



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



In the matter of:)
)
) ISCR Case No. 17-01812
)
Applicant for Security Clearance)

Appearances

For Government: Allison Marie, Esq., Department Counsel
For Applicant: Richard Prins, Esq.

07/13/2018

Decision

MURPHY, Braden M., Administrative Judge:

Most of Applicant’s debts occurred after a divorce and the failure of a family business that Applicant ran with his former wife. Applicant is resolving his debts through a debt resolution service and he has established a track record of payments into that plan. Applicant mitigated the security concerns under Guideline F, financial considerations. Applicant’s eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on February 2, 2015. On June 16, 2017, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations.¹

¹ The action was taken under Executive Order (Exec. Or.) 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 *National Security Adjudicative Guidelines* (AG), which became effective on June 8, 2017.

Applicant answered the SOR on July 14, 2017. He elected to have his case decided on the written record in lieu of a hearing. On August 30, 2017, Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 11. Applicant received the FORM on October 27, 2017. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation.

Applicant retained counsel on November 15, 2017, and submitted a response to the FORM on December 14, 2017. The FORM response's three enclosures are marked as Applicant's Exhibits (AE) A through C. Applicant did not object to admission of Items 1-11. The SOR and the Answer (Items 1 and 3) are the pleadings in the case. Item 2 is a procedural document. Items 3 through 11 and AE A through C are admitted into evidence without objection.

Applicant's December 14, 2017 submission is captioned "Respondent's Petition for Withdrawal in Lieu of Submission to Administrative Judge." In the event the Government did not withdraw the SOR, Applicant requested a hearing. (Petition at 7) The file also includes an e-mail from Applicant's counsel to the Department Counsel's office, dated the same day, December 14, 2017, in which he asked that the SOR be withdrawn "in lieu of submitting it to an Administrative Judge based on the information presented." (Hearing Exhibit (HE) I) The Government interpreted this statement as a request for an administrative determination on the written record, without a hearing. The case was then assigned to the Hearing Office of the Defense Office of Hearings & Appeals (DOHA) for assignment to an administrative judge for a decision on the written record.

The case was assigned to me on February 16, 2018. Since it seemed that Applicant's counsel had on the same day both waived his client's right to a hearing and also requested one, I issued an order on May 9, 2018 requesting that he clarify his client's choice of forum. The same day, Applicant's counsel confirmed that his client did not want a hearing but also requested time to submit additional evidence. (HE II) On May 10, 2018, over the Government's objection, I reopened the record until June 1, 2018, to allow Applicant the opportunity to do so. (HE III)

On May 31, 2018, Applicant timely submitted two new documents, which were marked as AE D and AE E.² On June 8, 2018, Department Counsel objected to admission of AE D and AE E, and offered an additional document, GE 12 (Item 12), as rebuttal evidence. On June 18, 2018, Applicant's counsel objected to admission of Item 12, and

² AE D is an affidavit from Applicant, dated May 31, 2018. AE E is a document from Applicant's debt resolution company, reflecting the status of his payments as of May 9, 2018. Applicant's Counsel also re-submitted Applicant's FORM Response, as well as AE A, AE B, and AE C. They have been included in the file but not re-marked, since they are duplicative of materials already submitted.

offered a new document (AE F) rebutting Item 12. AE D, AE E, AE F and Item 12 are admitted. The record closed on June 29, 2018.³

Amendments to the SOR

With the FORM, Department Counsel included an amendment to the SOR, offered under ¶ E.3.13 of DOD Directive 5220.6.

The Government amended SOR ¶ 1.l to reflect that the unpaid \$4,940 tax lien alleged was a debt owed to Applicant's home state. (In the original SOR, the creditor was unidentified.)

The Government withdrew SOR ¶ 1.m, which had alleged a charged-off debt to a bank. In its place, the Government alleged a new subparagraph ¶ 1.m:

¶ 1.m. You are indebted to [name of creditor] on a judgment entered against you in March 2017 in the approximate amount of \$10,613.59. As of the date of this Amendment to [the] SOR, the judgment remains unpaid.

