



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



In the matter of:

REDACTED

Applicant for Security Clearance

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ISCR Case No. 15-04411

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel

For Applicant: *Pro se*

01/24/2017

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant's mortgage was seriously delinquent in 2015. He managed to suspend foreclosure of his home loan by paying 1.5 times his scheduled monthly payment since October 2015. He has yet to make any payments toward a home-equity line of credit charged off for \$15,685 around August 2014 or a \$14,818 credit card judgment filed in January 2015. His financial situation continues to raise security concerns. Clearance is denied.

Statement of the Case

On December 7, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (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 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 December 31, 2015, Applicant answered the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On April 22, 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 him. I scheduled a hearing for May 17, 2016.

I convened the hearing as scheduled. Four Government exhibits (GEs 1-4) were admitted into evidence without objection. A letter forwarding discovery of the Government's exhibits to Applicant was marked as a hearing exhibit (HE 1) for the record but not entered into evidence. Applicant testified, as reflected in a transcript (Tr.) received on May 27, 2016.

I held the record open for one month for Applicant to submit documentary evidence. On June 17, 2016, I received by electronic mail a document in an inaccessible format submitted on Applicant's behalf from his mortgage lender. An acceptable version was submitted by Applicant on July 19, 2016. Department Counsel filed no objection, and the document was admitted into the record as Applicant exhibit (AE) A.

Summary of SOR Allegations

The SOR alleges under Guideline F that, as of December 7, 2015, Applicant had not paid a \$14,818 credit card judgment from January 2015 (SOR ¶ 1.a); that his mortgage was \$11,187 past due on a \$112,991 balance (SOR ¶ 1.b); and that his home-equity line of credit had been charged off for \$15,685 (SOR ¶ 1.c). Applicant admitted the debts when he answered the SOR. He explained that he had incurred credit card debt while in college. After graduating in 2011, he began working as a bus driver for some income. In 2012, he suffered the first of three strokes, which left him unemployed for a couple of years and living on social security disability income. He explained that he was paying 1.5 times his mortgage payment each month to catch up. He had no success in settling the credit card debt in SOR ¶ 1.a because he could not afford to pay the \$10,000 wanted by the creditor to settle the debt.

Findings of Fact

After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 48-year-old community college graduate with an associate's degree awarded in May 2011. He began working as a contract computer software technician for a defense contractor in May 2014. Applicant was married from June 1988 to July 1996. He has a 15-year-old son from another relationship. (GEs 1-2; Tr. 22-23.) He provides financial assistance for his son at \$80 a week, but it is not court ordered. (Tr. 30-31.)

After his divorce, Applicant lived with his brother. Applicant worked as a commercial roofer, and he had no trouble paying his debts on time. (GEs 1, 4.) Around November 2004, Applicant relocated to be near his son, who was then three years old. (GE 1; Tr. 20.) In May 2005, Applicant purchased a two-family home, obtaining a mortgage loan of \$134,830. (GE 4; Tr. 40.) In July 2007, Applicant was injured at work. During his lengthy recuperation of approximately two years, he lived off his savings and an insurance settlement.¹ In June 2008, he opened a home-equity line of credit. (GE 2.)

Applicant could not return to roofing because of his injury. Applicant attended a local community college from September 2009 to May 2011 when he earned his associate's degree. The cost of his schooling and books was covered by his employer's worker's compensation insurance. (Tr. 21, 51.) He had been promised reimbursement for his travel costs to school, but he was not paid for his travel. (Tr. 52.) He used the credit card account in SOR ¶ 1.a to cover some living expenses, including gasoline for his vehicle. (GEs 1-2; Tr. 21, 73-74.) After earning his degree, Applicant initially could not find a job in his field. In September 2011, he began working as a part-time school bus driver. He earned about \$9 an hour for about 20 hours of work per week. (Tr. 63.) Around July 2012, he had the first of three strokes. (Tr. 21, 53-54.) He was unable to work for a few years and lived with his son's mother. (Tr. 54.) Applicant had temporary social security disability income, and, in 2012, he also received fuel assistance. (Tr. 21, 55.) By February 2013, he was seriously behind on his home-equity line of credit, on his mortgage, and on a credit card account (SOR ¶ 1.a). In October 2013, his credit card account was placed for collection for \$14,818. His home-equity line of credit was charged off for \$15,731 around August 2014. (GEs 2-4.)

From March 2014 to May 2014, Applicant was employed as an assistant manager for a catering company. In May 2014, he began working for his current employer, initially in a contract position. On September 23, 2014, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86) incorporated within an Electronic Questionnaire for Investigations Processing. In response to inquiries concerning any delinquency involving routine accounts, Applicant listed the \$14,818 credit card debt. He indicated that a civil action had been brought for the debt and that he was going to settle it in court. Applicant listed no other delinquent accounts. (GE 1.)

