



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-00752

Appearances

For Government: Julie Mendez, Esquire

For Applicant: *Pro se*

10/26/2016

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On October 29, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct).¹

In an undated SOR Response and in a second response dated November 24, 2015, Applicant admitted all allegations. He also requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). I was assigned the case on April 12, 2016. On June 10, 2016, DOHA issued a notice setting the hearing for July 27, 2016. The hearing was convened as scheduled.

The Government offered four documents and a modified SOR, which were accepted without objection as exhibits (Exs.) 1-4 and hearing exhibit (HE) 1. Applicant offered testimony and was given until August 3, 2016, to submit any documentation for consideration. On July 28, 2016, Applicant offered an account statement concerning the

¹ 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 DOD on September 1, 2006.

delinquent debt noted at SOR allegation 1.a, which was accepted without objection as Ex. A. The transcript (Tr.) was received on August 4, 2016, and the record was closed.

Findings of Fact

Applicant is a 37-year-old senior records manager who has been with the same company since August 2012. He has earned a high school education and some college credits. He was honorably discharged in 2003 from the United States military after four years of service. During that time, in about 2001, he received a security clearance before he was deployed abroad. The father of three minor children, he is currently cohabitating with a fiancée and their two children. Applicant provides his third child, who lives with her mother, \$600 a month in financial support. At issue is approximately \$37,000 in delinquent debt. Applicant currently earns about \$72,000 a year.

Applicant left military service under painful and stressful circumstances. He was separating from his former wife and they had recently lost a child. It was recommended by his command that he leave and seek appropriate counseling. His effort to rejoin the military was unsuccessful, as was his effort to reconcile with his now-ex wife. From February 2004 until about October 2004 he “was back and forth between living on the street and living with friends” (Tr. 16) Through the help of a friend, he started a new job in November 2004. He has worked continuously from that time to date. (Tr. 16-17)

Since at least 2006, Applicant has acquired multiple debts that became delinquent. Some of these debts were acquired when he was supporting his girlfriend, now fiancée, while she was a stay-at-home mother for their children. Both Applicant and his girlfriend were enrolled in college, which helped contribute to his financial burden. By 2013, Applicant’s fiancée started working and contributing to their household coffers. She presently nets about \$1,600 a month. Consequently, Applicant thought it was time to start addressing his debt. (Tr. 20) In the summer of 2014, he retained a law firm to help him with his debts on a “pay-as-you-go” basis. (Tr. 17) He used the firm to dispute “anything that needed to be disputed” on his credit reports. (Tr. 18) Where action has been taken on any of the debts at issue, such action was mostly taken in November or December 2015, after the issuance of the October 2015 SOR.

At issue in the SOR are the following delinquent debts:

1.a – University debt - \$1,010 – *Paid or debt forgiven*. Applicant provided a financial statement reflecting that his balance is now zero. (HE 1; Ex. A; Tr. 21-22)

1.b – University debt - \$3,985 – *Valid*. Applicant stated that he was charged for classes, but ultimately dropped the courses at this other university. Shortly before the hearing, he was told that the debts would most likely not be forgiven because they were dropped after the official drop date. He testified that he was orally told the school might consider a payment plan, but there is no documentary evidence to that effect and no payment plan was proffered. (HE 1; Tr. 22-25) At present, the debt remains unpaid.

1.c Medical debt - \$652 – *Valid*. Applicant discussed a payment plan with this office in 2015, but no documented evidence of payments was offered. The debt is now with a collection entity and still owed. (HE 1; Tr. 24-27)

1.d – Telecommunications debt - \$575 – *Removed from credit report because it is invalid or stale*. Applicant contacted this company in 2015 regarding cable equipment erroneously noted as unreturned. The account now reflects a zero balance. He believes this is due to a dispute on his behalf by the law firm, but is unsure. (HE1; Tr. 27-28)

1.e – Automotive finance balance - \$17,503 – *Balance reduced; still disputing*. This debt is related to a 2014 vehicular repossession of a car bought around 2012. Applicant disputed this car loan account balance after a cease and desist order was initiated over contractual issues regarding more favorable terms available for which he thought he was eligible as a former military member. He was ultimately found ineligible for the discount. (Tr. 32) Meanwhile, he fell behind on payments. He stated that his law firm disputed the balance reflected, but he has not paid to return to using its services. Therefore, he does not know whether the dispute was successful. (Tr. 33) A new balance is now shown as \$16,053, which he still questions. No documentary evidence was introduced reflecting the disputes. (HE 1; Tr. 28-34)