In his FORM response, Applicant denied SOR ¶ 1.l, as amended, as he believed the tax debt had been paid. He denied the original SOR ¶ 1.m (which was withdrawn), and admitted SOR ¶ 1.m, as amended.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a-1.j. He admitted SOR ¶1.k in his Answer but denied it in his FORM Response. As noted above, Applicant admitted SOR ¶ 1.m, as amended, and denied SOR ¶ 1.l, as amended. He provided narrative explanations for each allegation. I have incorporated Applicant's admissions and other statements into the findings of fact. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is 48 years old. He served on active reserve with the Army National Guard from 1989 to 1995. He served on active duty with the U.S. Army from February 2000 to December 2001. Since 2004, he has worked as a private investigator and process server. He has mostly been self-employed, with a company he says he co-owned with his wife. Since April 2011, he has also worked in federal law enforcement. He was granted a security clearance by the Defense Department in 2013. (Items 4, 5)

³ The undersigned was on leave out of the office for much of mid-June, which is why the parties received more time than they otherwise might have to review and respond to exhibits submitted when I reopened the record.

Applicant was married from 1997 until he and his wife separated in March 2015. They divorced in December 2015. (Item 9) They have three daughters, ages 12, 17, and 20. He also has a 22-year-old son. (Item 4)

The 13 debts alleged in the SOR (as amended) total about \$52,185. Almost all of the debts were incurred after Applicant's divorce. Applicant's business was also affected, since his former wife was a co-owner. (Item 3) Applicant stated in his Answer that he made his wife a 51% co-owner of the business so that she and their children would have financial security. Applicant states that after their divorce, his former wife "basically took over the company and because of her inexperience, [she] ran it into the ground." Applicant was responsible for all the loans and credit cards related to the company. (Item 3 at 2) Applicant states that he learned about many of the debts in 2016, in the aftermath of the divorce. He was temporarily unemployed at the time. (AE D) Applicant experienced a 70% drop in income after his divorce and the failure of his business. (AE E)

In their December 2015 divorce decree, Applicant's former wife is listed as being employed by a local public school district. The document gives no indication that she had an independent business at the time. Applicant's employment status is listed as self-employed. (Item 9 at 16) With the exception of the two vehicles (SOR ¶¶ 1.a and 1.b), the general marital debts are divided equally in the divorce, with 50% responsibility to each party. (Item 9) But for SOR ¶¶ 1.a, 1.b, and 1.k, all of the SOR debts post-date the divorce.

SOR ¶ 1.a is a charged-off debt for \$12,064. It is for Applicant's truck, which was repossessed after his divorce. The truck is listed in the divorce decree as Applicant's property, and the related debt is his responsibility. (Item 9 at 20-21) SOR ¶ 1.b is a charged-off debt for \$9,460. It relates to a car purchased by Applicant's former wife in February 2015 (a month before they separated). It became delinquent two months later, in April 2015. (Item 6) Though Applicant admitted the debt, his divorce decree establishes that his former wife is responsible for it. (Item 9 at 21-22) SOR ¶ 1.b is therefore resolved for Applicant on that basis.

Most of the other SOR debts are accounts that were either charged off or placed for collection. These debts include SOR ¶¶ 1.c (\$7,415 charge off); 1.d (\$2,210 in collection); 1.e (\$1,192 in collection); 1.f (\$1,144 charge off); 1.g (\$966 in collection); 1.h (\$812 charge off); 1.i (\$679 in collection); and 1.j (\$538 in collection). Applicant stated that he was unable to pay these debts after the divorce and the business failure. But for the truck, Applicant attributes all of them to the business. When the business began failing, Applicant became personally liable for the debts. (FORM response at 3)

In May 2017, Applicant entered into a repayment agreement with a debt resolution company. (Item 3) In the agreement, Applicant declared \$28,180 in debts, to be paid off in monthly installments of \$310.80 over a 60-month (five-year) period. The agreement

includes a service fee of 20% of the original amount of any debt settled,⁴ as well as monthly administrative and maintenance fees of \$29. The company does not begin settlement negotiations with any of Applicant's creditors until Applicant has accumulated \$25% of the amount of one of his enrolled accounts. (Item 3 at 6)

SOR ¶¶ 1.a through 1.j are listed in the agreement. (Item 3 at 10) Applicant made his first \$310 payment under the debt resolution agreement in May 2017. He has made a year's worth of monthly payments since then, up through his April 2018 payment, the most recent one established in the record. This reflects about \$3,700 of payments towards the accounts in the agreement. (AE E)

As of November 2017, one account (SOR ¶ 1.f) was reported by the debt resolution company to be in active settlement. (AE C) Applicant provided no updated documentation reflecting that any of his other debts being negotiated by the debt resolution company have been paid, settled, or resolved.

The remaining SOR debts (¶¶ 1.k, 1.l and 1.m) are not listed in the debt resolution agreement. (Item 3, Attachment A) The status of these debts is as follows:

SOR ¶ 1.k is a past-due cable bill for \$242. Applicant admitted the debt in his Answer but noted it is 10 years old, and he believes it has been paid. He denied the debt in his FORM Response. An April 2017 credit report indicates that the account was opened and became past-due in 2012. (Item 6) This debt therefore pre-dates the divorce.

SOR ¶ 1.l, as amended in the Government's FORM, is an unpaid \$4,940 state tax lien. The lien was filed in Applicant's home county in January 2017. It is for the period from December 1, 2014 through April 30, 2015. The lien is for "limited sales, excise and use tax." (Item 7)

In his FORM Response, Applicant denied SOR ¶ 1.l, as amended. He asserted that the account is for past-due taxes relating to his former wife's business. There is no such indication on the lien. Applicant is named on the lien, and his wife is not. The lien is also listed on Applicant's credit report. (Item 6; Item 7) Applicant also believes that the account has been paid. He indicated that he is in contact with the tax authorities to ascertain the debt's status. (Petition at 6) If necessary, he will contract with the debt resolution company to help him resolve the debt. (AE A at 5)

SOR ¶ 1.m, as amended in the Government's FORM, is an outstanding \$10,613 judgment, issued against Applicant in March 2017. Applicant admitted SOR ¶ 1.m in his FORM Response. He stated that the account was for a revolving business loan used to finance his ex-wife's business operations. Applicant was a co-signer and when the business failed, he was unable to make payments on the debt because of divorce costs,

⁴ For example, if Applicant had a \$2,000 debt that was settled for \$1,000, he would pay \$1,400 to resolve it, with \$400 (20% of the original amount owed) going to the debt resolution company. (Item 3 at 6)

the loss of the business, and his temporary unemployment. He stated that he was unaware of the debt because related correspondence was provided to his former wife at her address, and she failed to tell him about it. (AE A at 6)

The judgment at SOR ¶ 1.m was issued in a court in Applicant's home state, though in a different county from where he lives. Applicant is personally named on the judgment as a defendant. His full name and correct birth date are listed, although the address listed for Applicant on the judgment does not correspond to any address he provided on his SCA. (Item 4; Item 8)

Applicant's company is also listed on the judgment as a defendant. (Item 8) The address listed is the same address Applicant gave on his SCA as the address for a company where he worked as a process server from 2004 to 2011. (Item 4 at 12; Item 8) The judgment lists two names for this company defendant. Applicant listed one of those companies on his SCA as his employer since October 2013, though he provided a different address for the company on his SCA from that listed as the company's address on the judgment. (Item 4 at 11; Item 8)

The Government asserts that Applicant was personally served process of the default judgment on November 14, 2016. In support, Department Counsel offers Item 12 as evidence that Applicant knew about the default judgment at least as of that date.⁵

Item 12 is from a website, "[Name of county redacted].com." Applicant's counsel objects to admission of Item 12 on the grounds that it is not an official record. In support, he offers AE F, a document from the same website saying as much.⁶ He argues that Item GE 12 is insufficient evidence to prove that Applicant received service of process of the default judgment in November 2016, which he denies. As the evidentiary standard is relaxed in an administrative forum such as this one, GE 12 is admitted. Nevertheless, and more importantly, Applicant also acknowledges that he "accepted responsibility for the debt [SOR ¶ 1.m] and judgment."⁷

Applicant also asserts that "he responsibly referred it to his debt management and settlement company."⁸ As with the tax lien at SOR ¶ 1.l, he offers no corroborating documentation that he has done so.

⁵ Department Counsel's e-mail of June 8, 2018.

⁶ "In any case where legal reliance on information contained in these pages is required, the official records of [the county] should be consulted." (AE F)

⁷ Applicant Counsel's e-mail of June 18, 2018.

⁸ Applicant Counsel's e-mail of June 18, 2018.

