



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



In the matter of:)
)
) ISCR Case No. 15-08180
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

08/14/2017

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. Eligibility for access to classified information is denied.

Statement of the Case

On July 30, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F, financial considerations, and E, personal conduct. The action was taken 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 (AG) effective within the DOD on September 1, 2006. On June 8, 2017, new AG were implemented and are effective for decisions issued after that date.¹

¹ I considered the previous AG, effective September 1, 2006, as well as the new AG, effective June 8, 2017. My decision would be the same if the case was considered under the previous AG.

Applicant answered the SOR on August 29, 2016, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM). Applicant received it on October 4, 2016. The Government's evidence is identified as Items 1 through 5. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant responded to the FORM and provided documents that are marked as Applicant Exhibits (AE) A through D. There were no objections by either side and all evidence was admitted. The case was assigned to me on July 21, 2017.

Findings of Fact

Applicant denied all of the allegations in SOR. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is 43 years old. He served in the military from 1992 to 1995 and received an honorable discharge. He is not married and has no children. He has an associate's degree. He has worked for his present employer, a federal contractor, since 1999.²

Applicant completed a security clearance application (SCA) in March 2015. In response to Section 26-Delinquencies Involving Routine Accounts-inquiring if in the last seven years he had a judgment entered against him, he responded "no." It also asked if in the last seven years he had defaulted on any type of loan; had any account or credit card suspended, charged off, or canceled for failing to pay as agreed; been over 120 days delinquent on any debt; or was currently over 120 days delinquent on any debt? Although not specifically alleged in SOR ¶ 2.b, this section also asked if in the past seven years any wages, benefits, or assets were garnished or attached for any reason. Applicant's response for the entire paragraph was "no."³

As part of a background interview, Applicant was interviewed by a government investigator in September 2015. He was confronted with the two judgments and the debts in the SOR. Applicant told the investigator that the accounts in SOR ¶¶ 1.a (\$14,117) and 1.b (\$31,657) did not belong to him, and he was the victim of identity theft. He hired a lawyer to dispute the judgments and debts. He said he learned of the judgments in SOR ¶¶ 1.a and 1.b in 2009 when he received a call from each of the creditors regarding purchases. He told the investigator he had the ability to repay his debts, and he was ready and willing to pay all of them. He also told the investigator that he did not disclose these judgments on his SCA because he denied owing them.⁴

² Item 2.

³ Because SOR ¶ 2.b does not specifically include the garnishment language, I have not considered Applicant's failure to disclose this information for disqualifying purposes, but may considered it when analyzing his credibility, in the application of mitigation, and in the analysis of the whole person.

⁴ Items 2, 3.

With regard to the debts in SOR ¶¶ 1.c (\$17,784) and 1.d (\$31,228), Applicant told the investigator that he did not owe these accounts and was unsure why they were on his credit report. He stated he would contact the creditors to resolve the accounts. He told the investigator that he did not disclose these debts on his SCA because he had no knowledge of them.⁵

In Applicant's answer to the SOR, he denied the judgment alleged SOR ¶ 1.a and said: "[account] was settled, paperwork was provided at interview." Applicant provided a document with his answer that shows the county sheriff's civil office is the levying officer for the judgment in SOR ¶ 1.a. It shows that the creditor in SOR ¶ 1.a is the plaintiff, and Applicant is the defendant. The document was sent to Applicant's employer from the civil division of the Superior Court of Applicant's home state. The document is titled, "Notification of Account Status." It notes the original amount of the judgment and the current payoff amount of \$472 that was due as of September 2015. The document provided does not reflect that the final amount was paid. No document was provided to show the judgment was released.⁶

In Applicant's answer to the SOR, he denied the judgment in SOR ¶ 1.b and said: "[account] was settled, \$11,510 was garnished to [law firm] in Feb 2011." He provided a letter from his bank dated February 7, 2011, advising him that it had received a garnishment order. In handwriting on the letter the amount "\$11,510.07" is written.⁷ Applicant did not provide any other documents to show that this letter pertains to the debt in SOR ¶ 1.b; that the creditor agreed to settle the account for a lesser amount; that the garnishment stopped; and the judgment was released.⁸

In Applicant's answer to the SOR, he denied the debt in SOR ¶ 1.c and stated: "this account was unrecognized and believed to be the result of identity theft. My former attorney has closed their doors for business. I am currently seeking legal representation to resolve this financial delinquency."⁹ Applicant did not provide documents or other information regarding this debt.

In Applicant's answer to the SOR, he denied the debt in SOR ¶ 1.d and said:

[Account] was unrecognized and believed to be the result of identity theft. Before my former attorney had closed their doors for business, the recommendation was not to draw out a lengthy legal burden that would

⁵ Item 3.

⁶ Item 1.

⁷ Item 1.

⁸ Item 1.

⁹ Item 1.

further escalate financial responsibility, rather reach a debt clearing settlement with the account's collector [name] for a third of the balance.¹⁰

Applicant provided a letter from July 2016 from the collection company offering to settle this debt. No other information was provided regarding the status of this debt.¹¹

In Applicant's response to the FORM, he stated:

I'm currently working on eliminating all outstanding debts whether they are mine or not. There was some substantial debt acquired when I purchased a home back in 2007 largely in part to repairs, but then the APR spiked and the housing market crashed. The ability to maintain the mortgage which (sic) such high rates caused the increase in credit card debt. There is definitely some dispute on what debt was accrued and what was stolen.¹²

Applicant further stated:

In reference to fighting my debt that was cumulative, where I believe I was the victim of identity theft. My former attorney has advised me to stop spending money on attorney fees and contact the creditors for settlement, basically giving up. Their belief is a settlement is cheaper and faster and technology today is not the same as was then, which makes it harder to prove my case.¹³

Applicant did not provide evidence of action he has taken regarding his assertion that he is the victim of identity theft, such as a police report, correspondence with creditors, or disputing alleged fraudulent debts on his credit report. Credit reports from May 2015 and September 2016 corroborate the judgments and delinquent debts alleged in the SOR. According to both credit reports, the judgments have not been satisfied.¹⁴

In his answer to the SOR, Applicant denied that he deliberately failed to disclose both alleged judgments and the delinquent debts alleged in SOR ¶¶ 2.a and 2.b. His response to both allegations was the same.¹⁵ He stated:

¹⁰ Item 1.

¹¹ Item 1.

¹² AE B.

¹³ AE B.

¹⁴ Items 4, 5.

¹⁵ Item 1.

I deny, after speaking with my Trusted Agent (TA) in confidence prior to my completion of the e-QIP renewal. They advised me to leave out any financial records that I thought were closed. I explained in detail of what I knew was out there and their reply was 'It's just a re-verification, only a formality.' It now seems I was misled by the individual assigned to assist me. I intend on hiring [company] to clean up the financial delinquencies on my credit report.¹⁶

In Applicant's response to the FORM, he explained that when he referred to his "trusted adviser"¹⁷ he was not blaming her. He had worked with her for four years. He stated that he simply asked her some questions and "she responded in kind. Ultimately it falls on me for the lack of details that I provided."¹⁸ No evidence was presented that Applicant's "trusted advisor" was a legal counsel or a person with professional responsibilities for advising an individual specifically concerning security processes.

Section 22 of the SCA inquires about an applicant's police record and asks, "Have you **EVER** been charged with an offense involving alcohol or drugs." Applicant responded "no." It also asked if in the past seven years Applicant had been charged, convicted, or sentenced of a crime in any court. Applicant was convicted of driving under the influence of alcohol in April 2007 after pleading guilty. He was fined and placed on probation for two years. He was cited in July 2008 for drunk in public and was cited again in May 2009 for drunk in public. He told the government investigator that he did not go to court for the citations and they were dismissed. He explained to the investigator that he failed to disclose the three alcohol-related offenses because he misunderstood the question.¹⁹

I have considered all of the evidence. When Applicant completed his March 2015 SCA, his wages were being garnished for the judgments in SOR ¶¶ 1.a and 1.b. He provided a court document verifying the garnishment on the judgment in SOR ¶ 1.a and it noted his final payment was due in September 2015, subsequent to his completion of SCA. He provided a second document from his bank from February 2011 indicating it had received a garnishment order. He stated in his answer that it was for the judgment in SOR ¶ 1.b. Applicant failed to disclose any derogatory information on his SCA such that he had two judgments; his wages were being garnished; he had a DUI conviction, and other alcohol-related conduct. The questions are straight forward. His "trusted advisor" may have told him not to disclose derogatory information, but that does not negate his responsibility to comply with answering the questions honestly, and his

¹⁶ AE B.

¹⁷ AE B. Applicant originally referred to a "trusted agent" and later to a "trusted advisor."

¹⁸ AE B.

¹⁹ Applicant's alcohol-related offenses and his failure to disclose them on his SCA were not alleged in the SOR and will not be considered for disqualifying purposes, but may be considered when analyzing his credibility, in the application of mitigation, and when considering the whole person.

sworn declaration that the answers were accurate. His explanation that he misunderstood the questions about disclosing his alcohol-related misconduct demonstrated a deliberate intent not to disclose derogatory information and reinforces his pattern of dishonesty. I find Applicant deliberately failed to disclose the two judgments against him on his SCA.

Applicant did not disclose on his SCA the debts in SOR ¶¶ 1.c and 1.d, claiming he was the victim of identity theft and was unaware of them when he completed his SCA. The evidence is insufficient to conclude he was aware of these debts when he completed his SCA. I find he did not deliberately fail to disclose the debts in SOR ¶ 1.c and ¶ 1.d, as alleged in SOR ¶ 2.b. I find in his favor for SOR ¶ 2.b.

Applicant stated that in 2013 his father had a stroke and it took two years to help his father recuperate. He stated: "I'm just a hardworking individual who has made some questionable financial mistakes."²⁰ Applicant further stated: "I understand these issues are mine and mine alone. I'm willing to successfully see these matters through, given some more time."²¹ Applicant did not provide information about his current finances, obligations, or actions he has taken to resolve his delinquent debts.

Policies

When evaluating an applicant's national security eligibility for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used 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 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

²⁰ AE B.

²¹ AE B.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states that an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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 that an applicant may deliberately or inadvertently fail to 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 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 E: Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

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 ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following potentially applicable:

(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.

When Applicant completed his March 2015 SCA his wages were being garnished for the two judgments alleged in SOR ¶¶ 1.a and 1.b. My analysis above supports a

conclusion that he deliberately failed to disclose he had judgments entered against him, as required. AG ¶ 16(a) applies.

Applicant did not disclose on his March 2015 SCA the delinquent debts alleged in SOR ¶¶ 1.c and 1.d. His explanation that he was unaware of the debts and believed he was the victim of identity theft is credible. There is insufficient evidence to conclude he deliberately failed to disclose these debts, and I find in his favor on SOR ¶ 2.b.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully; and
- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

The evidence does not establish the application of AG ¶ 17(a). There is insufficient evidence to conclude that Applicant made a prompt, good-faith effort to correct his omissions. Applicant stated he sought advice from a "trusted agent" and was told he could leave out any financial records he thought were closed. He said he told the "trusted agent" details of what he knew was "out there" and was told "it's just a re-verification, only a formality." No evidence was provided as to the professional responsibilities of the "trusted agent." At the time Applicant completed his SCA in March 2015, based on his documents, the judgment in SOR ¶ 1.a was still being garnished with the last payment due in September 2015. Therefore, it was not "closed." Applicant did not disclose other derogatory information on his SCA, which further goes to his intent and deliberate failure to disclose the required derogatory information. AG ¶ 17(b) does not apply.

