



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



In the matter of:)
)
) ISCR Case No. 15-00836
)
Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank, Esq., Department Counsel
For Applicant: *Pro se*

01/31/2017

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense's (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. Applicant owes approximately \$138,000 in student loans on which he is paying \$30 per month. He is more than \$64,000 delinquent on other debts. Since October 2012, he has documented payments of approximately \$700 on his delinquent accounts. He has not made sufficient documented progress toward resolving his delinquent obligations. Financial considerations security concerns are not mitigated. Eligibility for access to classified information is denied.

History of the Case

On October 27, 2015, acting under the relevant Executive Order and DoD Directive,¹ the DoD issued a Statement of Reasons (SOR) detailing financial

¹ Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*

considerations security concerns. DoD adjudicators could not find that it is clearly consistent with the national interest to grant or continue Applicant's security clearance. On November 18, 2015, Applicant answered the SOR and requested a hearing. On January 15, 2016, I was assigned the case. On February 17, 2016, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for a hearing to be convened on February 26, 2016.

At the hearing, Government's Exhibits (Ex.) 1 through 7 and Applicant's Exhibits A through D were admitted without objection. The record was kept open to allow Applicant to present additional documents. Additional documents were presented and admitted without objection as Exs. E through H. Applicant testified at the hearing. On March 7, 2016, DOHA received the hearing transcript (Tr.).

Findings of Fact

Applicant, in his SOR response, asserts his student loan debt is in good standing, that some of the SOR delinquent obligations no longer appear on his credit report, and that he owes nothing following the repossession of his two homes.

Applicant is a 44-year-old cost analyst/compliance manager who has worked for a defense contractor since April 2010, and he seeks to obtain a security clearance. (Tr. 17, 36, 86) From March 1994 through January 1998, he honorably served in the United States Marine Corps. (Tr.46) He separated as a corporal (E-4). (Tr. 42) The U.S. Department of Veterans Affairs rates Applicant's disability at ten percent for which he receives \$133 monthly. (Tr. 74) His annual salary is \$99,550. (Tr. 38) In March 1999, after leaving the Marine Corps, he married and they have ten² children ages 4 to 22. (Ex. 1) His wife does not work outside of the home. In November 2015, Applicant received an outstanding achievement award for his work.

Applicant's history of delinquent debt and bankruptcies is documented in his credit report and in his October 2012 Office of Personnel Management (OPM) personal subject interview (PSI). When Applicant completed his August 2012 e-QIP, he listed a \$25,000 debt owed to a credit union following vehicle repossession, \$100,000 owed for student loans, a \$120,000 home foreclosure, and a \$250,000 home foreclosure. He did not list his January 2004 Chapter 7 bankruptcy, his July 2010 Chapter 13 bankruptcy, or his October 2010 bankruptcy.

During Applicant's October 2012 PSI, Applicant discussed all the delinquent debts listed in the SOR. He discussed: his failed business, his three bankruptcies, his two home foreclosures, his delinquent student loans, the vehicle repossession, his delinquent credit card accounts, and other smaller delinquent accounts. He agreed "he

(January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

² Applicant's August 2012 Electronic Questionnaires for Investigations Processing (e-QIP) lists only nine children. Another child was born after completion of the e-QIP.

owed all the delinquent debts discussed and was working hard to pay everyone back.” (Ex. 6) He stated he was trying to make payment arrangements with his creditors in order to pay off all his delinquent obligations. (Ex, 6)

Applicant asserts he had no financial problems until he left the Marines. His goal is to live debt free. (Tr. 85) He believes in paying cash for all purchases. He currently owns his home and 12 acres outright, which he purchased in December 2012. The home and land were purchased and are valued³ at approximately \$71,000. (Ex. F) His two older model vehicles (1993 and 1997) are paid for. (Tr. 70) He has approximately \$23,000 in various 401(k) retirement accounts. (Tr. 71)

In May 2000, he obtained bachelor's degrees in business administration and accounting. The cost of schooling was paid for in part by educational benefits due to his military service. (Tr.45) Following graduation he worked for a large accounting firm. His starting salary was \$38,000 annually and his final salary was \$44,000 annually. (Tr. 48) In July 2003, he became unemployed when the accounting firm collapsed. In October 2003, he left the state to pursue a Masters in Business Administration (MBA) degree, which he obtained in May 2005. In June 2004, while a student obtaining his MBA, his fifth child was born. Applicant had no medical insurance and \$20,000 of medical expenses were incurred. In January 2004, he filed for Chapter 7 bankruptcy protection (SOR 1.c) and in May 2004, his medical bills and other debts were discharged. In 2004, he had a three-month internship which paid him \$15,000 to \$16,000.

