



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



In the matter of:)
)
) ISCR Case No. 15-01027
)
)
Applicant for Security Clearance)

Appearances

For Government: Andrew Henderson, Esq., Department Counsel
For Applicant: *Pro se*

November 16, 2016

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant was alleged to be delinquent on 11 debts, in the total amount of \$35,271. He filed for Chapter 13 bankruptcy in May 2009, but it was dismissed in June 2009. Applicant remains delinquent on eight of his eleven debts, in the total amount of approximately \$7,531. Additional security concerns were raised by Applicant's misconduct while serving in the Marine Corps. Applicant failed to mitigate both the financial concerns and the personal conduct concerns. Eligibility for access to classified information is denied.

Statement of the Case

On May 21, 2012, Applicant submitted an e-QIP. On February 23, 2016, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F (Financial Considerations), and E (Personal Conduct). The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security*

Clearance Review Program (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective September 1, 2006.

Applicant answered the SOR on March 25, 2016 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on May 23, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 27, 2016, scheduling the hearing for July 22, 2016. The hearing was convened as scheduled. The Government offered Hearing Exhibit (HE) I and Exhibits (GE) 1 through 8. GE 1 through GE 8 were admitted without objection. Applicant testified on his own behalf and offered Applicant Exhibit (AE) A. AE A was admitted without objection from Department Counsel. The record was left open for receipt of additional documentation. On November 3, 2016, Applicant presented six additional pages of documentation, marked as AE B through AE G. Department Counsel had no objections to AE B through AE G, and they were admitted. The record then closed. DOHA received the transcript of the hearing (Tr.) on August 1, 2016.

Findings of Fact

Applicant is 35 years old. He has worked as an employee of a government contractor since 2012. He served in the Marine Corps from October 2001 to January 2012 on active duty and active reserves. He achieved the rate of Sergeant, E-5, but was later reduced in rank as discussed below. He deployed twice to Iraq. He received an honorable discharge. Applicant married his wife in June 2004. However, their divorce is pending. Applicant has one minor daughter with his wife. (GE 1; Tr. 30-38, 44.)

The Government alleged that Applicant is ineligible for a clearance because he made financial decisions and displayed personal conduct that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. His financial problems and personal conduct allegedly raised questions about his reliability, trustworthiness, and ability to protect classified information. The SOR alleges that Applicant is delinquent on 11 debts, in the total amount of \$35,271. Applicant admitted the debts alleged in SOR subparagraphs 1.a through 1.d, 1.g, and 1.j through 1.l. He denied the debts listed in SOR subparagraphs 1.e, 1.h, and 1.i. He admitted the personal conduct alleged in SOR paragraph 2.b, but denied the reprimand identified in SOR subparagraph 2.a due to its incorrect date. The alleged debts were listed on credit reports dated May 25, 2012; January 6, 2015; February 18, 2016; and May 13, 2016. (GE 4; GE 5; GE 6; GE 7.)

Applicant attributed his debts to circumstances beyond his control. Shortly after Applicant's daughter was born in 2007, Applicant's wife was hospitalized with a pulmonary embolism. She was out of work for an extended period of time and they fell behind on bills due to the loss of her income. Additionally, his on-going divorce proceedings have been costly. He testified that he pays two-thirds of his salary in child and spousal support, leaving him little left over to satisfy his own bills. (Tr. 23-25.)

Applicant filed for Chapter 13 Bankruptcy in May 2009, as alleged in SOR subparagraph 1.a. At that time, they were behind on their mortgage as a result of

Applicant's wife's medical condition and her inability to work. That bankruptcy filing was dismissed in June 2009, and the home was short-sold. (GE 2; GE 4; Tr. 24-26.)

Applicant is indebted to a cable company for a delinquent debt totaling \$193, as alleged in SOR subparagraph 1.b. It has been delinquent since 2014. Applicant presented a receipt from this creditor showing he has a zero balance owed to this creditor. This debt is resolved. (GE 5; GE 6; AE B; AE C; Tr. 26-27.)

Applicant is indebted to an apartment home on a delinquent debt totaling \$278, as alleged in SOR subparagraph 1.c. It has been delinquent since 2015. Applicant indicated he "reached out to [creditor] with no response in an attempt to pay this debt." It is unresolved. (GE 6; AE B; Tr. 27, 47.)

Applicant is indebted on a collection account for a delinquent debt totaling \$407, as alleged in SOR subparagraph 1.d. It has been delinquent since 2015. Applicant indicated that he established a payment plan with this creditor. He presented a copy a bank statement showing he made a payment to a creditor, but the creditor's name is not legible on that statement. Applicant failed to meet his burden to show he is resolving this debt. (GE 6; AE E; Tr. 27, 47.)

Applicant is indebted on a medical collection account for a delinquent debt totaling \$267, as alleged in SOR subparagraph 1.e. It has been delinquent since 2012. Applicant testified that he was unaware of this medical bill because it was for his daughter and the bills go to his soon-to-be ex-wife at her residence. This debt remains unresolved. (GE 6; Tr. 27.)

Applicant is indebted on a collection account for a delinquent debt totaling \$299, as alleged in SOR subparagraph 1.f. It has been delinquent since 2015. Applicant admitted this debt. Applicant presented a receipt from this creditor showing he paid \$299.27 on August 5, 2016. This debt is resolved. (GE 6; AE B; AE C; Tr. 47.)

Applicant is indebted on a collection account for a delinquent automobile debt totaling \$5,227, as alleged in SOR subparagraph 1.g. It was been delinquent since 2010. This was for a leased vehicle that was repossessed for non-payment. Applicant testified that this debt belonged to his wife and that it may be assigned to her in their divorce pending proceeding. In his post-hearing submission, he stated "find attached a copy of the proposed settlement agreement stating the [\$]5,227 will be assumed by my ex-wife." However, no such settlement agreement was attached. This debt is unresolved. (GE 6; AE B; Tr. 21, 45-46.)

