



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 16-00369
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esquire, Department Counsel

For Applicant: *Pro se*

06/11/2018

Decision

HOGAN, Erin C., Administrative Judge:

On May 27, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 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 June 8, 2017.

On June 14, 2016, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on March 1, 2017. The case was assigned to another administrative judge on September 25, 2017, and transferred to me on April 4, 2018. On April 12, 2018, a Notice of Hearing was issued scheduling the hearing for May 2, 2018. The hearing was held as scheduled. During the hearing, the Government offered four exhibits which were admitted as Government Exhibits (Gov) 1 – 4. Applicant testified and offered no exhibits. The record was held open until May 16, 2018, to allow the Applicant to submit additional documents. Applicant timely submitted a 19-page document, which was admitted as Applicant Exhibit (AE) A. The transcript (Tr.) was received on May 9, 2018. Based upon a review

of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant is an employee of a Department of Defense contractor seeking to maintain a security clearance. He has worked for his current employer since 2015. He has worked for various DOD contractors since 2004. He has had no periods of unemployment. He is a high school graduate. He has two daughters, ages ten and five, from two different relationships. He is engaged and his fiancée has two sons. He has held a security clearance for 15 years without incident. (Tr. 18- 24; Gov 1)

On October 22, 2015, Applicant submitted a security clearance application as part of a periodic reinvestigation. (Gov 1) A subsequent security clearance background investigation resulted in the following SOR allegations: a \$13,574 delinquent home equity line of credit that was placed for collection in June 2014. (SOR ¶ 1.a: Gov 4 at 5, 8); a \$258 delinquent cell phone account that was placed for collection in November 2014 (SOR ¶ 1.b: Gov 4 at 6); a \$538 delinquent cell phone account that was placed for collection in August 2014 (SOR ¶ 1.c: Gov 3 at 2; Gov 4 at 7); a \$497 delinquent account placed for collection in October 2015 (SOR ¶ 1.d: Gov 4 at 7; Gov 3 at 2); a \$230 medical account placed for collection in January 2013 (SOR ¶ 1.e: Gov 4 at 7; Gov 3 at 2); a \$669 electric bill that was placed for collection in October 2015 (SOR ¶ 1.f: Gov 4 at 7; Gov 3 at 2); a \$155 debt owed to a gym that was placed for collection in April 2012 (SOR ¶ 1.g: Gov 4 at 9); and a \$1,655 jewelry store account that was placed for collection in June 2012. (SOR ¶ 1.h: Gov 4 at 6; Gov 3 at 4)

In June 2012, Applicant purchased a home for \$129,000. In 2014, two child support proceedings were filed against Applicant. He could not afford to pay child support and his mortgage. He consulted an attorney who advised him to make paying child support a priority because he could go to jail for failing to pay child support. The attorney advised Applicant that he should attempt to sell his house. Applicant attempted to sell his house. He was not successful and the house went to foreclosure. He pays a total of \$950 a month for his two daughters. In March 2014, Applicant moved back in with his parents in order to save money. He paid them \$350 a month for rent. He moved in with his fiancé about six months ago. (Tr. 16 – 22; Gov 2; Gov 1, section 26)

When he received the SOR in 2016, Applicant contacted a credit counseling agency to assist him with paying delinquent debts. He paid off several of the debts and intends to resolve the remaining debts. His financial situation has improved. The current status of the SOR debts are:

SOR ¶ 1.a: \$13,574 home equity account placed for collection: Applicant testified that he was not sure what this account was for. He possibly thought it was a mortgage. He was never notified about owing anything on his mortgage. The credit report entry did not provide a phone number or address so Applicant claims that he was unable to look into it. He will pay it, if it is determined to be a valid debt. The October 30,

2015 credit report entry indicates that this is a home equity line of credit. An entry for creditor A on page eight indicates the nature of the debt. On page five of the October 2015 credit report, it shows that creditor B took over the account from creditor A as a collection agent. (Gov 4 at 5, 8) The credit report, dated November 14, 2016, lists the debt with the original creditor A. The entry also indicates the debt was paid and closed. (Gov 3 at 4) It is also listed as paid and closed in the credit entries Applicant provided from his credit counselor. (AE A at 10) The account is resolved.

SOR ¶ 1.b: \$258 cell phone account placed for collection: Applicant claims he paid this debt in 2017. The account is no longer listed on the November 2016 credit report. The debt is resolved. (Tr. 27; Gov 3)

SOR ¶ 1.c: \$538 cell phone account placed for collection: Applicant admits he has not paid this debt. He intends to pay it off in the near future. (Response to SOR, Tr. 1.c; AE A at 5, 15)

SOR ¶ 1.d: \$497 credit card account placed for collection: Applicant claims that he paid this debt in June 2016. A credit report entry on the November 2016 credit report lists the debt as paid. Applicant's post-hearing submissions also indicate the debt is paid. The debt is resolved. (Tr. 1.d; Gov 3 at 2; AE A at 16)

SOR ¶ 1.e: \$230 medical account placed for collection: Applicant claims the account was paid in June 2016. The November 2016 credit report indicates a medical collection account with the identical account number was paid on June 7, 2016. The debt is paid. (Tr.29; Gov 3 at 2; AE A at 1)