As of October 8, 2014, Applicant's credit record revealed an additional delinquency in that his home-equity line of credit was in collection for \$15,685 after being charged off to profit and loss. Applicant's mortgage loan was rated as current with a balance of \$113,469. His home loan had been 180 days or more delinquent in the past, but he brought his home loan current in August 2014. (GE 3.)

On November 18, 2014, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). Applicant indicated that he supported himself in college with his savings and an insurance settlement from his 2007 injury. During his unemployment from July 2007 to September 2009 because of medical issues, he worked around his home or went to medical appointments. Applicant explained that he became

¹ Applicant did not elaborate about the amount of the settlement.

delinquent on the credit card account in SOR ¶ 1.a around October 2010, and that he had not made any payments on the \$14,818 balance. Applicant indicated that the debt prompted a lawsuit in October 2014. He expressed an intention to make repayment arrangements. Applicant volunteered that he had been late in paying his mortgage a month or two at different times during his unemployment from July 2012 to March 2014 when his income was limited. However, he had cashed in a \$28,000 retirement fund, which he claimed satisfied his mortgage arrearage. At his hearing, Applicant testified that he had to pay at least \$7,000 in fees and taxes for his early withdrawal of his retirement funds. (GE 2; Tr. 58-59.) Applicant did not recognize the home-equity line of credit delinquency when confronted about that debt by the OPM investigator. (GE 2.) Applicant could provide little detail about the debt at his hearing. (Tr. 79-81.) However, he recalled writing checks against an account to cover living expenses. (Tr. 78, 85.)

Applicant's mortgage was delinquent throughout most of 2014 and 2015. He had tenants in his rental unit until September 2014, but they "screwed [him] out of the last three months' rent." (Tr. 40-41.) After foreclosure proceedings had been initiated against his mortgage, Applicant received a call from a state housing assistance agency offering to help with moving expenses. Applicant arranged with his mortgage lender to pay \$755 every two weeks (1.5 times his scheduled monthly mortgage payment) to address his mortgage delinquency. (Tr. 34-36.) As of late October 2015, Applicant's mortgage was past due in the amount of \$11,187 on an \$112,991 balance. As of December 3, 2015, his credit report (GE 4) showed that in October 2015, he paid \$1,510 toward a scheduled monthly payment of \$1,002. It was apparently his first payment toward his arrearage. Applicant testified that he has continued to make the payments by automatic deduction from his bank account. (Tr. 38-39, 70.) His mortgage lender confirmed in June 2016 that as long as Applicant pays \$755 every other week, the foreclosure process will be suspended. (AE A.)

Applicant made no payments on his home-equity line of credit after March 2014. In January 2015, a collection entity obtained a \$14,818 judgment against Applicant for the credit card delinquency in SOR ¶ 1.a. (GE 4.) Applicant had been given 90 days to settle the debt out of court. He offered the creditor a lump sum of \$7,000, but the creditor wanted \$10,000. (Tr. 68-69.) He has not contacted the creditor since then because of his tight financial situation. (Tr. 72.)

Around April 2016, Applicant went on short-term medical leave. After his first week of leave, he began receiving disability pay at 70% of his regular wages. Applicant was still on medical leave as of his hearing in mid-May 2016. (Tr. 24-25, 70.) He described his financial situation as "rough." His take-home pay is \$1,000 every two weeks. (Tr. 31-32.) He has not attempted to obtain tenants for his downstairs unit, which has been vacant since September 2014. (Tr. 42.) Applicant pays the electric and water bills for both his unit and the rental unit. His water bill runs him \$50 a month. His electric bill recently doubled to about \$160 a month. (Tr. 43.) Applicant has oil heat and the cost varies with the season and temperature. He has paid as much as \$800 for one month of home heating oil in the past. (Tr. 45.) He pays \$40 a month for wireless phone service. Applicant has Internet service at \$40 or \$60 a month, but he cancelled his cable television service. His groceries run him \$180 a month. He also pays \$60 a month for his son's karate lessons. (Tr. 47-49.)

As of mid-May 2016, Applicant had approximately \$8,000 on deposit in his checking account because he had received a disability check of \$24,000 in 2015. He used \$13,000 for a \$20,000 car and financed the rest of the cost. Applicant is paying \$155 a month for the car loan, which was not on his credit record as of December 2015. (GE 4; Tr. 47, 56-57.) He did not have any savings. (Tr. 49-50.) Applicant did not have any active credit card accounts as of May 2016. (Tr. 58.) He had not had any financial counseling. He contacted his state for assistance and was told he did not qualify. (Tr. 83.)

Applicant had not filed his federal or state income tax returns for 2015 or asked for an extension of time to file those returns as of his hearing in mid-May 2016. Applicant believes his tax withholdings are more than adequate to cover taxes owed. (Tr. 60, 63-65.)

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 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 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.