Applicant is indebted on a medical collection account for a delinquent debt totaling \$233, as alleged in SOR subparagraph 1.h. It has been delinquent since 2012. Applicant testified that he was unaware of this medical bill because it was for his daughter and the bills go to his soon-to-be ex-wife at her residence. This debt is unresolved. (GE 5; Tr. 28.)

Applicant was alleged to be indebted to the Internal Revenue Service (IRS) on a delinquent tax lien filed in July 2007 in the amount of \$27,248, as alleged in SOR subparagraph 1.i. Applicant presented a letter that explained the tax lien was mistakenly filed against him instead of another individual with the same name. It is resolved. (GE 4; AE G; Tr. 19-20, 28, 44.)

Applicant admitted he is indebted on a collection account for a delinquent debt totaling \$718, as alleged in SOR subparagraph 1.j. Applicant testified that this debt belonged to his wife and that it may be assigned to her in their divorce pending proceeding. This debt is unresolved. (Tr. 20-21, 28.)

Applicant is indebted on a collection account for a delinquent debt totaling \$117, as alleged in SOR subparagraph 1.k.¹ It was been delinquent since 2012. Applicant testified that he thought this debt was “paid off” but that he will resolve it by the end of the year. This debt is unresolved. (GE 4; AE B; Tr. 21, 48.)

Applicant is indebted on a collection account for a delinquent debt totaling \$284, as alleged in SOR subparagraph 1.l. It was been delinquent since 2012. Applicant presented a document from this creditor and claimed it displayed a “payment plan to pay off this debt.” However, the document is illegible. Applicant did not state whether he made any payments under the alleged payment plan. This debt is unresolved. (GE 4; AE F; Tr. 48.)

Applicant admitted that he was barred by his military command in 2010 from seeing a specific female military member, after being caught engaging in various sexual acts with her in and out of the workplace. Applicant directly disobeyed that order in February 2011 by meeting with her at her house. However, he asserted the date identified in the SOR, of November 15, 2011, was incorrect. He reported the date to be February 23, 2011. As a result of that incident, he received Non-Judicial Punishment (NJP) for violating Articles 91 (Insubordinate Conduct) and 92 (Failure to Obey an Order or Regulation) of the Uniform Code of Military Justice. As a result of the NJP, Applicant lost a pay-grade and was placed on restriction for 45 days. He was denied re-enlistment. (GE 1; GE 2; GE 3; Tr. 29-31, 39-43.)

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in

¹ The SOR incorrectly listed this debt as a \$1,178 delinquency. Department Counsel moved to amend the amount of this debt to \$117. Applicant had no objection and the motion to amend the SOR was granted. (Tr. 21-22.)

conjunction with the factors listed in AG ¶ 2(a) describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of the 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, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

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

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 notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant remains delinquent on eight of his eleven debts, in the total amount of approximately \$7,531. The tax debt identified on the SOR was successfully disputed as it was not his. Two other small debts were resolved through payment. These unresolved debts range between \$117 and \$5,277 and are owed to numerous creditors over the past six years that he could not, or chose not to, repay. His financial difficulties extend back as far as 2009, when he filed Chapter 13 bankruptcy. These debts and his history of financial irresponsibility raise security concerns under DCs 19(a) and (c), thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The following Financial Considerations mitigating conditions (MC) 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; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's SOR-listed delinquent debts are significant and ongoing, without indication that the circumstances under which they arose have changed. His long

history of financial irresponsibility continues. He therefore failed to establish substantial mitigation under MC 20(a).

Applicant also offered insufficient evidence to support significant mitigation under MC 20(b). Applicant demonstrated that his debts arose under circumstances beyond his control, including his wife's health problems, her unemployment, and their costly divorce. However he failed to establish that he made attempts to resolve the debts or took other responsible action under the circumstances.

Applicant demonstrated no financial counseling, substantial progress toward debt resolution, or changes to bring his financial situation under control. He failed to resolve even a \$117 collection account that has been delinquent since 2012 (SOR ¶ 1.k). He did not establish significant mitigation under MC 20(c) or 20(d). MC 20(e) is implicated only with regard to Applicant's tax debt, which did not belong to him and was successfully disputed.

Guideline E, Personal Conduct

The security concern for the Personal Conduct guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations 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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

Applicant's poor judgment demonstrated by his decision to disregard an order from his command, show that he has poor self-control, lacks good judgment, and is unwilling to abide by rules and regulations. It also creates a vulnerability to exploitation, manipulation, or duress. Security concerns under AG ¶¶ 16(c) and 16(e) are substantial, and shift the burden to Applicant to mitigate them.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

After considering these potential mitigating conditions, it is apparent that none of them were established in this case. Applicant's NJP for Insubordinate Conduct and Failure to Obey an Order or Regulation remain a concern. While he has not committed any criminal offenses since 2011, the seriousness of his past crime and the on-going nature of his financial difficulties indicate that Applicant's reliability, trustworthiness, or good judgment are still in question. He has not provided sufficient evidence to meet his burden of proof concerning his personal conduct.

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 all of the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant has the burden to demonstrate sufficient mitigating information in this case and he has failed to meet that burden. While Applicant has not had a criminal violation or infraction since 2011 overall, he has not demonstrated that he has acted responsibly with respect to his finances or his personal conduct. Applicant's inability to resolve his financial obligations and his record of misconduct continues to raise concerns about his reliability, trustworthiness, and ability to follow rules and regulations necessary to protect classified information. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, Applicant has not mitigated the Financial Considerations or the Personal Conduct security concerns.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Jennifer I. Goldstein
Administrative Judge