



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



In the matter of:)	
)	
)	ISCR Case No. 15-04709
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank Esq., Department Counsel
For Applicant: *Pro se*

03/22/2017

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 \$70,000 in delinquent student loans upon which he is now making payments and \$4,000 of other delinquent accounts. The SOR also alleges he falsified his Electronic Questionnaires for Investigations Processing (e-QIP). Applicant has mitigated the personal conduct and financial considerations security concerns. Clearance is granted.

History of the Case

On February 10, 2016, acting under the relevant Executive Order and DoD Directive,¹ the DoD issued a Statement of Reasons (SOR) detailing financial considerations and personal conduct 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 February 23, 2016, the Defense Office of Hearings and Appeals (DOHA0 received Applicant's SOR answer and his request for a hearing. On May 17,

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.

2016, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for a hearing to be convened on June 8, 2016.

At the hearing, Government's Exhibits (Ex.) 1 through 7 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. In July 2016, three additional documents were received and admitted as Ex. I, J, and K. On June 21, 2016, DOHA received the hearing transcript (Tr.).

Findings of Fact

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

Applicant is a 37-year-old technician who has worked for a defense contractor since May 2014, and he seeks to obtain a security clearance. (Ex. 1) His annual salary is approximately \$48,000. (Tr. 61) In May 2014, he divorced and has one son² age 12 for whom he pays \$218 monthly child support. (Ex. 7) He is current on his child support obligation. (Ex. 7) Applicant's manager, prior manager, and coworkers stated Applicant is trustworthy, reliable, flexible, and a hard worker who is willing to work long hours outside normal hours. (Ex. A,B,C,D) They say he has exemplary behavior and work ethic.

In August 2006, Applicant started attending classes at a technical institute, from which he graduated in 2011. (Ex. 1, Tr. 16) Following graduation, Applicant worked temporary jobs until obtaining a stable job in 2012.

Prior to Applicant meeting his ex-wife, he had a single credit card. (SOR Answer) In March 2010, he married and it was agreed that since his then-wife was more experienced with credit that she should handle the household's finances. (Tr. 17) His then-wife was "very adamant about her handling 100 percent of the finances for our household." (Tr. 54) His then-wife worked the entire time they were married with an annual salary of \$42,000. (Tr. 69)

Applicant had faith that his then-wife was properly handling the household finances. He stated;

I trusted her a lot, a whole lot. She never, to my face, gave me a reason not to trust her, but come to find out, she was not very trustworthy in the first place. She was a good liar. (Tr. 70)

² Applicant first learned he had a son in 2014 and was to meet him for the first time the day following his hearing. (Tr. 62)

His faith in her was misplaced³ for she was juggling their bills attempting to pay the bills each month. His then-wife had a serious gambling problem, which he learned of the night before he moved out of the home. (Tr. 16, 18, 57, SOR Answer) Shortly after getting married, his then-wife filed for bankruptcy on those debts she and especially her prior husband had acquired prior to the marriage. Applicant and his then-wife never establish a joint bank account so Applicant would transfer money to his then-wife's account for her to use to pay their bills.

The SOR alleges Applicant failed to list his delinquent accounts on his August 2014 e-QIP. He did so because he was unaware of any debts at the time he completed the form. He asked his then-wife repeatedly about their finances only to be told everything was fine. His then-wife would intercept any delinquency notices in the mail before he arrived home from work. (Tr. 36, 56) She thought she would be able to recover and bring the delinquent accounts current. This did not happen. His student loans and single credit card account were not being paid. Repeatedly, he specifically asked his then-wife about his student loan payments and was told the loans were being paid. (Tr. 32) His then-wife was paying her bills, including making her monthly student loan payments, but not his. (Tr. 35, 70)

Before Applicant completed his e-QIP, he specifically asked his then-wife about the status of their finances. She told him she had been checking their credit score on a regular basis and that everything was current. (SOR Answer, Tr. 30, 33) He believed her and answered the e-QIP accordingly. (Tr. 13, 59) He never independently verified their debts. (Tr. 18)

In August 2014, Applicant moved from the home to an apartment and struggled to get by pending the divorce. (Tr. 13) Shortly before moving out, he learned their car was being repossessed. (Tr. 35) With the change of address, he began to receive delinquency notices from creditors. In June 2015, a judgment (SOR 1. p) was entered against him for approximately \$3,000 for his credit card account. He learned⁴ of the judgment when he went to make a purchase and his debit card was declined. His account had been attached and \$1,140 removed. He arranged to repay the rest of the judgment at \$250 per month. The judgment has now been paid and released. (Ex. G, H, Tr. 38) He was also paying the Internal Revenue Service (IRS) \$75 monthly to address his tax debt for tax year 2014. As of March 2016, he owed the IRS \$132. (SOR Answer) He made monthly payments for ten months before his taxes were paid. (Tr. 81)

Applicant acknowledged it was a mistake to trust his ex-wife and to fail to verify their finances. He says his mistake will not be repeated. Now that he is single, he has taken control over all of his financial matters.