SOR ¶ 1.f: \$669 electric utility account placed for collection: Applicant admits that this debt is unresolved. He intends to resolve this account in the near future. (Tr. 29-30)

SOR ¶ 1.g: \$155 gym membership account placed for collection: Applicant claims this debt is paid. It was not listed on the November 2016 credit report. The debt is resolved. (Tr. 30; Gov 3)

SOR ¶ 1.h: \$1,655 delinquent jewelry store account placed for collection: Applicant claims this debt was paid off through garnishment several years ago when he worked for another contractor. The recent entry he provided after the hearing listed the debt as charged off with a zero balance. He did not provide documentation of resolution of the debt through garnishment. (Tr. 30-31; AE A at 17)

Applicant provided a copy of his household budget in his post-hearing submissions. Applicant's net monthly salary is \$3,678. His net monthly expenses are \$3,326. After expenses, there is a remainder of \$352. (AE A at 2) He is current on his federal and state income taxes. (Tr. 37) Applicant testified that there was approximately \$30,000 to \$40,000 in equity on his house before it went to foreclosure. Applicant's post-hearing submission indicates that he does not owe anything to the bank that financed his mortgage. (Tr. 21; AE A at 11)

Applicant states that over the past few years he had to make some difficult financial decisions. He made paying his child support obligations a priority because he wants to be a father to his children. He continues to work to relieve his debts with his credit counseling company when he is able to do so. He asks for forgiveness for showing a lack of responsibility by allowing some debts to become delinquent. He is doing everything he can to resolve the delinquencies while raising his two daughters with no help from other sources. (Response to SOR)

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. The administrative judge's overarching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(a), 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 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 that 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 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).

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 notes several disqualifying conditions that could raise security concerns. The disqualifying conditions that are relevant to Applicant's case include:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant encountered financial problems in 2014, while involved in child support and custody proceedings. He could not afford to pay both his child support and his mortgage. He chose to pay his child support payment. He attempted to sell his house, but was unable to do so before it went to foreclosure. Several other accounts became delinquent during this time period. The SOR alleges eight delinquent debts with a total approximate balance of \$17,576. AG ¶¶ 19(a), and 19(c) apply to Applicant's case.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his 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 own 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))

AG ¶ 20 includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply:

(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; and

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

AG ¶ 20(a) applies. Applicant purchased a house in 2012. He eventually could not afford to pay both the mortgage payment and his child support obligations. He chose to support his children. The home was foreclosed in 2014. Applicant began addressing his delinquent debts. The evidence shows that he has paid five of the eight debts alleged in the SOR. Applicant's financial situation has improved. He demonstrated his reliability and trustworthiness through his efforts to resolve his delinquent accounts.

AG ¶ 20(b) applies because Applicant's financial situation was adversely affected by his child support obligations. He was unable to pay his mortgage and pay his child support obligations. He opted to pay his child support obligations. He unsuccessfully attempted to sell his house before it was foreclosed. After the foreclosure, Applicant

moved in with his parents to save money. He began to pay his delinquent accounts in 2016. He acted responsibly under the circumstances.

AG ¶ 20(c) applies. Applicant has been using an online credit counseling company to help him pay his delinquent debts. Only two delinquent debts remain. His financial problems are being resolved and his financial situation is under control.

AG ¶ 20(d) applies towards the debts alleged in SOR ¶¶ 1.a, 1.b, 1.d, 1.e, and 1.g. Applicant provided proof or there was sufficient proof in the credit reports that these debts were resolved. The largest debt, SOR ¶ 1.a, a \$13,754 home equity line of credit appears to have been resolved during his foreclosure proceedings. Applicant indicated that there was about \$40,000 in equity in the home. This is likely since the home equity line of credit is resolved and, although not alleged in the SOR, the mortgage on the home that went to foreclosure is also resolved. Applicant demonstrated a good-faith effort to resolve his debts. The jewelry store debt alleged in SOR ¶ 1.h is likely resolved. Applicant testified that it was resolved through garnishment when he worked for a previous employer. He did not provide documentation verifying this assertion. Applicant intends to pay the two remaining debts. The total amount of delinquent debt has decreased from \$17,576 to \$1,207. If it is discovered that he owes the jewelry store debt, the total amount of the delinquent debt is \$2,862. Applicant is resolving his debt slowly, but more importantly, he is making sure that his children are supported. He does not live above his means. It takes time to recover from a financial setback. Applicant has worked to improve his financial situation. I am confident he will continue to work on repaying his delinquent debts.

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 considered Applicant's successful career with federal contractors since 2004. I considered he is a responsible father who insures that he provides for his children. I considered that he is recently engaged.

After Applicant's home went to foreclosure, he cut expenses by moving in with his parents. Six months ago, he moved in with his fiancée. They currently share expenses. While Applicant still has several debts to resolve, I am confident that he will continue to resolve them through his online credit counseling company. Security concerns under financial considerations are mitigated.

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
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Subparagraphs 1.a -1.h:	For Applicant
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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