



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



In the matter of:)
)
 [Name Redacted]) ISCR Case No. 15-07505
)
)
 Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: Alan V. Edmunds, Esquire

09/12/2017

Decision

HOGAN, Erin C., Administrative Judge:

On June 17, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct. The action was initially 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 within the Department of Defense on September 1, 2006. On June 8, 2017, the AGs were updated and cancelled the AGs effective September 1, 2006. This decision will be decided based on the new AGs effective on June 8, 2017. If I were to consider this case under the AGs effective September 1, 2006, it would result in the same outcome.

On July 12, 2016, Applicant answered the SOR and requested a hearing. Department Counsel was ready to proceed on September 15, 2016. The case was assigned to another administrative judge on February 15, 2017, and transferred to me on May 22, 2017. A Notice of Hearing was issued on June 5, 2017, scheduling the hearing for July 12, 2017. The hearing was held as scheduled. The Government offered

nine exhibits which were marked and admitted as Gov Ex 1-9. Applicant offered 13 exhibits which were admitted as Applicant Exhibits (AE) A-M. The record was held open until June 26, 2017, to allow Applicant to submit additional documents. He timely submitted a document which was marked and admitted as AE N. The transcript (Tr.) was received on July 20, 2017. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his response to the SOR, Applicant admits the allegation in SOR ¶¶ 1.a, and denies the remaining allegations.

Applicant is an employee of a DOD contractor seeking to maintain a security clearance. He has worked for his current employer since August 2010. He worked in numerous federal contractor positions before working for his current employer. He has maintained an active security clearance since 2002. He served on active duty in the United States Army from 1997 to 2001. He separated with an honorable discharge. He has some college credit. He is married and has four children, ages 14, 10, 8 and 5. (Tr. 28-30, 50-51; Gov 1)

On July 16, 2014, Applicant submitted an Electronic Questionnaire for Investigation Processing (e-QIP). In response to Section 26 – Delinquency Involving Routine Accounts, Applicant answered, “No” and did not list any collection accounts, or debts that were over 120 days delinquent. He explained on his security clearance questionnaire that his credit file was being investigated because of identity theft indicating that his social security number was being used to file and obtain his federal tax refunds, commit unauthorized transactions, false bank accounts, etc. He mentioned he was exhausting all remedies to resolve the identify theft issue. He provided an attachment to his July 2014 e-QIP showing the steps that he had taken to resolve his identity theft issues. The attached documentation also mentions in correspondence with the Internal Revenue Service regarding 2013 federal income taxes that Applicant was behind on his mortgage payments. Also attached was a letter to the Social Security Administration, dated June 4, 2014, which among other things indicated his credit has been ruined and his security clearance was in jeopardy. (Gov 1, section 26 and attachments)

A subsequent background investigation revealed the following delinquent accounts: a mortgage account that was past due \$3,768 with a total balance of \$223,944 (SOR ¶ 1.a: Gov 2 at 3; Gov 3 at 1; Gov 5 at 6); a \$56,158 second mortgage that is past due in the amount of \$31,641 (SOR ¶ 1.b: Gov 3 at 2; Gov 5 at 5); a \$999 judgment filed in 2011 for a medical debt (SOR ¶ 1.c: Gov 4; Gov 5 at 4); an \$846 medical account that was placed for collection in August 2014 (SOR ¶ 1.d: Gov 5 at 7); a \$388 medical account that was placed for collection (SOR ¶ 1.e: Gov 5 at 7); a \$205 medical account placed for collection (SOR ¶ 1.f: Gov 5 at 8); a \$116 medical account placed for collection (SOR ¶ 1.g: Gov 5 at 8); a \$77 collection account (SOR ¶ 1.h: Gov

5 at 8); a \$75 account placed for collection (SOR ¶ 1.i: Gov 5 at 8); and a \$75 account placed for collection (SOR ¶ 1.j: Gov 5 at 9).

The SOR also alleged that Applicant falsified a security clearance questionnaire signed by him in 2009, when he answered “no”, in response to Section 28, Your Financial Delinquencies “.... a. In the last 7 years, have you been over 180 days delinquent on any debt(s)?” The SOR states, “You answered “NO” and thereby deliberately failed to disclose that you had been over 180 days delinquent on numerous debts within the relevant seven-year period.” Applicant denies this allegation. He testified that he has never been 180 days behind on debt payments and was not aware of any collection accounts. (Tr. 47-48, Answer to SOR)

The record evidence shows that Applicant encountered financial problems before 2009. However, this does not appear to have been an issue when he reapplied for a security clearance in 2009. (AE 7; AE 8; AE 9)

Applicant testified that the reasons for his current financial problems related to the mortgages he took out in 2005 and the subsequent mortgage crisis. His family also lost a significant amount of income after his wife lost her full-time job, earning \$90,000 in 2011 or 2012. She lost her job when she was placed on bed rest during a difficult pregnancy in 2011. Applicant could not keep up with the expenses. He also helped out his parents financially from 2010 to 2015, sending them \$250 each paycheck or \$500 per month. (Tr. 37-39, 55-56, AE N at 7-12)

When Applicant purchased his home in 2005, he took out two mortgages with the same mortgage company. The first mortgage was for \$317,000. The second mortgage was for \$56,000. Applicant had issues paying his mortgages starting in 2008. The loans were sold several times to different mortgage companies. The interest rate kept increasing and Applicant was attempting to resolve the issue because he could not afford the mortgage payments. He hired a lawyer in 2010 to assist him with refinancing his loan under the Home Affordable Modification Program (HAMP). In 2012, his mortgage loan was modified under HAMP. Applicant testified that the first mortgage was modified and the second mortgage was forgiven. After the hearing he provided a document noting that his original mortgagor filed a 1099-C indicating on October 20, 2013, they cancelled \$63,771.19 of Applicant’s mortgages. It is not clear if this applies to the first or the second mortgage. Applicant filed this form with his federal income tax return. He initially disputed the second mortgage in 2015. It was removed from his credit report. He filed another dispute in June 2017. The second mortgage is not listed on his June 2017 credit report. (Tr. 52-60; AE B; AE I; AE N at 5)

Applicant’s identity theft issues began in 2011, when someone fraudulently filed his federal tax returns. The identity theft issues continued in 2012 and 2013. Applicant also noticed a cell phone account that was fraudulently taken out in his name. Attempts were made to repossess a car from him that he never owned. It took Applicant close to a year to receive his tax refunds because of the identity theft investigation. He was

hoping to use his refunds to pay his bills. He has worked to correct this situation. So far, he has not had any identity theft issues since 2016. (Tr. 39-43; AE H)

Currently, Applicant is doing well financially. Last year, he received a \$40,000 raise and now earns \$195,000 annually. He and his wife attended financial counseling and are current on their bills. He provided an updated credit report dated June 29, 2017, which indicated Applicant is currently paying all of his bills. There were no negative accounts listed on the credit report. (Tr. 44, AE E, AE F, AE I)

The current status of the debts alleged in the SOR are:

SOR ¶ 1.a: \$3,768 past-due mortgage account: The account is current and Applicant is making payments. (AE A; AE I)

SOR ¶ 1.b: second mortgage account past due in the amount of \$31,641: Applicant disputes this account. He claims it was resolved when he underwent his mortgage modification. He initially filed a dispute with the credit reporting agencies in 2015. He testified the debt was removed from his credit report. In June 2017, he again entered a formal dispute with the credit reporting agencies under the Fair Credit Reporting Act. He has not received a response from his dispute. Applicant's September 2015 credit report indicated that Applicant disputed this debt and that a reinvestigation was in process. The account is no longer listed on credit reports dated June 2017 and April 2016. (Gov 2; Gov 3 at 2; AE B; AE I)

SOR ¶ 1.c: \$999 medical judgment: Debt is resolved. Applicant provided proof that he paid a medical judgment to a hospital that is in the same hospital network as the name of this hospital creditor. After the hearing, he obtained a statement from the creditor hospital indicating and that all of his medical accounts are paid. (AE C, AE N at 15-17; Item 7 at 9)

SOR ¶ 1.d: an unidentified creditor medical account \$846 placed for collection: Applicant provided sufficient proof that he paid his medical debts. No delinquent medical debts are listed on his June 2017 credit report. (AE I)

SOR ¶ 1.e: a \$388 medical account placed for collection: Applicant provided sufficient proof that he paid his medical debts. No delinquent medical debts are listed on his June 2017 credit report. (AE I)

SOR ¶ 1.f: a \$205 medical account placed for collection: Applicant provided sufficient proof that he paid his medical debts. No delinquent medical debts are listed on his June 2017 credit report. (AE I)

SOR ¶ 1.g: a \$116 medical account placed for collection: Applicant provided sufficient proof that he paid his medical debts. No delinquent medical debts are listed on his June 2017 credit report. (AE I)

SOR ¶¶ 1.h and 1.i: \$77 and \$75 accounts placed for collection: Applicant testified that these were fraudulent entries related to his identity theft issues. Applicant formally disputed these credit report entries in June 2017. He has not received a response. These accounts are not listed as debts on his credit reports from September 2015, April 2016, and June 2017. (Gov 2, Gov 3, AE I) , and

SOR ¶ 1.j: a \$75 medical account placed for collection: Applicant provided sufficient proof that he paid his medical debts. No delinquent medical debts are listed on his June 2017 credit report. (AE I)

Applicant provided a copy of his budget. His total monthly net income is \$10,828. His total monthly expenses are \$8,017. After expenses, he has \$2,811 in discretionary income each month. (AE G)

Applicant's co-worker testified on his behalf. He has a PhD in Management and has worked with Applicant for the past five years. He works with Applicant on a daily basis. He has held a security clearance since 2002. He describes Applicant as having "the highest moral fiber." He notes Applicant is active in the community, is trustworthy and loyal. He states Applicant is a very effective and wonderful co-worker. He is aware of Applicant's identity theft issues, which he recalls began about three years ago. He has no concerns or reservations about Applicant having a security clearance. (Tr. 21-26)

Applicant denies deliberately falsifying his July 2014 security clearance application. He claims that he was not aware of any delinquent debts that were turned over to a collection agency. He testified his wife handled all of the finances until 2014. He became more active in managing the household finances after he learned of debts during his background investigation interview. (Tr. 69) He is active in his church as a minister and an administrator. (AE K)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered when determining 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 national security eligibility will be resolved in favor of the 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 as to obtaining 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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 concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure 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. Financial distress can also be cause or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that

cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several disqualifying conditions that could raise security concerns. I find AG ¶19(a) (an inability to satisfy debts) and AG ¶19(c) (a history of not meeting financial obligations) apply to Applicant's case. Applicant encountered financial problems over the past several years resulting in several delinquent accounts. Most of the delinquent accounts were medical bills. The largest accounts involved his first and second mortgages.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving 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 pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

The Government's substantial evidence and Applicant's admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions apply to Applicant's case:

AG ¶ 20(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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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(b) applies because Applicant's financial problems were partially caused by circumstances beyond his control. A difficult pregnancy resulted in his wife being put on bed rest in 2011. As a result, she lost her well-paying job causing financial problems for the family. Additional medical expenses were also incurred. Applicant encountered problems with paying his first and second mortgages in 2008, during the mortgage crisis of 2008. He encountered identity theft issues from 2011 to 2015, most of the issues related to the fraudulent filing of his federal and state tax returns. This delayed his ability to get his tax refunds. In 2010, he hired an attorney to assist him with obtaining a mortgage modification under the HAMP. He was proactive in dealing with the identity theft issues. He disputed the accounts that he believed were in error. He also worked to pay off his medical debts. His June 2017 credit report shows that he resolved his delinquent accounts and his mortgage is current. Applicant acted responsibly under the circumstances.

AG ¶ 20(c) applies. Applicant and his wife completed two formal financial counseling programs. He has taken steps to resolve his delinquent accounts and his financial situation is now stable.

AG ¶ 20(d) applies. Applicant provided proof that he initiated a good-faith effort to resolve his delinquent accounts. He hired an attorney to help seek a modification of his mortgage under HAMP. While Applicant became delinquent on his mortgage payments after the loan modification, his mortgage account is now current and his medical debts are resolved. Applicant's June 2016 credit report indicates no negative entries. Applicant took the initiative to resolve his debts.

AG ¶ 20(e) applies with respect to the debts alleged in SOR ¶¶ 1.b, 1.h, and 1.i. Applicant is in the process of disputing these accounts, in response to the SOR. The evidence supports that Applicant's second mortgage (SOR ¶ 1.b) was likely cancelled during his loan modification process as indicated by the IRS Form 1099-C provided by Applicant after the hearing. He disputed the 2015 credit report entry related to the second mortgage. The entry was no longer listed on his 2016 and 2017 credit reports. He maintains that the debts alleged in SOR ¶¶ 1.h and 1.i were the result of his identity theft issues. The entries are no longer on his June 2017 credit report.

Guideline E: Personal Conduct

The concern under Personal Conduct is that 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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative

or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

Under AG ¶ 16, the following could potentially raise a security concern in Applicant's case:

(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 national security eligibility or trustworthiness, or award fiduciary responsibilities.

With respect to SOR ¶ 1.a and SOR ¶ 1.b, I find that Applicant's omissions were not deliberate. He testified that he did not think he had delinquent debts that were over 180 days old at the time of completing both applications. Applicant was not aware that some of his medical debts were placed for collection. With regard to SOR ¶ 1.b, Applicant indicated that he was behind on his mortgage payments and that his credit was ruined in documents that he attached to the 2014 security clearance questionnaire related to the identity theft issues. The information provided in the attachments to his 2014 security clearance questionnaire put the Government on notice that Applicant had financial issues. Any omissions in response to section 26 were not intentional and not material. The Personal Conduct concern is found for Applicant.

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 the 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.

Applicant encountered problems when his wife was unable to work during a difficult pregnancy. He struggled with his mortgage payments, but hired an attorney and obtained a loan modification. Identify theft issues further complicated his financial problems. Applicant did not intentionally falsify his 2014 security clearance questionnaire. He resolved his debts either through payment or formal disputes. He and his wife attended financial counseling. Their current budget and credit report shows that their financial situation is now stable. While Applicant has had a history of financial problems, currently his financial situation is stable. Applicant mitigated the security concerns under Financial Considerations and Personal Conduct.

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.j:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a – 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 security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

ERIN C. HOGAN
Administrative Judge