



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



In the matter of:)
(Redacted)) ISCR Case No. 15-03999
Applicant for Security Clearance)

Appearances

For Government: Rhett C. Petcher, Esq., Department Counsel
For Applicant: *Pro se*

05/25/2017

Decision

As of March 2014, Applicant owed a \$1,582 judgment debt and an \$8,202 collection debt. Applicant admitted the debts when he answered the Statement of Reasons (SOR). He has yet to mitigate the financial considerations security concerns raised by the delinquencies. Clearance is denied.

Statement of the Case

On December 7, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued an SOR to Applicant, detailing the security concerns under Guideline F, financial considerations, and explaining why it was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DOD CAF took the action under Executive Order (EO) 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 for Determining Eligibility for Access to Classified Information* (AG) effective within the DOD on September 1, 2006.

On March 8, 2016, Applicant answered the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On August 19, 2016, the case was assigned to me to conduct a hearing to

determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On August 25, 2016, I scheduled a hearing for September 29, 2016.

I convened the hearing as scheduled. Four Government exhibits (GEs 1-4) and four Applicant exhibits (AEs A-D) were admitted into evidence without objection. Applicant testified, as reflected in a transcript (Tr.) received on October 11, 2016. I held the record open for one month after the hearing for post-hearing submissions from Applicant. No documents were received by the October 30, 2016 deadline.¹

Findings of Fact

The SOR alleges under Guideline F that, as of December 7, 2015, Applicant owed a \$1,582 judgment from 2008 (SOR ¶ 1.a) and an \$8,202 credit card collection debt (SOR ¶ 1.b). When he answered the SOR allegations, he admitted both debts without explanation. After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 41-year-old college graduate, who began working as a project manager for a nonprofit community work service program in December 2013. (GE 1; Tr. 26-27.) He applied for his first DOD security clearance for a contract that the nonprofit has with the U.S. military. (AEs C, D; Tr. 16.)

A native of Thailand, Applicant immigrated to the United States with his parents when he was two years old. He became a naturalized U.S. citizen in April 2002. (GE 1.) After graduating from high school, he moved to his present area for college in September 1993. In June 1997, he began working part time as a security officer for a baseball franchise. After earning his bachelor's degree in June 1998, he worked full time for the baseball club until July 2006, when he was released for violating an employee policy. He had obtained an autograph from a baseball pitcher while he was on duty. (GEs 1, 2.)

Applicant then worked in commercial sales for an automobile dealer from August 2006 to May 2007. He resigned due to job dissatisfaction. In May 2007, he went to work in the nonprofit sector, initially as a job coach and then as a rehabilitation project director in a program for adults with special needs. Over his seven years with that organization, his salary increased from \$33,000 to \$38,000. (Tr. 28-29.) In August 2013, he was terminated from that employment after he was found to have improperly restrained a disruptive and non-cooperative client. (GEs 1, 2.)

To supplement his income, in September 2007 Applicant began working a second job at night, 20 to 30 hours a week, for a multinational technology company in one of its retail outlets. In October 2013, Applicant was terminated for not following the store's check

¹ On May 4, 2017, in response to an inquiry about any post-hearing submissions, I learned that Applicant had separated from his employment with the nonprofit sponsoring him for security clearance eligibility. A JPAS entry confirmed an employment separation date of February 1, 2017. Applicant's hearing had been conducted, so I retained jurisdiction under ¶ 4.4.1 of DOD Directive 5220.6.

policy. He accepted a return for cash from a customer who had paid by check when store policy required refunds of check purchases by mail. (GE 2.) Applicant was unemployed from October 2013 to December 2013, when he started working for the nonprofit community organization at an annual salary of \$43,500. (GEs 1, 2; Tr. 28.)

On March 3, 2014, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86). Applicant responded negatively to the financial record inquiries concerning any delinquencies involving enforcement in the last seven years and any delinquencies involving routine accounts in the last seven years. (GE 1.)

As of March 15, 2014, Applicant's credit report showed that a \$1,582 judgment (SOR ¶ 1.a) had been filed against him in November 2008 in a court near his parents' home. Disposition of the judgment was listed as unknown. Additionally, a credit card debt had been settled for less than its full balance in May 2007, but another credit card debt of \$8,201 had been charged off in September 2007 and placed for collection in approximately March 2008 (SOR ¶ 1.b). Applicant was making timely payments on one credit card with a \$300 limit and a \$192 balance, but that account had been 120 days past due in July 2013. (GE 3.)

On March 21, 2014, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). Regarding his financial record, he indicated that the Internal Revenue Service (IRS) had garnished his entire paycheck in April 2013 to resolve a \$1,500 federal tax debt for 2012. When confronted by the OPM investigator about the 2008 judgment and \$8,201 collection debt, Applicant denied any knowledge of them. He volunteered that he had missed a few payments on his one open credit card account previously, but it was now current. Applicant asserted that he was able to meet his expenses (cell phone, electric bill, Netflix, and his one open credit card), given that his fiancée was helping to pay the household finances. (GE 2.)

