



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-01495

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: *Pro se*

03/31/2017

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. He had more than \$37,000 in delinquent, charged-off, past-due, and collection accounts. He has documented payment of less than \$1,300. He has failed to mitigate the financial considerations security concerns. Clearance is denied.

History of the Case

On November 4, 2015, acting under the relevant Executive Order and DoD Directive,¹ the DoD issued a Statement of Reasons (SOR) detailing financial considerations security concerns. DoD adjudicators could not find that it was clearly consistent with the national interest to grant or continue Applicant's security clearance. On December 18, 2015, Applicant answered the SOR and requested a hearing. On July 28, 2016, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for a hearing to be convened on August 25, 2016.

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

At the hearing, Government's Exhibits (Ex.) 1 through 5 and Applicant's Ex. A through H were admitted without objection. Applicant testified at the hearing. The record was kept open to allow Applicant to present additional documents. On September 8, 2016, five additional documents were received and admitted as Ex. I through Ex. M. On September 2, 2016, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's answer (Answer) to the SOR, he admitted to all the SOR debts. I incorporate Applicant's admissions as facts. After a thorough review of the pleadings, exhibits, submissions, and transcript. I make the following additional findings of fact.

Applicant is a 49-year-old lead software engineer who has worked for a defense contractor since November 2005, and he seeks to retain a security clearance. (Ex. 1) From 1986 through 2006, he served in the U.S. Air Force before honorably retiring. His monthly Air Force take-home retirement pay is \$1,400. (Tr. 44) He takes home \$2,963 every two weeks from his main job. (Tr. 45) In addition to his full-time job, he has a part-time job working 10 hours each weekend, which brings home an additional \$150 every two weeks. (Tr. 45) His total combined take-home pay is approximately \$98,000 a year. His employee performance evaluations indicate he exceeds expectations and is outstanding in judgment, dependability, and reliability. (Ex. H)

In 2000, Applicant and his wife filed for bankruptcy protection. (Tr. 37) The reason for filing is not part of the record. In 2011, he again considered filing for bankruptcy protection, but after discussing the matter with an attorney, it was decided it was better to negotiate with his creditors. (Tr. 37) In September 2012, Applicant made an unsworn declaration during a personal subject interview (PSI) during which his finances, including the delinquent accounts listed in SOR 1.I through SOR 1.w, were discussed. (Ex. 2)

When Applicant completed his April 2014 Electronic Questionnaires for Investigations Processing (e-QIP), he indicated he had approximately \$20,000 in delinquent credit card debt which had been incurred due to his son's medical problems and his wife losing her job. (Ex. 1) He stated he worked with a credit solution company (company²) and asserted the delinquent debt on half of the credit accounts had been resolved. He was told he would have to resolve the other half with the collection agencies. (Ex. 1) He stated he was making monthly payments and expected all of his debts to be paid in full by December 2013. (Ex. 1)

In November 2003, while Applicant was a member of the Air Force, his son was born with only one kidney and blockage in the other kidney. (Tr. 21) His son underwent 12 surgeries. His wife lost her job as a customer service agent for a van line due to having to take her son to medical appointments and caring for him. The household went from two wage earners to one. (Tr. 23)

² Applicant sought the services of a single debt solution company that is referred to in this decision as a "debt solution company" or simply "company."

In August 2007, Applicant sought the services of a debt solutions company. (Ex. L, Answer, 24) Applicant states "that was really a bad choice." (Tr. 24) The company advised Applicant to stop any payments he was making to creditors on a list provided by him to be included in the debt solution plan. (Ex. L, Answer) The plan listed 18 accounts 7 of which are listed in the SOR. These delinquent SOR obligations are: the charged-off accounts in SOR 1.b, 1.j, 1.l, and 1.p; plus the debts in 1.o, 1.q, and 1.u. (Ex. L) The company told him his debts would all be paid by July 2010. (Ex. 2)

The company was paid monthly and received a total of \$2,500 for their services. For this fee the company was to negotiate on Applicant's behalf with his creditors. Once a settlement offer was negotiated, Applicant was informed of the offer and told to pay it. He made payments on various accounts over the next 36 months. (Answer) He had entered into a three-year contract with the company and stopped his involvement with the company when the contract ended. (Tr. 25)

Applicant asserts the debts in SOR 1.a (\$1,715), 1.l (\$9,889), 1.m (\$1,563), 1.n (\$1,400), 1.o (\$1,058), 1.p (\$1,078), 1.q (\$2,690), 1.r (\$5,254), 1.s (\$3,337), 1.t (\$309), 1.u (\$1,108), 1.v (\$1,590), and 1.w (\$303) were negotiated by the debt solution company. No documentation was provided for the eight additional SOR debts. Applicant asserts these debts were also included in the plan, but are not listed in Ex. L. He asserts that even though he made payments on these obligations they were still charged off by the creditors. The first payment was made in August 2007 and the last payment was made in July 2010. (Ex. L) The creditors must have forgiven some of Applicant's debt because he was informed by the Internal Revenue Service (IRS) that he had to pay income tax on the outstanding balances forgiven by each creditor. (Answer) However, Applicant did not provide any IRS forms showing which creditors forgave delinquent debts and how much was forgiven.

In November 2013, Applicant's wife was diagnosed with Stage 3 breast cancer. (Ex. D, E, Tr. 26) She underwent 68 weeks of chemo therapy which caused her to be severely ill and unable to work. (Answer) Following her chemo therapy, she completed 33 radiation treatments in the following six week period. (Answer) She was terminated from her job for missing too many days of work. During her recovery, she suffered from neuropathy, losing feeling in her left arm and numbness in her left foot. (Tr. 26)

On Valentine's Day, February 14, 2015, Applicant's wife suffered a massive heart attack. (Ex. F, Tr. 27, Answer) She spent a week in the hospital and then had 12 weeks of recovery. She was back at work for three days when she suffered from stress induced angina and was rushed to the hospital with severe chest pains. (Ex. G, Tr. 28) The medical expenses from the medical treatment, hospital stay, and after care were not entirely covered by TRICARE. She applied for social security disability payments, but was turned down because she had insufficient quarters of work to qualify for social security disability.

At an undisclosed date, Applicant sought assistance from a professional financial counselor and was told he should not attempt to address all his delinquent debt at once,

but to concentrate on paying only two or three creditors at a time. (Tr. 34) He was also informed to start with the accounts with the smallest balances.

Starting in March 2016, Applicant began \$25 monthly payments to the charged-off debts listed in SOR 1.f (\$657), SOR 1.g (\$610), and SOR 1.i (\$436). (Exs. I, J) In March 2016, he started making \$87 monthly payments on the charged-off account in SOR 1.h (\$521). These payments paid the debt (SOR 1.h) in full as of August 2016. (Exs. C, I, J) In March 2016, Applicant paid the debt listed in SOR 1.k (\$230). (Ex. B, Tr. 47)

Applicant sent a settlement offer to the collection company collecting the charged-off debt listed in SOR 1.b (\$1,176) and offered to settle the matter for \$500. (Ex. K, Tr. 39) He also sent a letter to another creditor offering to pay the charged-off debt listed in SOR 1.a (\$1,715) by making 12 monthly payments of \$142.96. (Ex. K) If accepted, the offer would pay the entire amount owed on this debt. In September 2016, he stated he would be submitting copies on a monthly basis of all future payments to the creditors. (Ex. I) No future documents evidencing payments were received.

Applicant provided no documents showing payment or negotiations with the creditors listed in SOR 1.c (\$973), SOR 1.d (\$737), and SOR 1.e (\$717). He asserted, in his SOR Answer, that he had an agreement with the collection agencies in SOR 1.b (\$1,176), 1.c (\$973), and 1.d (\$737) to pay \$50 monthly on these delinquent accounts until they are paid. He expected these debts to be paid in full between February 2016 and October 2016. (Answer) In December 2015, he said he had made agreements to pay \$25 monthly on the delinquent accounts in SOR 1.e (\$717), 1.f (\$657), 1.j (\$399), and 1.k (\$230), to pay \$51 on the delinquent debt listed in SOR 1.g (\$610), and \$43 monthly on the debt in SOR 1.i (\$436). (Answer) No documentation was received showing any repayment agreements with any collection agencies or payments in accord with those arrangements other than on the other debts in SOR 1.f, SOR 1.g, and SOR 1.i.

Applicant is current on his monthly truck payment, which, because of his poor credit, has a 21 percent interest rate. (Tr. 40) He pays approximately \$2,000 monthly on his two vehicle payments and vehicle insurance. (Ex. A-1) He owes approximately \$105,000 on his home, which has a \$175,000 appraisal value. (Tr. 44) He has approximately \$24,000 in his 401(k) retirement plan, with \$6,000 or \$7,000 in loans against it. (Tr. 45) He sporadically receives letters from creditors.

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 had 20 charged-off, past due, or collection accounts totaling more than \$36,000. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations" apply.

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.³

AG ¶ 20 list six Financial Considerations Mitigating Conditions that might apply:

(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

³ The Appeal Board concisely explained an 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).

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 provided 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.

