



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-00644

Appearances

For Government: Caroline E. Heintzelman, Esquire, Department Counsel

For Applicant: *Pro se*

08/16/2016

Decision

HOWE, Philip S., Administrative Judge:

On May 7, 2012, Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP). On August 21, 2015, the Department of Defense Consolidated Adjudications Facility (DODCAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). 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 Department of Defense on September 1, 2006.

Applicant acknowledged receipt of the SOR on September 2, 2015. He answered the SOR on September 18, 2015, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on November 10, 2015, and I received the case assignment on November 12, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on November 18, 2015, and I convened the hearing as scheduled on December 9, 2015. The Government offered

Exhibits 1 through 7, which were received without objection. Applicant testified and submitted Exhibits A through D, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on December 16, 2015. I granted Applicant's request to keep the record open until December 23, 2015, to submit additional matters. Applicant did not submit additional evidence. The record closed on December 23, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR Applicant admitted the factual allegations in Subparagraphs 1.a, 1.b, and 1.d through 1.g of the SOR, with explanations. He denied the factual allegations in Subparagraph 1.c of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 57 years old, has a masters' degree, and works for a defense contractor. He has worked there since 2004. He has been married and divorced twice. He has three children of his own. The youngest child lives with him now. Applicant lives in the home that is the subject of the mortgage referred to in Subparagraph 1.a. His salary is \$123,000. Applicant served 16 years in the U.S. Air Force, but does not receive a pension from his service. (Tr. 15, 16, 18 35; Exhibits 1, A)

Applicant owes seven delinquent debts totaling \$21,973. He admits all but one debt, claiming that debt is to be paid by his former wife. (Tr. 25; Exhibits 2-7)

Applicant claims his mortgage account is current (Subparagraph 1.a). The unpaid arrearages were \$6,923 on a balance of \$207,164. He testified he brought the debt current by refinancing his pickup truck. It was brought current in November 2015. Applicant stated that in the past his mortgage lender let him get behind in payments and then get caught up by paying market rates. He was paying medical bills, property taxes, and "other big ticket items that I needed money for at that particular moment." The credit report of November 2015 shows the mortgage payments were delinquent every month until at least September 2015. This debt is resolved. It is the only debt resolved owed by Applicant of the seven alleged in the SOR. (Tr. 16, 17, 22; Exhibits 2-5, D)

Applicant owes \$7,426 to a debt collector, supposedly being paid by garnishment to satisfy a judgment obtained against Applicant by the debt collector (Subparagraph 1.b). Applicant did not submit a copy of any judgment or a copy of his pay statement showing any garnishment. Applicant testified he told the creditor he would try to "work something out with them as I could." Applicant did not take action to address the debt, because he did not want to make monthly payments. He claims he had a line of credit he used to pay his property taxes when he was short of cash. Finally, the lender did not allow him to use the remaining \$1,500 to pay his taxes one year. He stopped making payments to this lender in about 2010. This debt is unresolved. (Tr. 23-25, 33, 34; Exhibits 2-5, C)

Applicant owes \$2,688 on a credit card (Subparagraph 1.c). He claims the debt is not owed by him, but admits at the hearing it is a joint account with his second ex-wife. He testified, "I believe that it was paid off, but I just don't have any proof of it. That is why I need to validate it." It appears on all his credit reports as his financial obligation. It became delinquent in 2013. This debt is unresolved. (Tr. 25, 26; Exhibits 2-5)

Applicant owes a bank \$2,418 that remains unpaid since 2009 (Subparagraph 1.d). He admits the debt, but claims he wants to wait for a lawsuit against him by a debt collector to be settled and then pay this debt. He submitted an exhibit that a lawsuit filed in 2014 by the collection company is closed as of September 2015. The only action Applicant has taken to try to resolve his debts is to retain a credit repair company to attempt to verify the negative entries appearing on his credit reports. He did not submit any proof that any of the debts in the SOR have been resolved by him or that company. He claims he does not know whom to pay on this unresolved debt. (Tr. 26; Exhibits 2-5, C)

Applicant owes \$1,230 (Subparagraph 1.e). He admits he owes the money but has not established a payment plan, preferring to let his contracted credit repair company arrange a plan after they "validate" the amount owed. This debt arose from an on-line payment company charge account. He has not made any payments on this account. This debt is unresolved. (Tr. 26, 27; Exhibits 3-5)

Applicant owes a bank \$1,121 (Subparagraph 1.f). He admits the debt is not paid and he heard from the collection agency about two weeks before the hearing. This debt became delinquent in 2011. The debt is unresolved. (Tr. 27, 35; Exhibits 2-5)

Applicant owes a mail order organization \$167 (Subparagraph 1.g). This account was opened in 1999 and the last payment was in 2008. Applicant testified he does not know how old the account is. It is unresolved. (Tr. 27, 28; Exhibits 2-5)

Applicant had \$4 in savings as of the date of the hearing. His checking account was in deficit \$1,200 as allowed by the bank to a limit of minus \$1,500 until it is replenished with his automatic pay deposit. He is paid every two weeks and each payment is \$3,300. (Tr. 28)

Applicant claims his debts became delinquent in 2010 when his second wife lost her job and they could not make payments on all the debts they incurred while having two incomes. (Tr. 18, 19; Exhibits 2-7, A)

Applicant signed up for credit counseling and repair the day prior to the hearing. He was interviewed by the government investigator about his debts in May 2012 and the SOR was issued in August 2015, but Applicant claims he was researching his debts and what to do about paying them and did not have time to address them earlier than December 2015. His written statement states that it will take six to eight months to confirm the debts he owes and establish payment plans. He has one loan for \$4,000 from his retirement account for his daughter's education. Applicant took out a student

loan for his daughter's education for \$20,000. It is delinquent since 2012. His written statement declares he will take out another loan in mid-2016 and possibly sell his horse trailer, farm tractor, and farm implements. Applicant testified he used to train and show horses at riding events until 2006. (Tr. 19, 20, 30; Exhibits 2, A and B)

Applicant's statements in 2006 to a government investigator and in 1999 discuss his financial difficulties prior to those interviews. He admitted in them that he had financial problems for a number of years and filed Chapter 7 bankruptcy in 1996. His financial problems, according to these two statements, seemed to have started when he was discharged from the Air Force as a major because he did not think he could be promoted to lieutenant colonel. He received an honorable discharge and a lump sum payment of \$80,000. He was divorced from his first wife in 1992. He owed child support of about \$7,000 according to his 1999 statement when their daughter decided to live with her mother. His daughter is now an adult and no child support is owed. Applicant's second wife joined the U.S. Army as an enlisted person. While she was being trained, Applicant moved with her and was unemployed from June 1995 to October 1997. He has been employed since then. (Exhibits 6, 7)

Applicant stated in his written exhibit that he has had security clearances since 1979 in the Air Force and afterward. He has never had a security problem. (Exhibit A)

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 useful 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 (AG ¶ 2(a)). 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 avoided drawing 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. Two conditions are applicable to the facts found in this case:

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

Applicant accumulated \$21,973 in delinquent debt from 2008 to the present time that remains unpaid. This amount includes arrearages on his monthly mortgage payment. His mortgage balance when the SOR was issued was \$207,164. Applicant

has seven delinquent debts listed in the SOR. The evidence raises all of the above security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from 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;

(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; and

(f) the affluence resulted from a legal source of income.

No mitigating condition is established by Applicant Applicant's financial difficulties are recent, dating from 1996 to the present. The SOR list of delinquent debts dates from 2008. He has not resolved any debts so they are not infrequent. The circumstances leading the accumulation of his debts are not unusual. AG ¶ 20 (a) is not established.

The financial problems were not incurred beyond Applicant's control and there is no evidence that he acted responsibly under the circumstances. AG ¶ 20 (b) is not established.

Applicant is not paying his debts in an orderly manner. Applicant contracted with a debt service company about a month prior to the hearing. There is no evidence that this organization has resolved any of his debts or any meaningful financial counseling intending to aid him in resolving his delinquent debts. He has \$4 in savings and a negative balance in his checking account of \$1,200 while earning \$6,600 monthly after

taxes. There are no clear indications from the evidence he presented that the financial problems are under control and being resolved. AG ¶ 20 (c) is not established.

Applicant has not addressed any SOR debts, except for his delinquent mortgage account, but only after the SOR was issued. He testified he will pay them in the future when one collection action is “settled,” but admits he procrastinates on doing that action. Applicant has a history of poor financial management according to his own statements. AG ¶ 20 (d) is not established because Applicant has not made a good-faith effort to resolve his debts. A promise to pay debts in the future is not evidence of a good-faith effort to resolve his delinquent debts.

Applicant did not present any evidence that he has a reasonable basis to dispute the debts listed in the SOR. In fact, he admits most of them. AG ¶ 20 (e) is not established.

There is no affluence at issue in this case, so AG ¶ 20 (f) is not established nor is it relevant.

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 an applicant’s conduct and all the 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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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 demonstrated he has a long history from 1996 to the present of not being able to manage his finances. He incurs debt and does not repay it. He has \$4 in savings on a \$123,000 annual salary, and a negative balance in his checking account. He does not know where he spends his money; consequently he has no idea how to manage it properly. There are no permanent behavioral changes by Applicant regarding management of his finances. He

procrastinates for years in paying debts, and then, with his clearance in jeopardy, hires a credit repair company to “validate” his debts. He failed to establish that financial issues will not recur. The potential for pressure, coercion, exploitation, or duress to occur in his life exists because of his chronic inability to pay his delinquent debts.

Overall, the record evidence leaves me with questions or doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial considerations.

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
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Subparagraphs 1.a to 1.g:	Against Applicant
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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.

PHILIP S. HOWE
Administrative Judge