Applicant incurred approximately \$138,000 in student loan debt to obtain his MBA and also for his wife's education. The SOR lists five student loan debts: SOR 1.e, \$85,524; SOR 1.f, \$56,701; SOR 1.h, \$19,372; SOR 1.m. \$38,167; and SOR 1.n, \$57,710. Between 2005 and 2008, he asserts, but did not document, he made \$350 to \$700 monthly payments on his student loans. (Tr. 65) The loans went into default for nonpayment. Between December 2014 and August 2015, he made eight payments of approximately \$30 each towards his student loans, which he claims are no longer in default. (Ex. E) However, he provided no documentation showing he had rehabilitated his student loans. At the hearing, he stated he hopes to be able to increase⁴ his monthly payments. He asserts he intentionally kept the payments low as he could clean up his other derogatory accounts on his credit report. (Tr. 26)

In 2005, after obtaining his MBA, Applicant obtained a job with a hedge fund with an annual base salary of \$94,000 plus a 20 percent bonus. In May 2005, he purchased a home for \$150,000 with \$1,200 monthly mortgage payments. (Tr. 55) He was at this job from June 2005 through March 2008. His income for half of 2005 was \$60,000, for 2006 it was \$130,000, and for 2007, \$135,000 to \$140,000. (Tr. 52) He indicated that during these times he was making a great deal of money. In October 2006, Applicant

³The home and land's current fair market value is known. However, what was paid for the property is not part of the record.

⁴ At the current rate, it will take Applicant approximately 40 years to pay off his student loans, if no additional interest accumulates.

became a Certified Public Accountant (CPA). In June 2007, he purchased a car that was later repossessed. He owes \$11,803 (SOR 1.p) following the repossession. (Tr. 59) He has made no payments on the delinquent obligation and has not had any recent contact with the creditor. (Tr. 61-63)

In March 2008, Applicant left his job and invested \$70,000 of his own money to open an Italian Ice store. (Tr. 52, 53) The money came from his savings and the sale of his stock options. (Ex. 6) The store netted less than \$10,000 per year. (Tr. 54) In the fall of 2009, the store ceased to do business. (Tr. 54) During this period, Applicant maxed out his credit cards (SOR 1.i, \$9,484 and SOR 1.o, \$5,209). His last contact with the credit card companies was in 2008 or 2009. Since obtaining his current job in March 2010, he has not contacted the creditors. (Tr. 64) He stated it was a mistake to leave his well-paying job in order to start the Italian Ice store,

Applicant obtained a \$36,305 home equity loan (SOR 1.g) for upgrades and other necessities in an attempt to ready the home for sale. When his attempts to sell the home were unsuccessful, he obtained a tenant. (Tr. 37) The tenant paid rent for only six months. (Tr. 20, 29) One or two years later, the house went to foreclosure for nonpayment of the mortgage. (Tr. 29) The home equity debt (SOR 1.g., \$36,305) is listed as a debt of concern in the SOR. However, the default on this home mortgage is not an SOR debt of concern.

In June 2007, Applicant purchased a home for \$249,000 (SOR 1.d, \$249,900), which went to foreclosure in January 2009. (Ex. 6) In July 2010, Applicant filed for Chapter 13 bankruptcy protection (SOR 1.a) in an attempt to prevent foreclosure. The bankruptcy listed \$153,000 of liability. The bankruptcy was dismissed for failure to make the required payments to the plan. Another Chapter 13 bankruptcy was filed in October 2010 (SOR 1.b), which was dismissed in November 2010 for failing to file proper information. During each bankruptcy he was required to obtain financial counseling.

Applicant asserted he was no longer liable on either mortgage debt, but provided no documentation supporting his assertion. He has made no payments following the foreclosures. He has not attempted to contact the mortgage companies and asserts he has not received any correspondence them nor has he received any IRS forms that indicated the debt was cancelled or forgiven. He last talked to the mortgage companies in 2008 or 2009. Regarding the 2005 home purchase, Applicant's 2012 credit report indicates "credit grantor reclaimed collateral to set[tle default]." (Ex. 5) For the 2007 home purchase, his Applicant's 2012 credit report indicates, "credit grantor reclaimed collateral to settle default[t]." (Ex. 5)

Applicant paid the telephone account (SOR 1.l, \$177). (Ex. D) He has made no payments or made payment arrangement on the medical debt (SOR 1.k, \$576). (Tr. 64) He is considering paying the cancelation fee for telephone service (SOR 1.j, \$1,318), but to date has made no payment. There is no documentation disputing this debt. (Tr. 68)

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 must 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 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 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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 of 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

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

Applicant owes approximately \$138,000 of student loan debt and more than \$64,000 in other delinquent debt. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations" apply.

Five financial considerations mitigating conditions under AG ¶ 20 are potentially applicable:

(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;⁵ 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.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

Applicant presented some important mitigating information. Between December 2014 and August 2015, he made eight payments totaling \$238 towards his student loans. He asserts, but failed to document his student loan debt is now current. As a CPA, he should realize the importance of providing documentation to corroborate his

⁵The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue 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. June 4, 2001)).

assertion that his student loans are current. He also asserted he would like to increase his monthly payments, but there is no evidence showing he did so.

Applicant provided documentation showing he had paid a telephone bill (SOR 1.I, \$177). He asserted he paid a \$262 credit card debt which was not listed as an SOR debt of concern.

