



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-04765

Appearances

For Government: Caroline E. Heintzelman, Esquire, Department Counsel

For Applicant: *Pro se*

08/15/2016

Decision

HOWE, Philip S., Administrative Judge:

On February 13, 2014, Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP). On January 12, 2015, the Department of Defense Consolidated Adjudications Facility (DODCAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). 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) effective within the Department of Defense on September 1, 2006.

Applicant acknowledged receipt of the SOR on May 18, 2015. He answered the SOR in writing on July 31, 2015, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on October 16, 2015, and I received the case assignment on October 29, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on November 18, 2015, and I convened the hearing as scheduled on December 9, 2015. The Government offered

Exhibits 1 through 5, which were received without objection. Applicant testified and submitted Exhibits A through L, without objection. Applicant was given two additional weeks to submit documents pertaining to the debts. He never sent in any additional exhibits. The record closed on December 23, 2015.

DOHA received the transcript of the hearing (Tr.) on December 16, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR Applicant admitted the factual allegations in Subparagraphs 1.b and 1.h of the SOR, with explanations. He denied the factual allegations in Subparagraphs 1.a, 1.c to 1.g, and 1.i to 1.k of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 55 years old, married and has three children. He works for a defense contractor and has since October 2006. He has 24 years of prior military service and retired from the U.S. Army. He has \$32,400 in military retirement pay, a salary of \$84,000, and his wife earns \$40,000. The total family income is about \$156,400 annually. (Tr. 28, 29; Exhibit 1)

DEBT OVERVIEW:

Applicant has 10 delinquent debts listed in the SOR. They total \$123,953. Applicant also has a mortgage balance on his foreclosed house of \$355,514. The past-due amount of \$81,859 alleged in Subparagraph 1.g included in the total owed is part of that mortgage balance. The tenth allegation is the \$14,900 in property taxes owed on the house. That amount is also added into the \$123,953 total. Applicant also is alleged not to have filed his federal and state tax returns for 2013. Applicant's Answer states he paid two debts (Subparagraphs 1.a and 1.c), totaling \$16,003. (Tr. 31-64; SOR and Answer)

Applicant admits he owes the \$8,812 debt in Subparagraph 1.b and the \$1,824 debt in Subparagraph 1.h, both being credit card debts. (Tr. 31-64; SOR and Answer)

Applicant denies he owes the \$127 television service debt in Subparagraph 1.d, the credit union debt of \$102 in Subparagraph 1.e, the \$83 owed to a telephone company in Subparagraph 1.f, the \$243 owed to a home security company as alleged in Subparagraph 1.i, any money owed on his foreclosed house because it was sold, as well as the real estate taxes allegedly owed in Subparagraphs 1.g and 1.j. He claims he filed his "tax" for 2013. (Tr. 31-64; SOR and Answer)

Applicant contends he was the victim of identity theft in the past, but could not identify any of the alleged debts arising from this theft. He did not file a police report and had no proof of any identity theft. He also stated his financial problems arose because

he and another church member supported their church financially, using their own money without help from any other member, and he could not pay his debts because he used his income to support his congregation. (Tr. 19, 20, 43, 45-48; Exhibits G, H)

SPECIFIC DEBT FINDINGS:

Applicant claims he paid the credit card debt in Subparagraph 1.a (\$9,635) and his Exhibit I pertains to that debt and the one alleged in Subparagraph 1.h for \$1,824 owed on the same bank's issued credit card. Applicant claims the letter that is Exhibit I from a bank pertains to these two debts and shows they are paid. The letter does refer to the specific debts Applicant allegedly paid. It does not list any amount of money owed or paid. It is dated September 22, 2015. The credit reports show the account was opened in 2007 and the last activity was in 2011. Applicant claims he stopped paying the credit card because two relatives died and he had to pay for the funerals. He never stated how much money he paid for those events. Applicant "thinks" his income was garnished to repay the debts. These two debts are not resolved based on Applicant's lack of specific proof that the accounts were paid. (Tr. 22, 32-34; Exhibits 3-5, I)

Applicant admits he continues to owe \$8,812 (Subparagraph 1.b) to a bank from 2011. This debt became delinquent in 2011 also, just like the previous debts. He has not had contact with the creditor about paying the debt. It is unresolved. (Tr. 34, 35, 51; Exhibits 3-5)

The debt owed to a bank for \$6,368 in Subparagraph 1.c Applicant claims he paid but has no proof of payment. It remains on the credit report dated September 18, 2015, the latest report submitted by the Department. This debt is unresolved. (Tr. 35, 52; Exhibits 3-5)

The television service debt listed in Subparagraph 1.d for \$127 Applicant denied owing. He does not have any proof of payment. It is unresolved. (Tr. 35, 52; Exhibits 3-5)

Applicant claims he paid the \$182 debt to a credit union shown in Subparagraph 1.e but has no proof of payment. It remains on his credit report. It is unresolved. (Tr. 36, 53; Exhibits 3-5)

The debt for \$83 owed to another television service and alleged in Subparagraph 1.f is resolved. Applicant submitted an exhibit to show he paid that debt. (Tr. 36, 54; Exhibits 3-5, F)

Applicant owed a bank on a mortgage for his house that was foreclosed upon in 2013. The debts for the mortgage and property taxes were alleged in Subparagraphs 1.g and 1.j. The past-due monthly mortgage payments totaled \$81,859. Applicant claims the \$14,900 in property taxes were paid by the bank when it sold the house after foreclosure. He also contends he received an Internal Revenue Service (IRS) Form 1099 for a check they gave him. He did not specify the amount of the check or provide a

copy of the IRS Form 1099. Applicant moved out of the house in December 2013 and now rents a house. These debts are resolved by the foreclosure and sale of Applicant's former home. (Tr. 23, 25, 36-38, 55, 58, 59; Exhibits 3-5, K)

