



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



In the matter of:)
)
Redacted) ISCR Case No. 15-06187
)
Applicant for Security Clearance)

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

02/23/2017

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

As of December 2015, Applicant owed \$13,347 in collection debt. While his finances were compromised at times by circumstances beyond his control, he has not made any progress toward resolving his delinquencies. Clearance is denied.

Statement of the Case

On December 30, 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 (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 January 29, 2016, 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 a DOHA Administrative Judge 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 May 23, 2016, the case was transferred to me because of my jurisdictional responsibilities. On May 31, 2016, I scheduled a hearing for July 11, 2016.

I convened the hearing as scheduled. Five Government exhibits (GEs 1-5) and 13 Applicant exhibits (AEs A-M) were admitted into evidence without objection. A chart prepared by Department Counsel as a supplement to his closing argument was marked as a Hearing Exhibit (HE 1). Before the introduction of any evidence, Department Counsel conceded that SOR ¶¶ 1.a and 1.e allege the same debt. Applicant testified, as reflected in a transcript (Tr.) received on July 19, 2016.

I held the record open initially for two weeks for Applicant to supplement the record. At Applicant's request and with no objection from the Government, on July 21, 2016, I extended the deadline to August 26, 2016. On September 26, 2016, Applicant submitted four additional exhibits (AEs N-Q). I accepted his belated submissions. Department Counsel filed no objection by the October 21, 2016 deadline for comment, and I accepted the exhibits into the record.

Findings of Fact

The SOR alleges under Guideline F that, as of December 30, 2015, Applicant owed six collection debts totaling \$17,424 (SOR ¶¶ 1.a-1.e) and a past-due medical debt of \$229 (SOR ¶ 1.f). When he answered the SOR, Applicant admitted the debts. He expressed his commitment to establish repayment plans on the debts in SOR ¶¶ 1.a, 1.d, and 1.e, and to pay in full the debts in SOR ¶¶ 1.b, 1.c, and 1.f by the end of March 2016. He also admitted that he had made some financial mistakes when he was younger. He indicated that he had always intended to repay his debts but did not have the income to do so.

After considering the pleadings, exhibits, and transcript, I find that SOR ¶¶ 1.a and 1.e pertain to the same debt. SOR ¶ 1.a is a more recent balance owed on the account. Additional findings of fact are as follows.

Applicant is 33-year-old senior assistant field technician, who directly services a large defense contractor. (GE 1; AE A.) He has worked for his employer, a company that outsources information technology services, since November 2014. Applicant seeks a DOD security clearance for his duties. (GE 1.)

Financial

Applicant graduated from high school in June 2001. (GE 1; Tr. 38.) He completed some credits in computer science at a community college. (Tr. 39.) Applicant worked as a sales supervisor in electronics retail from August 2003 to June 2009. In 2008, Applicant's

longtime roommate moved out and Applicant had to pay the full rent on his apartment. (GEs 1, 5.) In approximately August 2008, he stopped paying on a motorcycle loan that he had obtained in 2006 (SOR ¶ 1.d), and the motorcycle was repossessed. (GE 4; Tr. 33-34, 51.) In retrospect, Applicant understands that he blatantly disregarded his finances by taking on a loan that he could not repay. (Tr. 51.) In June 2009, Applicant was laid off when his position was eliminated in a restructuring. He was given a severance package of two weeks' pay for every year of his employment. (Tr. 39-40.) He collected unemployment for 13 months while looking for work and helping his father who had become ill. (Tr. 30.) In the summer of 2009, Applicant had earned income as a part-time deck hand that was not enough to jeopardize his unemployment benefits. (GE 5; Tr. 40.) In July 2010, he returned to work for the employer that had laid him off the previous year. (GE 1.)

In October 2012, Applicant vacated his apartment before the end of his lease term. (Tr. 33-36, 44.) He had been receiving calls about his father's behavior, and he moved in with his father to become his primary caretaker. In March 2013, Applicant was wrongfully terminated from his job for a timeclock issue. (GEs 1, 5; Tr. 41.) He collected unemployment compensation of \$267 per week and spent his time caring for his father. (Tr. 29-32.) He did not have to pay rent to his father, but he contributed funds for food. (Tr. 44.) In October 2013, Applicant began working as a retail manager in wireless phone services. (Tr. 41.) Applicant did not make any payments on his past-due debts, including the motorcycle loan, because he was saving for a reliable car. (Tr. 45-46.)

In June 2014, Applicant arranged for an in-home caregiver for his father because it had become too much for him to care for his father while working. Applicant moved in with a friend to whom he paid \$500 for rent and \$300 for other bills each month. (GE 1; Tr. 36.)

Applicant drove an old truck that his father had owned before him. (Tr. 48.) In August 2014, Applicant purchased a vehicle that was totaled in an accident nine days later. Insurance fully covered his liability on the \$21,426 loan. (GE 2; Tr. 59.) In November 2014, Applicant began working for his current employer. (GE 1; Tr. 42.) He bought another car because he needed reliable transportation to get to work and to take his father to his appointments. (Tr. 37.) With the help of a friend who co-signed for him, Applicant obtained a car loan for \$23,182 to be repaid at \$407 per month for 72 months. (GE 4.)

On January 5, 2015, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86). Applicant responded affirmatively to financial record inquiries concerning delinquencies involving routine accounts. He disclosed only the motorcycle loan and indicated that he owed \$8,000 (SOR ¶ 1.d). He explained that he was "enticed and fell into [a] financial credit trap." He could not afford the loan payments after his then roommate moved out of their rental unit, leaving him to pay the full rent. Applicant admitted that he had not taken any action to address the debt because of insufficient income, but he planned on arranging for repayment. (GE 1.)

As of January 16, 2015, the credit bureaus were reporting that Applicant owed \$9,394 on the motorcycle loan, which had been assigned for collection in May 2010 after no activity since August 2008 (SOR ¶ 1.d). In addition, he reportedly owed \$4,306 in credit

card debt from March 2011 (SOR ¶ 1.a, duplicated in SOR ¶ 1.e) in collection since May 2013; \$229 in medical debt from August 2009 (SOR ¶ 1.f) in collection since October 2014; \$166 in utility services debt from October 2012 (SOR ¶ 1.b) in collection since November 2012; and \$130 in cable company debt from November 2012 in collection since December 2014 (SOR ¶ 1.c). (GE 4.)

On April 16, 2015, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). He explained that he became financially overextended and defaulted on his motorcycle loan. Applicant did not deny the other collection accounts on his credit record when confronted. He indicated that he failed to recall them when he completed his SF 86. He expressed his intent to enter into repayment negotiations with his creditors now that he had a steady job and improved finances. (GE 5.)

In December 2015, Applicant placed his father in a nursing home. Applicant continued to visit him and provide some care. (Tr. 29-30, 38.)

As of March 2016, the collection debts in SOR ¶¶ 1.a-1.c and 1.f were still on Applicant's credit record as unpaid debts. Additionally, a \$2,809 credit card debt placed for collection in June 2013 (not alleged in SOR) had not been paid. (GE 2; Tr. 54.) The motorcycle loan in SOR ¶ 1.d was no longer on Applicant's credit record, although he had made no payments on the deficiency balance. (Tr. 52.) Applicant had reportedly been making timely payments on his car loan from November 2014, although information about the account had not been updated since December 2015. Applicant was making payments according to established terms on a credit card account opened in May 2015 to rebuild his credit. As of March 2016, the account had a \$1,032 balance. Applicant paid off the balance on that account with his \$1,000 income tax refund for tax year 2015. (GE 2; Tr. 53-54.)

Applicant feels strongly that he should be awarded a pay increase at work. (AE A.) Because of an increase in his share of his health insurance premium, his take-home income was less during fiscal year 2016 than in the previous fiscal year. (AE A.) He has been promoted three times, including just recently as of his hearing, but his employer has not increased his salary, which is approximately \$42,000 annually. (Tr. 30-31, 42.)

Applicant had not had any contacts with his creditors about his past-due debts as of his hearing in July 2016 because he did not have the resources to make payments. (Tr. 52.) Applicant had to move from his previous residence because his friends were getting married. Applicant moved in with another friend, to whom he pays \$750 a month toward rent and utilities. (AE P; Tr. 37, 46.) During the winter months, Applicant gives his friend an additional \$100 toward heating costs. (Tr. 37.) Applicant's cell phone bill is about \$200 a month. He pays for three cell phones: for himself, his father, and a nephew. Applicant has paid for cell phone service for his nephew since 2011. (Tr. 47.) Applicant's father has not used the cell phone for several months. Applicant plans to terminate service for that phone. (Tr. 47.) Applicant pays \$270 per month for car insurance for his financed vehicle and for the old truck that is still registered in his name. (AE P; Tr. 59.)

As of September 2016, Applicant was actively seeking part-time employment to supplement his income so that he can pay his collection debts. (AE N.) He incurred medical debt totaling \$2,092 for a knee injury and \$285 for dental work that was unpaid as of late September 2016. He also owed \$488 for vehicle taxes and \$90 to renew his car registration. (AE O.) He reports \$2,400 in monthly income and \$2,098 in recurring monthly expenses, giving him \$302 in monthly discretionary income to put toward his other bills. (AE P.) His car loan payment for March 2016 was paid late on April 1, 2016, but he has otherwise paid his car loan on time. (AE Q.) He presented no evidence of any progress on the collection debts in the SOR. He has had no financial counseling. (Tr. 55.)