The evidence establishes the financial considerations security concerns alleged in the SOR. Applicant’s mortgage was \$11,187 past due as of late October 2015. A \$14,818 credit card judgment was obtained against him in January 2015. His home-equity line of credit was charged off for \$15,731 in August 2014. As of late October 2015, Equifax was reporting a past-due balance of \$15,685 on the account. Applicant testified to a lack of knowledge about the debt, although he does not contest it. The DOHA 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). Guideline F disqualifying conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

Mitigating condition AG ¶ 20(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,” cannot reasonably apply. Applicant had brought his mortgage current around August 2014 only to fall seriously behind again in 2015. He has made no payments to resolve the credit card judgment or the charged-off home-equity line of credit.

AG ¶ 20(b) is implicated in several aspects. Applicant’s financial problems started after he was injured at work around July 2007. The evidence shows that he relied on consumer credit while recovering from his injury and then while attending school to gain the skills needed to pursue a new line of work. He received an insurance settlement, and his college tuition and books were covered by his worker’s compensation benefits. However, he also did not have any employment income when he was in school. After he earned his

associate's degree, he struggled to find a job in his field. He was unemployed from June 2011 until September 2011, when he began driving a school bus. In July 2012, he suffered the first of three strokes that led to 1.5 years of additional unemployment. The medical issues with consequent unemployment trigger AG ¶ 20(b), which provides:

(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.

Applicant also had no control over the failure of his last tenants to pay their rent for three months before they vacated in September 2014. Since then, Applicant has had to cover utility costs for both units in his two-family home.

Mitigating conditions AG ¶ 20(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," and AG ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," have some applicability because Applicant has been paying 1.5 times his monthly mortgage obligation since October 2015 to suspend foreclosure proceedings. As of his May 2016 security clearance hearing, Applicant had \$8,000 remaining from the disability settlement, which was slowly being depleted to pay his mortgage arrearage. Assuming no accrued interest and \$508 per month going toward his arrearage since October 2015, Applicant was still about \$5,000 behind on his mortgage as of May 2016. He is likely to continue to make his payments to avert foreclosure. A favorable finding is warranted with regard to the mortgage debt in SOR ¶ 1.b because of his efforts to resolve the delinquency. However, he had made no progress toward reducing the \$14,818 judgment or the \$15,685 past-due line of credit debt. Neither AG ¶ 20(c) nor AG ¶ 20(d) fully mitigates the financial considerations concerns.

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

The Board has previously noted that the concept of a meaningful track record necessary includes evidence of actual debt reduction through payment of debts. 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. All that is required is that an applicant demonstrated that he has established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. There is no requirement that the plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payments of such debts one at a time. 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.

See ISCR 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted). In Applicant's favor, there is no evidence that he is incurring consumer credit debt that could further compromise his financial situation further. He cancelled his cable television service, and he is not opening new credit card accounts. In the past year or so, he purchased a car with a down payment of \$13,000 from his disability settlement and a loan for \$7,000. There is no evidence that he has been late on his car payments. His income has been compromised by his short-term disability since April 2016 in that his benefit is 70% of his usual wages. However, his continued disregard of the credit card judgment does not inspire confidence that he can be counted on to address his \$30,503 in delinquent consumer credit obligations. The financial considerations concerns are not fully mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(a).² 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.

A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of the evidence to determine if a nexus exists between established facts and a legitimate security concern. 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). Applicant had some medical setbacks that compromised his finances. Yet, he has also not acted entirely responsibly with regard to addressing his difficult financial situation. He has taken no steps to contact his creditors about the delinquencies in SOR ¶¶ 1.a and 1.c. He has taken no steps to obtain tenants for his rental unit since his last tenants vacated in September 2014. Unacceptable doubts persist about whether Applicant can be relied on to comply with rules and regulations regarding the handling of classified information, given his ongoing disregard of the credit card judgment. Applicant's failure to comply with his federal and state income tax filing obligations for 2015 is further indication of his failure to appreciate the importance of complying with legal obligations.³ After considering all the

² 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.

³ The DOHA Appeal Board has long held that the administrative judge may consider non-alleged conduct to

facts and circumstances, it is not clearly consistent with the national interest to continue his 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Elizabeth M. Matchinski
Administrative Judge

assess an applicant's credibility; to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; to decide whether a particular provision of the Adjudicative Guidelines is applicable; or to provide evidence for a whole-person analysis under Section 6.3 of the Directive. See, e.g., ISCR Case No. 03-20327 (App. Bd. Oct. 26, 2006); ISCR Case No. 09-07219 (App. Bd. Sep. 27, 2012). Applicant's failure to file timely federal and state income tax returns or file for extensions of time to file his returns for tax year 2015 cannot provide a separate basis for disqualification because it was not alleged, but it is relevant to assessing Applicant's financial judgment generally.