Applicant admitted he owed a credit card gas bill alleged in Subparagraph 1.h for \$1,824 in his Answer, and his response to the government investigator in March 2014. At that time he told the investigator he would start making payments. At the hearing he testified the debt was not his obligation. From Applicant's testimony, he was sued by the creditor and the case has been continued, leading him to question this debt and his duty to pay it. This debt is unresolved because Applicant did not show any proof it was not his debt or that any court action was actually started by the creditor. Applicant submitted an exhibit pertaining to another debt that he was disputing. According to the 2015 credit report, this debt is the same \$1,824 alleged in Subparagraph 1.h owed on a credit card. The exhibit is dated September 2015. Applicant did not submit any other information on this dispute with the collector listed in the exhibit. This debt is unresolved. (Tr. 26, 38-40, 60; Exhibits 3-5, L)

Applicant owed \$243 to a home security company as alleged in Subparagraph 1.i. He stopped payment on this account in September 2011. He stated he last had contact with the security company several years ago. He has not resolved this debt. (Tr. 40, 41, 61; Exhibits 3-5)

The SOR alleges Applicant did not file his 2013 federal and state income tax returns. He claims he filed them in 2014 because he did not have enough money to pay the taxes owed in 2012 and 2013. Applicant also admitted he procrastinated on filing his tax returns. He submitted copies, unsigned, of his 2012 and 2013 federal and state income tax forms. He also submitted a form from the IRS showing he received a refund for his 2014 income tax filings. He did not submit any forms showing the refunds he claimed on his 2012 and 2013 federal income tax forms were paid by the IRS. He also did not show proof of payment of the state taxes owed shown on the two state income forms he submitted and claimed he filed. Applicant has not proven he filed the 2013 income tax forms, only that he filled out the forms. These taxes are unresolved. (Tr. 31, 32, 62; Exhibits A-E)

Applicant's 2015 credit report shows he owes \$3,374 to a moving company that moved him from his foreclosed house to a new home in 2013. Applicant claims he did not know about that debt because he did not review his credit report. (Tr. 41, 42; Exhibit 3)

Applicant also has two delinquent student loans on his 2015 credit report. He claims his signature on one loan was fraudulent. The initial loan was for \$4,000. Then he had another loan and the total now is \$28,000. He claims he never authorized the additional borrowing so "he is in court now with this identity theft." However, he only filed a complaint with the state attorney general and did not submit any proof of any legal action contesting the student loan debt. (Tr. 42-44; Exhibit 3)

Applicant's car loan shown on the 2015 credit report appears to be two months past due. He claims he is current on it now. He testified he brought the debt current in October 2015. (Tr. 44, 45; Exhibit 3)

Applicant testified he received financial counseling from his pastor in January 2014. (Tr. 30)

Applicant also submitted an Exhibit J pertaining to a class action lawsuit against his mortgage holder for a property inspection fee charged to its customers. It is irrelevant to the issues in this matter. (Exhibit J)

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 are useful 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 (AG ¶ 2(a)). The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 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 guideline at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. Three conditions are applicable to the facts found in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant accumulated \$123,953 in delinquent debt from 2011 to the present time that remained unpaid. Applicant has 10 delinquent debts listed in the SOR and the 11th allegation pertains to unfiled federal and state income tax returns for 2013. The evidence raises all of the above security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. The following five conditions may be applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (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 resolved three delinquent debts, based on his testimony and the exhibits submitted during the hearing. The debts are \$83 in Subparagraph 1.f; \$81,859 alleged in Subparagraph 1.g; and the property taxes alleged in Subparagraph 1.j for \$14,900 based on the foreclosure sale of his former home. The total of those debts is \$96,842. However, only the first debt was paid by Applicant with the other two obligations being resolved by the house sale that he did not handle but the mortgage holder did. AG ¶ 20(d) has minimal application.

The debts are recent and part of a pattern of unpaid financial obligations. The circumstances were not unusual; Applicant just did not pay his debts in a timely manner. AG ¶ 20(a) does not apply.

The financial conditions that resulted in Applicant's debt problems were not beyond his control. He spent his money to support his church and neglected his regular financial obligations. He lost his home to foreclosure. Applicant did not act responsibly under these circumstances. AG ¶ 20(b) does not apply.

Applicant claimed he received financial counseling from his pastor in January 2014. Applicant's financial problems are not under control or resolved. He disclosed, as did the exhibits, that he has student loan deficiencies, a debt to house movers, and was

behind in his car loan payments in 2014 and 2015. There is a pattern of irresponsible financial spending. AG ¶ 20(c) does not apply.

Applicant did not start a good-faith effort to repay his debts. He paid only one small debt. The foreclosure of his house by the lender resolved his mortgage debt without him doing anything positive to repay the debt. AG ¶ 20(d) does not apply.

Applicant did not demonstrate any reasonable basis to dispute his SOR-listed debts. He did not provide any documents to show the actions he might have taken to resolve them. 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 an 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.

AG ¶ 2(c) requires each case must be judged on its own merits. Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant did not act responsibly in failing to pay his legal debts. He made major errors in judgment about which debts to pay and when. Applicant and his wife earned a good income from their pension and employment. Yet he could not adhere to the monthly payments required to repay his debts. There has not been any difference in his financial activity since the SOR was issued. He could not provide proof of payment of any debt he testified he paid. It is likely his financial problems will continue.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from his financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a to 1.e:	Against Applicant
Subparagraphs 1.f and 1.g:	For Applicant
Subparagraphs 1.h and 1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	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.

PHILIP S. HOWE
Administrative Judge