According to a recent budget, Applicant earns \$5,000 in monthly income. He lists \$4,896 in monthly expenses, including his \$310 monthly payment to the debt resolution company. He has a monthly net remainder of \$604. (Answer Attachment A; AE B)

Policies

It is well established that no one has a right to a security clearance.⁹ As the Supreme Court noted in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.”¹⁰

The adjudicative guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines 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 national security eligibility will be resolved in favor of the national security.”

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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.

⁹ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”).

¹⁰ 484 U.S. at 531.

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 or sensitive information. . . .

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.¹¹

The financial considerations guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (f) . . . failure to pay annual Federal, state or local income tax as required.

Applicant accrued various delinquent debts after his divorce and the failure of a family business that he ran with his former wife. AG ¶ 19(f) does not apply to SOR ¶ 1.I, because it is a business tax debt, and not related to income tax, as required to apply AG ¶ 19(f). More generally, however, AG ¶¶ 19(a) and 19(c) do apply to that debt, as well as to the other debts alleged.

The financial considerations 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;

¹¹ ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

(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 good-faith effort to repay overdue creditors or otherwise resolve debts;

(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; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's debts are largely attributable to his 2015 divorce, and the failure of the business he ran with his now former wife. While he has begun to resolve them through his debt resolution agreement, the debts are ongoing. He has not established that AG ¶ 20(a) should apply.

Applicant and his wife were in business together, and their marriage and their business both failed. Almost all of Applicant's debts can be traced to these conditions, which were beyond his control.¹² The first prong of AG ¶ 20(b) is therefore established. Under the second prong, Applicant must establish that he acted reasonably under the circumstances. After he learned of the debts in 2016, in the aftermath of the divorce, Applicant retained a debt resolution company to begin resolving his debts. He did so in May 2017. The SOR was issued a month later.

It is not clear from the record that the debt resolution company has yet taken action with Applicant's creditors to resolve his debts. However, Applicant has nonetheless established a year's worth of payments into the agreement. He also provided a recent budget, which shows that his repayment plan is reasonable.

There is no documentation in the record that two of the larger debts (SOR ¶ 1.l and ¶ 1.m), are being resolved by the debt resolution company, or otherwise. These two debts

¹² SOR ¶ 1.k predates the divorce and the business failure, so it is an exception.

were not in the original SOR either at all (since the original ¶ 1.m was withdrawn) or with any specificity (¶1.l). Nonetheless, since the record was re-opened, Applicant had the opportunity to provide documentation that he had amended the debt resolution agreement to add them). Even so, these debts are also attributable to the business and its failure and are therefore mitigated by AG ¶ 20(b).

There is no requirement that an applicant show that the SOR debts be paid in full, or that they are being paid or resolved in any particular way. All that is required is a repayment plan, a showing that the plan is reasonable, and a showing of steps taken towards implementing the plan. Here, Applicant's budget shows that he can afford his repayment plan of \$310 a month. He has been making regular monthly payments into the debt resolution plan for a year. He has therefore established a track record of steady payments. Applicant also signed up for the debt program before the SOR was issued, thereby bolstering his good faith. AG ¶¶ 20(b) and 20(d) therefore apply.

The debt resolution company Applicant retained is not a "non-profit" organization, as they take a 20% fee out of the original debt amount for each debt they are able to settle. The company is also not a credit counseling service. However, Applicant's debts are nonetheless being resolved and are under control. AG ¶ 20(c) is therefore partially established.

Notwithstanding Applicant's admission, SOR ¶ 1.b is shown in the divorce decree to be the responsibility of Applicant's former wife, since it relates to her car. AG ¶ 20(e) applies to mitigate that debt. AG ¶ 20(e) is not otherwise established.

Having learned about the business-related tax lien at SOR ¶ 1.l, Applicant indicated that he is in contact with the authorities to ascertain what he owes. He also indicates that he will pay the debt. AG ¶ 20(g) is not established, as resolution arrangements are not yet in place.

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(a), 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 Guideline F in my whole-person analysis. Applicant's debts are largely attributable to conditions beyond his control, including his divorce and the failure of a family business he ran with his former wife. His repayment arrangements were delayed by his own employment instability. He has been in a repayment plan for a year and that plan is reasonable. Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude that Applicant mitigated the financial considerations security concerns.

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.m:	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 interests of the United States to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is granted.

Braden M. Murphy
Administrative Judge