Several circumstances beyond Applicant's control adversely affected his finances. He had some periods of unemployment or underemployment while in school and his income was limited. However, as his income information shows, there were times when he made a sizeable income. In 2008, he left a high-paying job to start an Italian Ice shop, which he admits was a large mistake. In 2004, while in school, he incurred \$20,000 in medical debt related to the birth of his fifth child. That debt was discharged in bankruptcy. He also made two additional bankruptcy filings in an attempt to save his two homes from foreclosure. The bankruptcies were dismissed for failing to make required payments or complete required filings. Both homes went to foreclosure, however, neither mortgage lender appears to be demanding payment from Applicant.

I do not find against Applicant because he sought bankruptcy protection three times, but I do believe that someone who has experienced bankruptcy should be more careful than others in handling their finances and addressing delinquent obligations. The filing for bankruptcy protection is not in and of itself disqualifying. Bankruptcy is a legal means to address debt. However, given the previous bankruptcy, he should have been more careful in handling his finances including addressing delinquent obligations for which he remains liable in light of the dismissals of the last two bankruptcies.

Applicant states some of the SOR delinquent obligations no longer appear on his credit report.⁶ The Appeal Board has observed "that some debts have dropped off his credit report is not meaningful evidence of debt resolution." ISCR Case No. 14-05803 at 3 (App. Bd. July 7, 2016) (citing ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015)).

It would be unrealistic to expect an individual, such as Applicant, whose finances were negatively impacted by matters beyond his control to resolve all debts immediately or simultaneously. However, in his October 2012 PSI Applicant discussed all the delinquent debts listed in the SOR. He discussed: his failed business, his three bankruptcies, his two home foreclosures, his delinquent student loans, the vehicle repossession, his delinquent credit card accounts, and other smaller delinquent accounts. He agreed he owed all the delinquent debts discussed and was working hard to pay everyone back. He said he was trying to make payment arrangements with his creditors in order to pay off all his delinquent obligations. In almost five years since his interview, he has documented payments of less than \$700.

⁶The Fair Credit Reporting Act, 15 U.S.C. § 1681b as implemented by 16 C.F.R. Section 605(a)(4), requires removal of "[a]ccounts placed for collection or charged to profit and loss which antedate the report by more than seven years."

An applicant is expected to present a reasonable plan to address his financial situation and demonstrate conduct consistent with such a plan. Here, as of the close of the record, Applicant's plan constituted essentially a promise to take action in the future, which is insufficient to mitigate the security concerns raised by this accumulation of delinquent debt and undocumented assertions his student loans are current and he owes nothing following the foreclosures and vehicle repossession. I find AG ¶ 20(b) is insufficient to mitigate the financial considerations security concerns. None of the other mitigating conditions apply.

Applicant is not credited with mitigating the other SOR debts because he did not provide sufficient documentation showing progress paying the debts, a reasonable dispute of any debts, or an inability to make monthly payments on his delinquent obligations and/or pay off the smallest remaining debt (SOR 1.k, \$576).

There is insufficient evidence about why Applicant was unable to make greater documented progress resolving the SOR debts. There is insufficient assurance that his financial problems are being resolved, are under control, and will not recur in the future. Under all the circumstances, he failed to establish that the financial considerations security concerns are mitigated.

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. Applicant honorably served in the U.S. Marine Corps and receives a disability payment due to that service. He now pays cash for all purchases. Although he paid very little on his delinquent obligations, he was able to purchase a home, which is paid for. His current spending and the vehicles he owns indicate he is not currently living beyond his means. At issue are not his current purchases, but his delinquent debts, which have existed for some time. He has failed to

document payment of more than \$700 on his delinquent accounts or show he has recently contacted his creditors. He was made aware of the Government's concern about his delinquent debts by his October 2012 PSI, when he said he was working hard to pay his creditors. Additionally, notice of the Government's concern about his delinquent obligations was provided in his October 2015 SOR and at his hearing.

It is well settled that once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). Unmitigated financial considerations security concerns lead me to conclude that granting of a security clearance to Applicant is not warranted at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With a track record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

The issue is not simply whether all his debts are paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. See AG ¶ 2(a)(1). I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude that financial considerations security concerns are not mitigated. It is not clearly consistent with the national interest to grant or reinstate Applicant's security clearance eligibility at this time.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to be eligible for a security clearance. The determination of an individual's eligibility and suitability for a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under Applicant's current circumstances, a clearance is not warranted. In the future, if Applicant has paid his delinquent obligations, established compliance with a repayment plan, or otherwise substantially addressed his past-due obligations, he may well demonstrate persuasive evidence of his security worthiness.

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, Financial Considerations:	AGAINST APPLICANT
Subparagraphs 1.a through 1.d:	For Applicant
Subparagraphs 1.e through 1.g:	Against Applicant
Subparagraphs 1.h, m, and n:	For Applicant (Duplicate student loan debt)

Subparagraphs 1.i, j, k, o and p: Against Applicant

Subparagraph 1.l: 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.

CLAUDE R. HEINY II
Administrative Judge