³ Applicant stated, "I gave all my finances to her, which I admit was a stupid mistake, and [my finances were] wrecked . . . I should have been more on top of it." (Tr. 35)

⁴ The court papers had been served on Applicant's then-wife, but she shredded the papers after receiving them and never told Applicant about the service or the lawsuit. (Tr. 37)

The majority of the SOR delinquent accounts were student loans, 21 out of 25 debts, with the Department of Education (DOE), Sallie Mae, and an account which was a government unsecured guaranteed loan (SOR 1.t) for education. Applicant's April 2016 credit report indicates that five of the accounts (SOR 1.v through SOR 1.z) have been transferred to another lender and reflect a zero balance. (Ex. 4) The majority of his student loans⁵ have been consolidated with one creditor. (Tr. 28, 68) He entered into a student loan rehabilitation program⁶ repayment agreement whereby he agreed to pay \$196 monthly on the loan. (Ex E, F, I, Tr. 29) In March 2016, he started making his monthly repayment payment. (Tr. 29) The monthly payments are made by automatic drafts on his bank account. (Tr. 29) Additionally, his \$1,097 2015 federal income tax refund was intercepted and applied to his student loan debt. (Tr. 81)

In June 2016, a Garnishment Cancellation Notice was issued by the holder of the student loans listed in: SOR 1.f, 1.g, 1.l, 1.n, and 1.q. releasing an order of withholding from earnings. (Ex. K)

Other than the student loan obligations, Applicant had two collection accounts and two charged-off accounts, which the SOR lists as totaling approximately \$4,000. He asserts he never had an account with the lender listed in SOR 1.s (\$672). (Tr. 39) He had no information about the \$451 collection account (SOR 1.r), which appears on his 2014 credit report, but not on his 2015 or 2016 credit reports. (Ex. 3, 4, 5) As previously indicated, Applicant paid off the debt listed in SOR 1.p of approximately \$3,000, but fees, interest, and other expenses increase the amount he paid to \$3,700. (Tr. 65) He said he wanted to get his student loans under control before starting on the small debts (Tr. 66)

Applicant is current on his rent, utility bills, insurance, and vehicle payment. (Ex. I) He has a 2007 vehicle with \$270 monthly payments. As of June 2015, the balance owed on his vehicle was \$328. He has no credit cards. (Tr. 63) His monthly net remainder (monthly income less monthly expenses and debt payments) is between \$500 and \$800, which includes his pay from his second job. (Tr. 63)

The SOR alleges Applicant failed to list a 1999 arrest for Reckless Use of Explosives and Possession of Explosives without a license. He was 19 years old and asserts he was using homemade fireworks to clear brush out of a field. (Ex. 7) He learned in high school chemistry class to mix chemicals together to create flash fireworks. (Tr. 43) He asserts he was not acting maliciously, but "was just a curious kid." (Tr. 75) He would clear brush and use the flash fireworks to start the bonfire. (Tr. 43) The explosives charges were dropped as part of a plea agreement. (Tr. 75) He stated, "[m]y lawyer said that that (sic) case – that everything pertaining to that case had been sealed and expunged." (Tr. 45) He also said,

⁵ Applicant is unsure the student loan in SOR 1.t is part of the consolidation. (Tr. 67)

⁶ After nine months of timely payments the student loan would be brought out of default. (Tr. 30)

I was under the impression that if the charges were dropped, that you were not officially charged with them, because you never go to court for them, and you're never convicted of them. (Tr. 75)

The explosives-related arrest occurred four days after being arrested for possession of a controlled substance for which he was arrested, found guilty, and served his sentence. (Ex. 5, 6, Tr. 75) He listed the drug arrest and conviction on his e-QIP. (Ex. 1) In December 2004, following the period of probation, he received a first offenders pardon. Applicant was unsure if he should list the arrest and charges due to his pardon and sought guidance from a qualified individual — his facility security officer (FSO). (Tr. 71) Applicant asserts his FSO said, "Do not divulge that information on there, he said, because if it's been sealed or expunged, then it's not an admissible thing on the e-QIP." (Tr. 46) This was an incorrect response by the FSO. Following a lengthy telephone call with his FSO, the FSO incorrectly responded in an April 2014 email which read, "You are correct with your assumption. Expunged arrests and convictions should not be disclosed as they are sealed records that do not show up on your background." (SOR Answer, Tr. 74) He took the advice to mean he did not have to list his explosives-related arrest.