Character References

Applicant met all and mostly exceeded his employer's expectations for his performance during fiscal year 2016. (AE A.) Several of Applicant's co-workers, including a team leader with a DOD secret clearance (AE L), endorse Applicant for security clearance eligibility because of his "exemplary character," trustworthiness, and reliability. (AEs B, C, E-M.) A longtime family friend and now co-worker, who recommended Applicant for his present employment, has been able to count on Applicant to assist in any way possible. (AE C.) After only a short time at the company, Applicant was asked to support their client's executive employees because of his technical and personal skills. Applicant quickly excelled in that role. Applicant was moved to a specialized group handling specific applications. (AE L.) A team leader sought out Applicant for his team "because of [Applicant's] relentless drive to learn new skills and provide outstanding customer service to [their] client." (AE G.) A team member found Applicant to be "professional and well balanced in times of heavy work demand." (AE I.) An employee of their client company, who has daily interaction with Applicant, attested to Applicant being very knowledgeable, honest, and reliable in a challenging work environment. (AE F.) Applicant informed his work references that he has some financial debt issues, but he did not get into specifics. Applicant is embarrassed by his old past-due debts. (Tr. 57-58.)

Applicant has developed a friendship outside of work with the co-worker responsible for processing new employees for their employer. In her opinion, Applicant maintains a high standard at work. (AE M.) A close friend of Applicant's for some five years considers Applicant to be of unquestionable honesty and reliability. (AE D.)

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.

The Government met its burden of establishing by substantial evidence a record of financial delinquency which raises 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.” As of late December 2015, Applicant owed collection debt totaling approximately \$13,347 (SOR ¶¶ 1.a-1.d, 1.f).

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 not applicable, given Applicant’s pattern of delinquency incurred over several years involving different accounts. Applicant defaulted on his motorcycle loan in 2008, and it has been in collection since May 2010. The medical debt in SOR ¶ 1.f is from 2009. The utility and cable company debts are from late 2012. The credit card debt in SOR 1.a (duplicated in SOR ¶ 1.e) is from 2011 and has been in collection since May 2013. In addition to the SOR debts, Applicant owes a credit card collection debt of \$2,809 from 2013 that considered seriously delinquent in September 2015. Debts not alleged cannot provide a basis for disqualification, but they are relevant when assessing mitigation, including whether Applicant has taken steps to resolve debts other than those alleged in the SOR as part of a reasonable plan to address financial issues of security concern.¹

¹ The DOHA Appeal Board has long held that the administrative judge may consider non-alleged conduct to 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). As to whether an applicant has demonstrated a reasonable debt resolution plan, the DOHA Appeal Board has also indicated that there is no requirement that the first debts paid in furtherance of a reasonable debt resolution plan be the debts listed in the SOR. See ISCR Case No. 07-06482 (App. Bd. May 21, 2008).

AG ¶ 20(b) has some applicability in this case. Applicant admits that he took on more debt than he could responsibly handle when he bought the motorcycle. Even so, his default of the loan in August 2008 was largely impacted by his then roommate vacating their apartment before the end of their lease. Applicant's layoff in June 2009 and his subsequent 13 months of unemployment were circumstances outside of his control that compromised his ability to make payments on the motorcycle loan and on the medical debt in SOR ¶ 1.f. Although Applicant was employed in late 2012 when he did not pay the utility and cable services debts, he was understandably focused on his father's care. Apart from perhaps inadequate income, it is unclear why he stopped paying on the credit card debt in SOR ¶ 1.a in 2011. By the time the debt was placed for collection in May 2013, he was again unemployed after he was wrongfully terminated over a timeclock issue.

However, AG ¶ 20(b) also requires that an individual act responsibly under the circumstances. Applicant's failure to make any efforts to address his past-due debts in the 18 months between his submission of his SF 86 in January 2015 and his hearing in July 2016 is not explained by unemployment or other unforeseen circumstance. By then, Applicant had arranged for an in-home caregiver for his father at no cost to him. Even if money was tight, Applicant had an obligation to contact his creditors and attempt to arrange for affordable repayments. As of September 2016, Applicant reported that his monthly income exceeded his expenses by \$302. While he also indicated that he had some medical expenses, he did not provide documentation of any medical payments that could explain the lack of any payments toward the debts in the SOR. 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 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. Applicant has yet to address even the three collection debts of less than \$250 each. His promise to pay at some future date is not a substitute for a track record of timely payments. See ISCR Case No. 07-13041 at 4 (App. Bd. Sep. 19, 2008) (citing ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999)). Neither AG ¶ 20(c) nor AG ¶

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 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.

20(d) has any applicability without some payments or other credible efforts to resolve his outstanding debts. AG ¶ 20(e) applies only in that the debt in SOR ¶ 1.e is a duplicate listing of the credit card collection debt in SOR ¶ 1.a and does not represent an additional delinquency. Applicant may well be sincere in wanting to address his debts, but he has not done enough to fully mitigate the financial considerations security concerns.

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).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. 09-02160 (App. Bd. Jun. 21, 2010). Co-workers and friends who have had an opportunity to interact with Applicant on a regular basis for some time consider him to be respectful, of high moral character, and very reliable. By all accounts, Applicant is not likely to engage in illegal acts to generate the funds needed to resolve his past-due debts. However, some 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 April 2015 that the DOD was concerned about the delinquent accounts on his credit record. He used his \$1,000 income tax refund for 2015 to pay off the balance on his current credit card rather than use some or all of his refund to address his long-overdue collection debts. 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

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.

Subparagraphs 1.a-1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	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