On March 28, 2014, Applicant was re-contacted by the OPM investigator to sign releases. At that time, he volunteered that he learned from his parents that the 2008 judgment was for missed payments on an automobile loan. He indicated that he had purchased a 2002 model-year vehicle and that his parents took over the car, but they failed to keep up with the payments. He maintained that his parents had paid the judgment in full, but he provided no proof of payment. (GE 2.)

Between September 2014 and November 2015, Applicant opened 11 revolving credit card accounts. Applicant had applied for some of the credit cards to cover expenses for his wedding to his fiancée set for November 2016. (Tr. 55.) As of November 2015, he owed balances totaling \$10,861 on eight of the 11 accounts. One of those credit accounts had a \$5,254 balance on a credit limit of \$6,500. The 11 accounts, which had a total credit limit of \$32,150, were all rated as current. Neither the judgment debt in SOR ¶ 1.a nor the collection debt in SOR ¶ 1.b were on his credit record as reported by Equifax in December 2015. (GE 4.)

At his hearing in September 2016, Applicant testified that he never received documentation of either the judgment in SOR ¶ 1.a or the collection debt in SOR ¶ 1.b. He assumes that any court documents or collection letters were sent to his parents' address. (Tr. 23-24, 38-39.) He testified that he would not have used his parents' address on any accounts after he moved and that he would have notified his creditors of his new address so that he could be billed. (Tr. 39.) He denied knowing why a judgment would have been filed against him in 2008 and, discrepant from what he had indicated in March 2014, he surmised that it might be an unpaid credit card. (Tr. 31.) After learning about the two debts from the OPM investigator, he sent an email to the company now holding accounts for the creditor named in SOR ¶ 1.b. He had yet to receive any response. (Tr. 23-24, 31-32, 37.) Applicant explained his failure to follow up on his initial inquiry in the past two years, stating "I don't have an answer for that. It's been just busy with work and other assorted things." (Tr. 54.) At Applicant's request, I held the record open for one month for him to submit documentation about the debts in the SOR. No documentation was received.

As of late September 2016, Applicant's salary with the nonprofit organization was \$44,000 annually. (Tr. 28.) His take-home pay was \$1,100 every two weeks. (Tr. 30.) He earned an additional \$1,600 in the summer of 2016 on a side job for another nonprofit organization. (Tr. 58.)

Applicant and his fiancée began a cohabitant relationship in November 2013. (GE 1.) They currently live in a house that she purchased. He gives her \$900 toward her \$2,000 monthly mortgage payment. (Tr. 42-43.) They split some other expenses, including utilities and cable/Internet costs, and his share is approximately \$300 a month. Applicant pays his own cell phone expenses of \$180 a month. Applicant does not own a vehicle, but he has a transit pass for public transportation that is \$85 a month. (Tr. 43-45.) He reported about \$300-\$400 in discretionary income each month. As of September 2016, Applicant had \$750 in his checking account and \$900 in his savings account. (Tr. 46.) He was paying \$377 per month toward credit card balances of approximately \$10,000. (GE 4; Tr. 47-48.)

Applicant was notified by the IRS in 2016 that he owes \$1,200 in federal taxes for 2014. As of September 2016, Applicant had no repayment plan in place for the tax debt. (Tr. 50-51.)

Character References

The nonprofit's director of job training services, who also serves as the facility security officer for the organization's government contracts, first met Applicant in 2010 on a service trip to New Orleans to assist in the cleanup and rebuilding of the city after a devastating hurricane. She hired Applicant in 2013 to manage their mailroom contracts with the government. Applicant has proven to be reliable, trustworthy, and hardworking. He takes his work responsibilities seriously and takes pride in his work as an advocate for his staff, who all have significant disabilities. She believes Applicant poses no threat to security, safety, or his contractual obligations, and is confident that he can handle the obligations of a secret clearance. (AE C.) The nonprofit's executive director likewise

endorses granting a secret clearance to Applicant based on her observations of his work performance since 2013. (AE D.)

A lieutenant commander in the U.S. military has known Applicant since 2002 when both worked for the baseball organization. She witnessed Applicant “conduct himself with unparalleled discipline, composure, and professionalism.” In her opinion, Applicant is an “extremely gifted manager of people” with high ethical standards. (AE B.)

Applicant’s fiancée, a teacher at a charter school, has known Applicant for over five years. She has never known him to share confidential personal information about his disabled clients. Applicant is generous in donating his time and talents to multiple local nonprofit organizations. She has no reservations about recommending Applicant for security clearance eligibility. (AE A.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to 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 overall 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Section 7 of EO 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 concerns about financial considerations are set forth 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.

As of March 2014, Applicant's credit report listed a \$1,582 judgment with disposition unknown and an \$8,201 credit card debt in collection. Applicant claimed no knowledge of the debts when he was first interviewed for security clearance eligibility in March 2014. The Appeal Board has held that adverse information from a credit report is normally sufficient to meet the substantial evidence standard to establish a debt. See, e.g., ISCR Case No. 14-03612 (App. Bd. Aug. 25, 2015.) Applicant admitted the debts when he answered the SOR. The delinquent debts raise security concerns under disqualifying conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.” Applicant has the burden to mitigate those security concerns.

Financial delinquency may be mitigated under AG ¶ 20 by one or more of the following conditions:

- (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 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.

AG ¶ 20(a) is applicable in that the delinquencies were infrequent and not incurred recently. Likely because of their age, they were no longer on his credit report as of December 2015. Applicant was able to open 11 new credit card accounts between September 2014 and November 2015. However, AG ¶ 20(a) does not mitigate Applicant's disregard of the debts. As of his OPM interview in March 2014, he was on notice that the delinquencies on his credit record were of concern to the DOD. Apart from sending an initial inquiry about the credit card debt in SOR ¶ 1.b, he has done nothing toward investigating or addressing the debts. He had 2.5 years between his OPM interview and his hearing to obtain documentation proving that the debts had been paid or to arrange repayment terms. When asked to explain his inaction, Applicant responded that he has been busy with work "and other assorted things." His failure to give priority to addressing the DOD's security concerns raises doubt about whether he can be counted on to attend to the obligations that come with security clearance eligibility.

When re-contacted by the OPM investigator in late March 2014, Applicant indicated that his parents had assumed responsibility for repaying his car loan, and that their failure to do so led to the financial judgment. He denied receiving any notices about the judgment, which was listed on his credit report. He now discrepantly claims that it may have been a credit card debt. Assuming it was for a car loan and that his parents promised to make the loan payments, a good-faith reliance on his parents' promise would only partially implicate AG ¶ 20(b). Applicant did not act responsibly by ignoring the judgment debt, especially after learning it was of concern to the DOD. AG ¶ 20(b) was not shown to apply to the credit-card collection debt. There is no evidence of any unforeseen circumstance that mitigates the \$8,202 credit-card collection debt. When asked to explain the adverse credit information on his record, he stated, "Again, I think it was just my own irresponsibility of paying them [sic] at the proper time." (Tr. 25.)

The Appeal Board has held that an applicant is not required to establish that he has paid off each debt in the SOR, or even that the first debts paid be those in the SOR.²

² The DOHA Appeal Board stated in ISCR Case No. 07-06482, decided on May 21, 2008, in part:

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate[s] that he has ". . . established a plan to resolve his financial problems and taken significant actions to implement that plan." See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The

However, an applicant needs to show that he has a plan to resolve his debts and that he has taken significant steps to implement his plan. Without any documented progress toward paying the judgment in SOR ¶ 1.a or the credit card collection debt in SOR ¶ 1.b, I cannot apply AG ¶ 20(c) or ¶ 20(d). Moreover, he presented no evidence to prove that he is not legally liable for the debts, so AG ¶ 20(e) is not established.

About his finances generally, Applicant has a timely record of payments on the 11 new credit card accounts opened since September 2014, which shows some financial responsibility. The aggregate balance on his open credit card accounts totaled \$10,861 as of December 2015. He owed approximately \$10,000 on the accounts as of late September 2016, despite monthly payments of \$377, so he has not significantly reduced his debt burden. He was under his credit limit of \$32,150 on the accounts. After his hearing, if not before then, Applicant should have understood that the DOD was concerned about the lack of demonstrated progress toward resolving the issues in the SOR. He presented no evidence of payments or of filing disputes. His evidence of recent financial responsibility is undermined to the extent that he continues to ignore his old debts. The financial considerations concerns are not sufficiently mitigated.

Whole-Person Concept

In evaluating the whole person, the administrative judge must consider an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(a).³ The analysis under Guideline F is incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

The security clearance adjudication is not aimed at collecting an applicant's personal debts. Rather, it involves an evaluation of an applicant's judgment, reliability, and trustworthiness in light of the security guidelines in the Directive. See ISCR Case No. 09-

Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

³ The factors under AG ¶ 2(a) are as follows:

(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.

02160 (App. Bd. Jun. 21, 2010). His fiancée and work colleagues at the nonprofit endorsed him for security clearance eligibility. His outstanding delinquency is manageable, which makes it more difficult to understand why he has failed to address it. Concerns persist about whether Applicant can be counted on to fulfill security responsibilities without regard to his personal interests. He has known since his OPM interview in March 2014 that the DOD was concerned about the delinquent accounts on his credit record. He had an ample opportunity to either disprove his liability or arrange for affordable payments toward the judgment and credit card debt. His handling of his tax issues was not alleged, but some concern arises because he owes the IRS \$1,200 with no plan in place to repay his delinquent taxes for 2014. 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). For the reasons noted above, I am unable to find that it is clearly consistent with the national interest to grant Applicant security clearance eligibility at this time.

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
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Subparagraphs 1.a-1.b:	Against Applicant
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Conclusion

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

Elizabeth M. Matchinski
Administrative Judge