The e-QIP section on Applicant's police action states, "For this section report information regardless of whether the record in your case has been sealed, expunged, or otherwise stricken from the court record, or the charge was dismissed." (Ex. 1) Even with this admonishment, Applicant followed the FSO's advice and answered "no" to the question asking if he had ever been charged with an offense involving firearms or explosives.

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's student loans and one additional account became delinquent. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations" apply.

Four Financial Considerations 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;

(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

Under AG ¶ 20(a), obtaining the student loans did not occur under unusual conditions, but the failure to timely pay those loans was an unusual condition unlikely to recur. His failure to make timely repayment does not cast doubt on Applicant's current reliability, trustworthiness, or good judgment. Applicant was wrong in trusting his ex-wife with the family finances and failing to verify the debts were being timely paid. He paid one creditor, repaid the IRS, is making monthly payments on his student loans, and is current on other debts. This shows reasonable action on his part. AG ¶ 20(a) and AG ¶ 20(b) apply.

Applicant does not have a lengthy track record of making student loan payments. However, he does have a history of making a repayment arrangement with a creditor and honoring that agreement and doing the same with the IRS. Based on Applicant's past conduct in addressing other delinquent debts and being current on other financial obligations, it is likely he will honor his student loan agreement.

Under AG ¶ 20(c) and ¶ 20(d), as previously stated, Applicant has reached a settlement agreement with the holder of his student loan obligations and is making his monthly payments. He paid an additional delinquent obligation (SOR 1.p, \$2,978), and he entered into a repayment agreement with the IRS, which he honored. Having

honored the repayment agreement on another debt, he is likely to continue making his monthly payments on his current student loan repayment agreement. AG ¶ 20(c) and ¶ 20(d) apply. Applicant has established a track record of debt payment mitigating the financial considerations security concerns.

Applicant asserts he never had an account with the creditor listed in SOR 1.s (\$672) and the debt in SOR 1.r (\$451) does not appear on his two most recent credit reports. The charged-off account in SOR 1.u does not list an amount owed to the creditor. These three debts total approximately \$1,100 and as such are not of sufficient magnitude to have a security significance under the financial considerations guideline.

Guideline E, Personal Conduct

The security concern under this guideline is as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. (AG ¶ 15)

The Government has shown Applicant failed to list his delinquent accounts and his arrest for explosives on his August 2014 e-QIP. But this does not prove the Applicant deliberately failed to disclose information about his finances and arrest. The Applicant has denied intentional falsification. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance is a security concern. But every inaccurate statement is not a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully. An omission concerning delinquent obligations is not deliberate if the person did not know of their existence.

Prior to completing his e-QIP Applicant repeatedly asked his then-wife about the status of their finances. She indicated everything was alright and he relied on her assurances without personally verifying the information. His then-wife lied, but Applicant did not know it when he relied upon that information to complete his e-QIP. He answered "no" concerning delinquent debts, but that is what he believed was true at the time. There was no lie or intentional falsification about his debts.

AG ¶ 17 (b) provides a condition that could mitigate the security concerns:

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

Applicant was arrested in June 1999 on drug charges and four days later for possession of explosives. As part of a plea agreement, the explosives-related charges were dropped and Applicant was sentenced on the drug possession charges. After completing his sentence, including the required period of probation, he received a pardon. He listed his drug conviction when he completed his e-QIP, which was the more serious charge. He did not list his arrest for explosives possession because he believed he did not have to list it as it had been dismissed. He had a lengthy discussion with his company's FSO, who advised Applicant that he did not have to list the arrest. This advice was incorrect, but Applicant's reliance on this advice when he completed his e-QIP was reasonable. AG ¶¶ 17(b) applies. After observing Applicant's demeanor and evaluating all the evidence of record, I found his testimony credible on the falsification issue. The allegation that he intentionally falsified his e-QIP with intent to deceive is unsubstantiated.

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 problems when his ex-wife failed to pay his student loans and one additional account. He has made arrangements to pay his student loans and complied with the terms of that agreement. He is not living beyond his means. He is current on his payments on his student loans. His current job provides him sufficient funds to address his obligations. He is current on his rent, utility bills, insurance, and car payment. His payment history indicates he will continue making timely, monthly payments on his debts until the obligations are paid.

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). He answered his e-QIP based on the information he had about his finances and based on the advice of his FSO. There was no intentional falsification of his e-QIP. Overall, the record evidence leaves me without questions and doubts about Applicant's eligibility and suitability for a security clearance.

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, Financial Considerations: FOR APPLICANT

Subparagraphs 1.a through 1.z: For Applicant

Paragraph 2, Personal Conduct: FOR APPLICANT

Subparagraphs 2.a and 2.b: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

CLAUDE R. HEINY II
Administrative Judge