1.f, 1.g – Veterans Affairs debts - \$3,241 and \$5,560, respectively – *Valid*. These were sums sent to Applicant as a veteran for education, living, and housing expenses after his military service. (Tr. 35) He was deemed to be unentitled to some of the money because he did not complete his college courses. (Tr. 36) Applicant completed paperwork for an extended repayment plan last year, but no documentation regarding progress on these debts, or adjustments to the balances owed, was offered. (HE 1; Tr. 34-36)

1.h – Charged-off account - \$595 – *Disputed, but no favorable results shown*. Applicant has been contesting this account entry since 2006. (Tr. 38) He testified that he never had an account with this creditor. (Tr. 38-39) He testified that this debt was most recently disputed by the law firm in or around November 2015. He does not know why it still appears on his credit report. He did not provide paperwork from the creditor, the law firm, or a credit bureau indicating it was successfully disputed. (HE 1; Tr. 38-39)

1.i – Veterans Affairs debt - \$422 – *Paid, otherwise satisfied, or successfully disputed*. This debt was put into an extended payment plan in November 2015. Although no payments were made, Applicant testified it was disputed. His credit report now reflects a zero balance on this debt, which Applicant believes was the result of the dispute process. (HE 1; Tr. 37)

1.j – Charged-off telecommunications bill - \$2,153 – *Disputed, but no favorable results shown*. This debt concerns equipment that the company registered as unreturned. Applicant testified that he disputed this issue directly with the company in November 2015, maintaining that he had returned the equipment. (Tr. 39-40) He stated that he last contacted the company in January 2016, checking to see if the issue was

resolved so he could reinstate service. At that point, the balance was still considered outstanding. (Tr. 41) No further action was taken. (HE 1; Tr. 39-41)

1.k, 1.l – Medical debts - \$213 and \$25, respectively – *Unaddressed*. Applicant does not know how or from where these debts were acquired. (Tr. 41) There is no documentary evidence of formal dispute of their entry on his credit report.

1.m – Insurance-related collection account - \$506 – *Unaddressed*. This debt originated in 2014. Applicant stated that this balance was satisfied, noting he has since initiated a newer policy. No documentation, however, was submitted showing the debt has been satisfied. (HE 1; Tr. 43-44)

1.n – State debt - \$312 – *Disputed*. This debt arises from college-related charges for a semester that Applicant did not attend at a third university. A more recent bill reflected a balance of \$272. (HE 1; Tr. 44). He stated that he is disputing this account to confirm the amount owed, \$272 or \$312. (Tr. 44-45). He concedes that he would have simply paid the full amount originally noted and waited for a credit, if any, but that he did not have sufficient money at the time. (Tr. 45) Applicant provided no documentary evidence reflecting a dispute with the state or a credit reporting bureau.

1.o – Collection account - \$282 – *Disputed, but no favorable results shown*. Applicant said this company is no longer in existence. He testified that the law firm was prepared to dispute this credit report entry, but could not locate the company. (Tr. 46) There is no documentary evidence showing whether it was disputed with one of the leading credit reporting bureaus. (Tr. 45-51) Because he is not currently engaged with the law firm, he has no access to its records to see if progress was ever made.

1.p, 1q – State traffic camera tickets - \$85 and \$85, respectively – *Valid*. Applicant acknowledged that these debts were his and that he paid them in December 2015 after receiving the SOR. (Tr. 52) However, he offered no documentary evidence reflecting that they were satisfied. (HE 1; Tr. 52)

Applicant currently owes just under \$1,000 to the Internal Revenue Service (IRS) for under withholding. This necessitated the filing of an amended return that was completed and filed. (Tr. 56-58) He is now withholding sufficient money to meet his federal tax obligations.

Applicant and his family have not had a recent vacation and they live simply. His fiancée's father spends the summer with them to babysit the children. The father recently suffered a health setback, is recuperating at Applicant's home, and receiving medical assistance through Medicaid. Applicant and his fiancée, however, pay for his meals. (Tr. 63-64) Applicant is current on his regular bills, including a car loan, and keeps a budget. There is no evidence Applicant has received financial counseling, only some guidance he is "somewhat going through" presently with a friend who is an accountant. (Tr. 60)

Applicant maintains that he and his fiancée, who is presently working, have been “doing really . . . well, financially.” (Tr. 53) He recently opened a savings account, but it does not yet have a positive net balance. (Tr. 52) He has been contributing to a 401k plan through his workplace, but conceded he recently withdrew a loan to meet some of his expenses.² (Tr. 52-53) He also conceded that it is a “fair assessment” to say that his finances “are still pretty tight.” (Tr. 55)

In completing his February 2015 security clearance application (SCA), Applicant denied having any delinquent federal debts in Section 26 - Financial Record Delinquency Involving Enforcement. Specifically, he failed to note his then-outstanding obligations to the Department of Veterans Affairs (SOR allegations 1.f, 1.g, and 1.i). He also denied having any delinquent debts under Section 26 – Financial Record Delinquency Involving Routine Accounts regarding bills turned over to a collection entity in the preceding seven years; had an account or credit card suspended, charged off, or cancelled for failing to pay as agreed in the preceding seven years; having been over 120 days delinquent in the preceding seven years on any debt not previously noted on the SCA; and currently being over 120 days delinquent on any debt or debts. Therefore, he failed to disclose the accounts noted at SOR 1.b, 1.c, and 1.e through 1.q. Applicant explained that he did not note the debts at issue here because he thought the fact he was validating and disputing them obviated his need to report them as established debts. (Tr. 58) He was not trying to be deceptive, but concedes it was “bad judgment” to not report them anyway. (Tr. 59)

Policies

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 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, these guidelines are applied 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 in making a decision.

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

² These expenses included money to help his fiancée’s family and to pay some of his own bills. (Tr. 53)

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 applicant or proven by Department Counsel and 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 the applicant may deliberately or inadvertently fail to safeguard 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).

Analysis

Guideline F, Financial Considerations

Under AG ¶ 18, the security concern under this guideline is that 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. As well, an individual who is financially overextended is at risk of engaging in illegal acts to generate funds.

Here, the Government introduced credible evidence showing Applicant has multiple delinquent debts amounting to over \$35,000, including at least one debt dating back to 2006. Most action, if any, on these debts occurred only after the October 2015 SOR was issued. This is sufficient to invoke Guideline F disqualifying conditions:

AG ¶ 19(a): inability or unwillingness to satisfy debts, and

AG ¶ 19(c): a history of not meeting financial obligations.

Five conditions could mitigate these finance related security concerns:

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;

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;

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;

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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.

After his honorable discharge from the military in 2003, Applicant experienced a period of unemployment while seeking counseling until he found a job in 2004. He has been employed since that time. In the interim, he struggled financially during one point when he housed and supported the mother of his two youngest children while she was attending college. Since 2013, however, she has been working and contributing to the family coffers, and is now Applicant's fiancée. Recently, they have been paying for her father's meals while he recuperates from a health setback.³

To date, many of the delinquent debts at issue remain unaddressed, unpaid, or lack documentary evidence reflecting rehabilitative efforts, including one debt Applicant first disputed a decade ago. Applicant formerly retained a law firm to help validate or formally dispute some debts, but he provided no documentary evidence indicating its efforts were successful or, where applicable, the credit report deleted an adverse entry.⁴ Whether any disputes were more recently successful or initiated by the law firm is unknown. This is because Applicant is not currently paying its monthly "pay-as-you-go" services. Consequently, he has no access to the law firm's more recent activity, if any.

In addition, Applicant has not received formal financial counseling, but he does use the help of a friend who is an accountant to help him with some of his financial issues.⁵ AG ¶ 20(d) applies in part due to Applicant's intermittent use of a law firm to

³ Of these circumstances, only the provision of meals for Applicant's fiancée's father, which is currently ongoing, can be said to be recent. This is a responsible response given the free babysitting the man provided in the past. However, at best, whatever unknown sum is used to provide the gentleman with appropriate meals under his particular circumstances raises AG ¶ 20(b) only to a limited extent.