AG ¶ 17(c) does not apply because deliberately failing to disclose information on a SCA and swearing to its accuracy is not a minor offense. I find Applicant's omissions are serious and cast doubt on his reliability, trustworthiness, and good judgment.

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 or sensitive information. Financial distress can also be caused 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 greater 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.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant's had judgments and unresolved delinquent debts dating from at least 2011, which he was unable or unwilling to resolve. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(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;

(d) the individual initiated and is adhering to 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.

Applicant provided evidence that the judgment in SOR ¶ 1.a was being garnished and his last payment was due in September 2015. Although the September 2016 credit report shows the judgment has not been satisfied, it likely was paid. Applicant did not provide sufficient evidence to show the judgment in SOR ¶ 1.b was settled and paid. He provided a 2011 letter from his bank regarding the garnishment order, but no information was provided as to the amount being garnished, that a settlement offer was accepted by the creditor, or that the judgment has been satisfied.

Applicant told the government investigator that he was a victim of identity theft. In his FORM response, he acknowledged making questionable financial mistakes and acquiring substantial debt after he purchased his house. He does not specifically state that the debts in SOR ¶¶ 1.c and 1.d are part of that debt. However, he has been aware since his September 2015 background interview that his finances were a concern. He told the investigator that he would contact the creditors to resolve the debts. He did not provide evidence that he filed a police report, contacted or corresponded with the creditors, disputed the debts on his credit reports, or corroborating evidence from his attorney regarding these debts. Applicant financial issues are ongoing. There is insufficient evidence to conclude they are unlikely to recur. His conduct cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

The application of AG ¶ 20(b) requires that the conditions that resulted in the financial problem were largely beyond Applicant's control. Applicant said that after he purchased his home in 2007, he acquired substantial debt for repairs and then his adjustable percentage rate spiked, and the housing market crashed. He failed to elaborate why those were circumstances beyond his control. He stated that he was unable to maintain his mortgage with the high interest rate, which then caused the increase in his credit card debt. Applicant willingly obtained an adjustable rate mortgage, which means the rate may increase. In his case, it did, but this was not beyond his control, but rather a risk he assumed. He stated he was the victim of identity theft. For the full application of this mitigating condition, Applicant must have acted responsibly under the circumstances. He failed to provide evidence that he has acted responsibly. Two debts were garnished after judgments were entered. He failed to

provide evidence that he took action to report the debts claimed to be fraudulent to the police, contact the creditors, or dispute the debts. AG ¶ 20(b) minimally applies.

There is no evidence that Applicant participated in financial counseling. The judgment in SOR ¶ 1.a has likely been resolved through garnishment. The information on SOR ¶ 1.b is inconclusive. There is insufficient evidence to conclude Applicant is taking action to resolve the remaining two debts and that his financial problems are under control. AG ¶ 20(c) partially applies.

Payment of debts through judgments and garnishment does not constitute a good-faith effort to repay overdue creditors or resolve debts. No evidence was presented to show Applicant is resolving the remaining debts in SOR ¶¶ 1.b, 1.c and 1.d. AG ¶ 20(d) does not apply.

Applicant disputed that he owed the debts in SOR ¶¶ 1.c and 1.d, claiming he was the victim of identity theft. He has been on notice since September 2015 that these debts were a security concern. At that time, he indicated he would contact the creditors to resolve the debts. Applicant did not provide documented proof to substantiate that he filed a police report for the alleged criminal activity, contacted the creditors to dispute the debts, or corroboration that he sought legal advice to resolve the debts. AG ¶ 20(e) does not apply.

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(d):

(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. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is 43 years old and served in the military. He has worked for his employer since 1999. Applicant deliberately failed to disclose he had two judgments that were being garnished. He has delinquent debts that total approximately \$80,669 and remain unresolved. The record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations, and Guideline E, 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:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.d:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For 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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge