

and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 7. Applicant disputed some incorrect biographical facts that were in the FORM. There were no other objections. Applicant responded to the FORM and submitted documents marked as Applicant Exhibit (AE) A through H.¹ Department Counsel objected to AE C and objected to Applicant changing his answer to the SOR. Department Counsel's objections are overruled. All exhibits were admitted into evidence without objection. The case was assigned to me on April 6, 2017.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.b, and 1.e through 1.i. He denied SOR ¶¶ 1.a, 1.c, and 1.d. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 53 years old. He is married and has a grown son and stepchildren. He completed a vocational school. He attended college, but did not earn a degree. He has worked for his current employer since 2000.

Applicant completed a security clearance application (SCA) in December 2012. He was interviewed by a government investigator in August 2013. At that time, he was put on notice of the debts in SOR ¶¶ 1.a, 1.b, 1.c, 1.d, 1.e, and 1.g. Credit reports from January 2013 and April 2015 support the debts alleged in the SOR.²

The debt in SOR ¶ 1.a (\$14,419) is a delinquent student loan. Applicant's student loan was deferred in 2012. During his 2013 background interview, he stated he fell behind on this loan when it came out of deferment, and he was unaware of its status. He told the investigator that he was currently making monthly payments of \$215. In his answer to the SOR, he stated the debt was loan current. He provided a document showing payments from August 2015 to January 2016. In his response to the FORM, he stated that he consolidated his student loans in August 2015 and is making monthly payments. Applicant provided a copy of a January 2016 credit report that reflects the loan is current.³

Applicant was put on notice about the debt in SOR ¶ 1.b (\$937) during his background interview. He told the investigator then that he disputed this debt and would deal with it in accordance with his plan. In his answer to the SOR, he acknowledged that he owed the debt in SOR ¶ 1.b and was going to pay it off by February 2016, and it would be reflected in his credit report. In his response to the FORM, he stated that he originally admitted he owed the debt, but he does not believe the amount alleged is

¹ Applicant marked his exhibits as A through G. So as not to change the sequence, I have marked his narrative response as AE H.

² GE 4, 5, 6, 7.

³ GE 2, 7; AE H.

accurate, therefore he disputes the debt. Applicant provided a January 2016 credit report and this debt is reported as a collection account for an account opened in 2009. Despite admitting he owes the debt and disputing the amount, Applicant did not provide proof of actions to resolve this account.⁴

During his background interview in 2013, Applicant acknowledged owing the debt in SOR ¶ 1.c (\$874) and explained due to the economy he fell behind in paying the account. He intended to pay the debt in accordance with his plan. In his answer to the SOR, Applicant denied this debt, stating it is a mistake that he disputed with the credit bureau, and it was removed from his credit report. Applicant's January 2016 credit report reflects the account was opened in 2011 and is in collection as a "seriously past due date." Applicant did not provide additional documentation to show the debt was removed from his credit report, paid, or resolved. Applicant did not provide information as to the plan he may have had to resolve his delinquent debts.⁵

Applicant denied the medical debt in SOR ¶ 1.d (\$550) believing it is a consolidation of medical debts from a collection company for other debts alleged in the SOR. It is not listed on his January 2016 credit report.⁶

Applicant admitted all of the medical debts alleged in SOR ¶¶ 1.e through 1.l. These debts originated from 2009 through 2014. With regards to the debts in SOR ¶¶ 1.e and 1.g, Applicant acknowledged during his background interview that he owed the debts from 2009, but had not gotten around to paying them, but intended to do so in accordance with his plan. In his answer to the SOR, he stated that each debt alleged is a bill for unpaid emergency room visits that were not covered by his insurance company. He further stated the bills would be paid within 30 days and should be reflected on his credit report. In Applicant's response to the FORM, he provided proof that he made three payments totaling \$856 to one medical creditor in June 2016, but did not specify which of the SOR debts were resolved by these payments. It appears the debts in SOR ¶¶ 1.e through 1.j are the same medical creditor and are resolved on his credit report. The medical debts in SOR ¶¶ 1.k, and 1.l are from a different creditor and the collection accounts have a zero balance on Applicant's January 2016 credit report.⁷ These debts are resolved.

Applicant provided character letters in which he is described as professional, trustworthy, respectful, upstanding, hard-working, dependable, dedicated, and honest. He provided copies of pay stubs, a financial statement, bank statements, and a biographical letter.⁸

⁴ GE 2, 7, AE H.

⁵ GE 2, 7; AE H.

⁶ GE 2.

⁷ GE 2, 5, 6, 7; AE G.

⁸ AE A, B, D, E, F.

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 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, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an 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 Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.⁹

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

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

Applicant has delinquent debts that began accumulating in 2009. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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;

⁹ See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

(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 delinquent debts began accumulating in 2009. He recently resolved medical debts that were owed from 2009 through 2014. He did not resolve them until after he received the SOR. His student loans were consolidated and his credit report reflects the account is current. SOR ¶¶ 1.b and 1.c are not resolved, despite Applicant being on notice about them since at least 2013. He stated SOR ¶ 1.c is no longer on his credit report, which is inaccurate. He admits he owes the debt in SOR ¶ 1.b, which has been delinquent since 2011, and which he acknowledged owing in 2013. He now disputes the amount, but failed to provide evidence of his actions to resolve it. AG ¶ 20(a) does not apply. Applicant has not resolved two delinquent debts. His debts are years old and there is insufficient evidence that they occurred under circumstances that are unlikely to recur. His conduct casts doubt about his current reliability, trustworthiness, and good judgment.

Applicant did not provide evidence that his financial problems were beyond his control. He told the government investigator in 2013 that due to the economy he fell behind on bills. He failed to elaborate on the specific problems he may have experienced due to the economy. Even if the financial problems were beyond his control, he did not provide sufficient evidence to show he acted responsibly under the circumstances. He acknowledged owing medical debts from 2009 through 2014, but did not pay them until June 2016. He has other debts that he has not provided proof that he is resolving. AG ¶ 20(b) does not apply.

There is no evidence Applicant participated in financial counseling. Applicant's student loan is now current. He paid his delinquent medical debts, but has failed to resolve two other debts. I cannot find there are clear indications that he is responsibly resolving his financial problems. The first part of AG ¶¶ 20(c) applies, but the later part does not.

In June 2016, after receiving the SOR, Applicant paid delinquent medical debts owed from 2009 through 2014. He owes two other delinquent debts that he has not resolved, despite being aware of them for years. Applicant's failure to pay his medical debts for years does not constitute a good-faith effort to repay overdue creditors. AG ¶ 20(d) does not apply. During his background interview, Applicant acknowledge owing the debt in SOR ¶ 1.c. Later he disputed it, stating it is no longer on his credit report,

which is inaccurate. He acknowledged he owed the debt in SOR ¶ 1.b, but disputes the amount. He has been aware of both of these debts for years. He failed to provide documentary evidence to substantiate the basis of his dispute or actions to resolve them. AG ¶ 20(e) does not apply.

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 the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

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 have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 53 years old. His delinquent debts began accumulating in 2009. He was put on notice regarding the security concerns raised by his finances during his background interview in 2013. He did not pay his medical debts until June 2016 and has other debts that are unresolved. Despite some evidence of mitigation, it is insufficient to overcome the security concerns. He has failed to meet his burden of persuasion. The record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

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
Subparagraphs 1.d-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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge