



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



In the matter of: )  
)  
) ISCR Case No. 15-07075  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Candace Le'i Garcia, Esq., Department Counsel  
For Applicant: *Pro se*

01/10/2017

**Decision**

CURRY, Marc E., Administrative Judge:

Applicant mitigated the security concerns about his finances and his personal conduct. Clearance is granted.

**Statement of the Case**

On April 20, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F, financial considerations, and E, personal conduct. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant answered the SOR, admitting all of the allegations in Paragraph 1 except SOR ¶¶ 1.c, 1.f, 1.i,. He did not respond to the allegations in Paragraph 2. He requested a hearing, whereupon the case was assigned to me on August 11, 2016.

DOHA issued a notice of hearing on August 24, 2016, scheduling the hearing for October 6, 2016. The hearing was held as scheduled. At the hearing, I considered the testimony of Applicant and three witnesses, and I received five Government exhibits (GE1 - GE 5), and five Applicant exhibits (AE) A - AE E). All were admitted without objection. At the close of the hearing, I left the record open, at Applicant's request, to allow Applicant the opportunity to submit additional exhibits. Within the time allotted, he submitted five additional exhibits (AE F - AE J) that I incorporated into the record without objection. DOHA received the transcript (Tr.) on October 13, 2016.

### **Preliminary Ruling**

SOR Paragraph 2 alleges falsifications based on omissions of relevant financial information regarding child support (§ 2.a), past judgments (§ 2.b), a car repossession (§ 2.c), bills referred to collection agencies (§ 2.d), and bills currently more than 120 days late (§ 2.e). At the close of the case, Department Counsel conceded all of the allegations in Paragraph 2 except § 2.c. Consequently, I resolve all of these in Applicant's favor and will only address § 2.c in the analysis section of the Decision.

### **Findings of Fact**

Applicant is a 42-year-old married man with three children, ages 19, 10, and 5, and one stepchild, age 13. He has been married since 2010. A previous marriage between 1995 and 2004 ended in divorce. His youngest child is from his current marriage. For the past two years, Applicant has worked on a military base in warehouse support. (Tr. 17) In this capacity, he manages the flow of equipment in and out of the warehouse.

Applicant is well-respected on the job. According to his supervisor, he is a man of high character who respects everyone who comes into the warehouse. (Tr. 52) Per a higher-level supervisor, Applicant is always "attentive to the needs of his leadership and the greater organization." (AE I)

Between 2010 and 2012, Applicant incurred approximately \$12,000 of delinquent debt, including the deficiency owed to a creditor for a repossessed car (SOR § 1.a), two medical bills (SOR §§ 1.b, 1.d), three utilities (§§ 1.c, 1.h, and 1.i), delinquent child support (SOR § 1.e), and an unidentified bill (SOR § 1.g). His financial problems occurred when he was disabled by a work-related injury. Although he was awarded worker's compensation insurance benefits, they only covered 60 percent of his income. (Tr. 18) During part of the period Applicant was disabled by a work-related injury, his wife was on bed rest and unable to work because of a difficult pregnancy. (Tr. 31, 48) At or about the time Applicant was disabled, his car engine failed. Unable to afford both the engine's repair costs and the ongoing car payments, Applicant returned it voluntarily to the dealer in 2010. (Tr. 18, 30) Subsequently, the dealer obtained a judgment against Applicant in the amount of \$7,781, as alleged in SOR § 1.a. (Answer at 1) In October 2016, Applicant contacted the creditor and organized a payment plan. (AE A) He made his first monthly payment, totalling \$150, that month. (AE F)

Applicant contends that he paid the medical bill, alleged in SOR ¶ 1.b, totalling \$98. He did not provide documentary evidence.

SOR ¶ 1.c, totalling \$3,464, is a delinquent utility bill which Applicant disputes. He contends that it was not his responsibility as he was no longer living at the property that was using this utility service provider. (Answer 5-7) In support of this contention, Applicant provided a letter from his current landlord confirming when he had moved into his current residence, and he provided a letter that he wrote to the utility company about the contested debt. (Answer at 6-7)

Applicant contends that he paid the medical bill alleged in SOR ¶ 1.d, totalling \$89. He provided no documentary evidence. Applicant contests the child support delinquency, allegedly totalling \$964, as listed in the SOR ¶ 1.e. He provided evidence establishing that he neither owed additional child support, nor was currently behind on child support payments. (AE C) He admits getting behind on his child support payments during the period that he was temporarily disabled. (Tr. 45; GE 2 at 9)

Applicant denies SOR ¶ 1.f, allegedly totalling \$143, and SOR ¶ 1.i, allegedly totalling \$202, as he has no record of them. Applicant denies owing the medical bill alleged in SOR ¶ 1.g, totalling \$89, contending that he satisfied it. He provided no documentary evidence. Applicant satisfied the debt alleged in SOR ¶ 1.h. (AE H)

Applicant has been working with a credit counselor since May 2016. With the counselor's help, he prepared a budget. (AE A at 4) Accounting for his household expenses and the \$150 monthly payment towards the debt alleged in SOR ¶ 1.a, Applicant has nominal discretionary income.

Applicant completed a security clearance application in November 2014. In response to Section 26, "in the past seven (7) years [have] you had any possessions or property voluntarily or involuntarily repossessed or foreclosed?," Applicant answered "no," and did not disclose the voluntary repossession of his car in 2010. Applicant testified that he knew when he completed the application that the car had been voluntarily repossessed, but that he "didn't understand the question." (Tr. 36)

### **Policies**

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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.”

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 for obtaining a favorable security decision.

## **Analysis**

### **Guideline F, Financial Considerations**

Under this guideline, “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.” (AG ¶ 18) Applicant’s delinquent debt triggers the application of AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.”

The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (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 debt; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant’s financial problems were caused by a period of work-related disability that overlapped with his wife’s pregnancy-related difficulties that prevented her from working. Since then, Applicant has satisfied the debts alleged in SOR ¶¶ 1.b, 1.d, 1.e,

1.g, and 1.h.<sup>1</sup> In May 2016, Applicant retained a credit counselor to help him organize his finances, and in October 2016, he organized a payment plan with the creditor alleged in SOR ¶ 1.a. That month, he made his first payment of \$150, as agreed. Given the cause of Applicant's financial problems and the progress that he has made in resolving them, I conclude AG ¶¶ 20(b) through 20(d) apply.

Applicant's explanation for disputing SOR ¶ 1.c constitutes a reasonable basis to dispute the legitimacy of the debt. He provided copies of both the letter he wrote to the creditor and a letter from his landlord establishing that he was not living in the residence when the utility bill was incurred. He provided no evidence substantiating the basis of his dispute of the debts alleged in SOR ¶¶ 1.f and 1.i. Nevertheless, given the significance of the debt alleged in SOR ¶ 1.c compared to SOR ¶¶ 1.f and 1.i,<sup>2</sup> I conclude that AG ¶ 20(e) is applicable.

### **Guideline E, Personal Conduct**

Under this guideline, "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 "(AG ¶ 15). Applicant's omission of his voluntary repossession from his security clearance application raises the issue of whether AG ¶ 16(a), "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities," applies.

Given Applicant's strong character references, I conclude that his testimony that he did not understand the question about voluntary repossessions on his security application was credible. There are no personal conduct security concerns.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They 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

---

<sup>1</sup>Applicant did not provide documentary evidence supporting his contention that he satisfied SOR ¶¶ 1.b, 1.d, and 1.g. Given the nominal amount of these debts, and given that Applicant provided proof of payment for the substantially higher debts alleged in SOR ¶¶ 1.e and 1.h, I concluded that his testimony as to these smaller debts was credible.

<sup>2</sup>SOR ¶ 1.c approximately ten times greater than the debts alleged in ¶¶ 1.f and 1.i, combined.

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.

Applicant did not experience financial hardship as a result of profligate spending. Instead, his financial difficulties were caused after he was temporarily disabled in a work-related accident at or about the same time that his wife was temporarily unable to work during a difficult pregnancy. Applicant has organized his finances, satisfied several debts, and organized a payment plan for the most significant outstanding debt. Under these circumstances, I conclude that the presence of rehabilitation is strong, and the likelihood of recurrence of his financial problems are minimal. Applicant has mitigated the security concern.

### **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:	FOR APPLICANT
Subparagraphs 1.a - 1.i:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a - 2.e:	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 eligibility for a security clearance. Eligibility for access to classified information is granted.

MARC E. CURRY  
Administrative Judge