouse removed him from the mortgage.⁴ He and his spouse were in the process of a marital separation, although neither he nor his spouse had hired a divorce attorney. They had a separation agreement under which he agreed to pay child support at \$150 a week, to keep their sons on his health insurance, and to cover half of the cost of his sons' activities. Applicant's spouse intends to keep the house and take responsibility for the costs associated with the home, including the monthly mortgage payments. (Tr. 41-43, 56.) However, the bankruptcy payments would continue to be deducted from Applicant's pay. (Tr. 41-43.) As of his hearing in July 2016, Applicant had yet to inform the bankruptcy court about his and his spouse's impending marital separation. (Tr. 50.)

As of July 2016, Applicant's hourly wage was \$31 (AE C), after a recent increase of \$2 an hour because he had become nuclear qualified. (Tr. 38.) His take-home pay was \$531 per week. (AE C.) He did not have any credit cards. He had opened a new bank account from which he plans to pay his child support by check. He had \$800 in that account as of his hearing. (Tr. 44-47.) He had \$46,000 in a 401(k) account through his employer. He is repaying two loans from his 401(k). (AE C.) He obtained a \$5,000 loan to

³ There is no evidence that Applicant or his spouse owed substantial credit card debt. (GE 2; Tr. 40.)

⁴ The mortgage loan delinquency was not on Applicant's Equifax credit reports of February 2015 (GE 3) and March 2016 (GE 2), well before he claims that he was removed from the loan. However, only Trans Union was reporting the mortgage on his credit as of January 2014 (GE 4), which could explain why it is not on the Equifax reports.

file for bankruptcy. He obtained his second loan for \$2,000 to cover household expenses when he was on short-term disability in 2015. (Tr. 47-52.)

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 EO 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 concerns about financial considerations are 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.

The evidence establishes that Applicant and his now estranged spouse filed for a Chapter 13 bankruptcy in July 2014 to save their home from foreclosure. As of January 2014, their mortgage loan was \$46,085 past due with no payments since June 2011. The SOR alleges the bankruptcy, which is a remedial action, rather than the mortgage default. However, Applicant would not have filed for bankruptcy but for his mortgage delinquency.

Concerning the credit charge in SOR ¶ 1.b, available credit reports show that a credit account was opened in March 2011. As of November 2013, the account was reportedly \$457 past due on a balance of \$4,863 after the account had been charged off for \$5,858. The Appeal Board has indicated that adverse information from a credit report can normally meet the substantial evidence standard for the Government's burden of alleging delinquent debt. See ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015). Applicant has repeatedly contended that he did not proceed with the planned dental services that gave rise to the debt, although he never disputed the debt with the creditor. The evidence shows that the creditor cancelled \$4,006 of debt in September 2013, and Applicant and his spouse reported the \$4,006 in cancelled debt on their income tax return for tax year 2013. Applicant discrepantly indicated in response to the SOR that he was "currently setting up a payment plan" with the creditor. While he may not have recalled that he reported the cancelled debt as income on his income tax return in 2013, he did not deny the debt's legitimacy when he answered the SOR. The circumstances fall considerably short of disproving the legitimacy of the debt. Disqualifying conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations," apply because of the mortgage delinquency that led to the bankruptcy filing and the credit charge that was neither paid nor disputed with the creditor.

Mitigating condition 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," is difficult to fully establish, despite the fact that the initial defaults occurred in 2011. He made no payments toward his mortgage loan in the three years preceding his bankruptcy filing. He took no steps to dispute or alternatively to pay the credit card debt in the two years preceding its cancellation by the creditor. His disregard of the financial obligations was a

course of conduct inconsistent with the sound judgment expected of persons holding security clearance eligibility.

Applicant has a case for partial mitigation under 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.” Applicant suffered an unexpected loss of income when he accepted a job transfer at lower pay to retain his employment with a defense contractor in approximately June 2011. His spouse was unemployed at that time. It took him two years to achieve his previous pay level.

Even if Applicant’s financial problems arose in whole or in part to circumstances outside of his control, I must still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties. See e.g., ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan 12, 2007). AG ¶ 20(b) requires that an applicant act responsibly to address his debts. Applicant and his spouse filed for a Chapter 13 bankruptcy well before the SOR was issued to address their mortgage loan delinquency, although not before they were under threat of foreclosure. It is unclear whether they attempted other avenues, such as a loan modification, before they filed for bankruptcy. However, a Chapter 13 bankruptcy filing is a legal means to address debt. Applicant has shown that he acted reasonably by following through with the bankruptcy and making the payments required. Although he and his spouse missed a month of payments when his income was reduced on short-term disability in the summer of 2015, they brought their payments current on August 10, 2015. Applicant’s failure to take responsible action to either dispute or arrange for repayment of the credit card delinquency in SOR ¶ 1.b precludes full mitigation under AG ¶ 20(b), however.

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,” applies in that Applicant has been making consistent payments in bankruptcy to address his and his spouse’s mortgage loan arrearage. They completed the credit counseling required of a bankruptcy filing. AG ¶ 20(c) also applies more generally in that Applicant has incurred no new delinquent debts. The only outstanding debt on his Equifax credit reports in recent years has been the credit card debt in SOR ¶ 1.b, and that debt was cancelled by the creditor in 2013 and reported as income by Applicant and his spouse on their joint tax return.

Concerning AG ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” the Appeal Board has explained what constitutes a good-faith effort to repay 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].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001)). Even so, in contrast to a Chapter 7 bankruptcy, a Chapter 13 bankruptcy requires a debtor to make some payments according to his or her income. The Appeal Board has held that, given sufficient evidence, a Chapter 13 bankruptcy can be part of a pattern of mitigation. See ISCR Case No. 12-06592 (App. Bd. Nov. 13, 2015), citing ISCR Case No. 07-06482 (App. Bd. May 21, 2008) (“There is no requirement that a plan provide for payment on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time.”).

AG ¶ 20(d) also has no applicability to the credit card debt that was charged off and then cancelled. As for Applicant’s challenge to the legitimacy of the debt on the basis that he did not receive the services, he did not present any documentation that would satisfy AG ¶ 20(e), which provides:

(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.

Nevertheless, given the debt’s cancellation, he is not likely to be pursued for any balance that may remain on the account.

Concerning Applicant’s financial situation going forward, he had 43 months of payments remaining to complete his bankruptcy plan as of late June 2013. His pending child support obligation of \$150 per week could strain his finances, but available credit reports do not show a history of significant delinquency other than the mortgage and the credit card in SOR ¶ 1.b. He has no outstanding consumer credit loans, such as a car loan. He testified that he was recently removed from the mortgage loan because his estranged spouse is going to keep the home in their divorce and take responsibility for the mortgage payments. He has little experience handling his personal financial matters because his spouse paid the household bills during their marriage. The \$40,000 yet to be paid through the bankruptcy is a substantial amount, but the plan has been established for some time. The financial considerations concerns are adequately mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative

process factors in AG ¶ 2(a).⁵ The analysis under Guideline F is incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

A determination of any applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern. Applicant is a longtime defense contractor employee, who transferred to a position that was not as well-paying to avoid being laid off in 2011. It appears that he and his spouse used the income that would have gone to their mortgage payments to instead cover their living expenses. Once Applicant's income stabilized to its previous level, and with his spouse employed, they filed for a Chapter 13 bankruptcy to address their mortgage loan delinquency. He presented a record of consistent payments since September 2014.

Applicant presented no evidence about his work performance, although his continued employment suggests it has been at an acceptable level. His hourly wage was recently increased by \$2 because he became nuclear qualified, which shows some commitment to his job. He did not present a budget detailing his expenses in light of his impending divorce, but he has no history of financial extravagance. He is unlikely to jeopardize his employment for the income he needs for his own support and to pay his child support. For the reasons noted above, I find that it is clearly consistent with the national interest to continue Applicant's security clearance eligibility.

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

⁵ The factors under AG ¶ 2(a) are as follows:

(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.

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Elizabeth M. Matchinski
Administrative Judge