Of the 20 delinquent SOR accounts, Applicant provided documentation showing payment on two debts (SOR 1.h, \$521 and SOR 1.k, \$230). He is paying \$75 monthly on three other accounts (SOR 1.f, \$657; SOR 1.g, \$610; SOR 1.i. \$436). Between March 2016 and September 2016, he paid \$525 on these accounts. He has documented that since first being asked about his delinquent accounts in September 2012, he has paid \$1,276 on delinquent obligations totaling more than \$36,000. His annual take-home income is more than \$97,000.

Applicant asserts he made additional payments when working with a debt solution company, but provided no documentation supporting his assertion. He provided no documents showing payment to the creditors listed in the program. Some of the creditors may have forgiven a portion of the debt making that portion taxable income to Applicant. But he never provided copies of those IRS forms, any information concerning which creditors forgave the debt owed, or how much was forgiven. He asserts he made two settlement offers on two delinquent accounts (SOR 1.a and SOR 1.b), but there is no documentation showing the creditors accepted the offers or that payment was made in accord with those offers.

Under AG ¶ 20(a), Applicant got behind on his finances due to unusual circumstances. In 2003, his son was born with serious medical problems. Applicant was active duty military at the time, which would have covered the majority of the medical expenses. However, his wife had to miss work related to her son's medical treatment and she lost her job. The couple went from a two-income family to a one-income household. Those events happened more than ten years ago. The record is silent as to why Applicant had to file for bankruptcy protection in 2000, but that filing should have made him very aware of the importance of making sure his debts were timely paid.

In December 2013, Applicant's wife was diagnosed with Stage 3 cancer. In February 2015, his wife suffered a massive heart attack and could no longer work. The medical expenses from the medical treatment, hospital stay, and after care were not

entirely covered by TRICARE. Again, these were unexpected medical emergencies. For AG ¶ 20(a) and AG ¶ 20(b) to apply there must not only be the unusual conditions or unexpected medical emergencies, but Applicant must act reasonably under the circumstances. Having documented payments of less than \$1,300 over a four year period, is not acting reasonably.

Under AG ¶ 20(c) there is no showing of any financial counseling. Nor are there clear indications the problem is being resolved. I find \$75 per month payments insufficient to timely resolve the delinquent accounts. AG ¶ 20(c) does not apply. Under ¶ 20(d), Applicant has paid two delinquent obligations, is making monthly payments on three more, and is attempting to reach settlement agreements on two other delinquent accounts. AG ¶ 20(d) applies to the two debts he has paid and to the three on which he has made monthly payments. In his SOR Answer, he stated he had made repayment arrangements with a number of creditors. At hearing, he did not provide copies of those agreements or show payments in accord with those agreements.

There is no documentation showing any repayment agreements or payments on the remaining 15 SOR delinquent obligations. Applicant asserts he made payment on a number of these delinquent accounts between August 2007 and July 2010 and a number of the creditors informed the IRS that some part of his debt had been forgiven. However, the only documentation related to the debt solutions company was a one-page list of the obligations to be covered by the plan. There is no showing of any payments being made to the creditors or any documentation showing the debts were forgiven in whole or in part.

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 experienced financial problem due

to medical problems outside of his control. Those medical problems resulted in his wife losing her job after their son was born in 2003. His wife also suffered serious medical problems in 2013 and 2015.

Applicant's household income is more than \$97,000. He has known of the Government's concern about his finances since his September 2012 interview when he was confronted about his finances and each of more than half of the SOR delinquent obligations. In November 2015, the SOR reasserted the Government's concern about his delinquent obligations. Since being aware of the Government's concern, he has documented payment of less than \$1,300. He currently makes combined payments of \$75 monthly on three accounts. This provides little confidence that he will be able to address the remainder of the SOR delinquent obligations in a timely manner.

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, documented the payment of SOR delinquent obligations, established compliance with repayment plans or otherwise substantially addressed his past-due obligations, he may well demonstrate persuasive evidence of his security 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). Payments are being made to some of his creditors, but the monthly payments are small. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant has not mitigated the security concerns arising from his delinquent financial obligations.

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, Financial Considerations: AGAINST APPLICANT

Subparagraphs 1.a – 1.e: Against Applicant

Subparagraphs 1.f – 1.i: For Applicant

| Subparagraph 1.j: | Against Applicant |
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| <p>1. The Applicant's financial statements are not audited by a certified public accountant, which is a requirement for the issuance of a license under the Act.</p> | <p>1. The Applicant's financial statements are not audited by a certified public accountant, which is a requirement for the issuance of a license under the Act.</p> |

Subparagraph 1.k: For Applicant

Subparagraphs 1.l – 1.w:

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 Applicant a security clearance. Eligibility for access to classified information is denied.

CLAUDE R. HEINY II
Administrative Judge