⁴ With regard to mitigating condition AG ¶ 20(e) overall, Applicant did not provide direct documentary evidence showing that efforts were taken to formally dispute any balances with either his creditor(s) or one of the major credit reporting bureaus, or otherwise introduce any documentation reflecting that his disputes are substantiated.

⁵ Although Applicant's friend's help does not constitute formal financial counseling, it is sufficient to raise AG ¶ 20(c) in part. This is true despite the lack of clarity regarding Applicant's methodology for addressing

dispute debts, and his documentation reflecting satisfaction of the \$1,010 debt noted at SOR allegation 1.a. However, despite his obvious concern about the debts at issue, the documentation he submitted shows scant overall progress on his debts.

Further, Applicant concedes that his financial situation remains tight with regard to his present ability to pay for debts outside of his regular, monthly bills. This condition persists despite the fact his fiancée now contributes to the household income. Meanwhile, the majority of the multiple delinquent debts noted in the October 2015 SOR remain largely unaddressed, unpaid, unresolved, or their status remains undefined. Consequently, AG ¶ 20(a) does not fully apply.

Despite the lack of essential documentary evidence, some progress through the dispute method seems to have transpired. In addition, as noted, Applicant provided evidence that he fully addressed one balance (SOR allegation 1.a). Otherwise, Applicant's case is hampered by the lack of documentary evidence demonstrating his efforts or efforts on his behalf to successfully address, dispute, resolve, or otherwise satisfy the debts at issue. Although Applicant was credible in his testimony, even if all his statements and assumptions are true, a significant amount of debt remains outstanding and multiple disputes seem to be ongoing with no signs of reconciliation or resolution on the horizon. In addition, Applicant's strategy going forward is unclear, especially given his discontinued use of the law firm. Finally, he concedes that while he is currently able to meet his current, ongoing bills, his finances continue to be "pretty tight," despite living simple lives without luxuries. This "tight" situation is highlighted and underscored by his recent need to withdraw funds from his 401k account.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, where the significance of conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations is defined ("[p]ersonal conduct 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.

In completing his February 2015 SCA, Applicant wrote "no" in response to Section 26 questions regarding delinquent and past-due accounts, despite the fact he had numerous such debts at the time that warranted notation and a "yes" answer. Applicant credibly testified that he answered the questions in the negative because he felt that his dispute over such debts obviated his need to acknowledge such negative accounts as delinquent debts for the purposes of the SCA. Under his particular circumstances, this is not a frivolous or unbelievable interpretation of the situation. I find Applicant highly credible on this issue. Without the intent to falsify, none of the personal conduct disqualifying conditions at AG ¶ 17 are applicable

his debts, his current financial situation, and the ongoing nature of some of the disputes that seem to be unsuccessful or continue to be open ended.

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). 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 incorporated my comments under the two guidelines at issue in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is a mature and credible senior records manager who has been with the same company since August 2012. He has earned a high school education and some college credits. He was honorably discharged in 2003 from the United States military after four years of service, following an estrangement from his wife and the loss of a child. The father of three minor children, he is currently cohabitating with his fiancée and their two children. He responsibly provides regular child support for his third child. He earns about \$72,000 a year and his live-in fiancée now generates her own income.

As a threshold issue, there is insufficient evidence to indicate that Applicant intentionally falsified material facts when he declined to enumerate his delinquent debts on his SCA, given the fact he was preparing to formally dispute or had already disputed those account balances. Applicant showed that he satisfied the debt at SOR allegation 1.a and credibly explained how the debts at 1.d and 1.i were successfully addressed. The remainder of his debts, some of which he stressed were either satisfied or disputed, lack corroborating documentation and, therefore, must be considered to remain outstanding. Moreover, some disputes appear to be forgotten or dragging on without resolution, a situation further hampered by his lack of documentary evidence from the law firm. Given the scant documentary evidence offered in this case, financial considerations mitigating conditions cannot presently be mitigated.

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

Subparagraph 1.a:

For Applicant

Subparagraphs 1.b-1.c:

Against Applicant

Subparagraph 1.d:	For Applicant
Subparagraphs 1.e-1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraphs 1.j-1.q:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a-2.b:	For 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 a security clearance. Eligibility for access to classified information is denied.

Arthur E. Marshall, Jr.
Administrative Judge