



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 17-02375
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esquire, Department Counsel
For Applicant: Tokay T. Hackett, Esquire

10/24/2018

Decision

HOGAN, Erin C., Administrative Judge:

On August 1, 2017, 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, 2018.

On September 29, 2017, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on November 1, 2017. The case was assigned to another administrative judge on April 13, 2018. On June 7, 2018, a Notice of Hearing was issued scheduling the hearing for September 10, 2018. The case was transferred to me on September 4, 2018. The hearing was held as scheduled. During the hearing, the Government offered six exhibits which were admitted as Government Exhibits (Gov) 1 – 6. Applicant testified, called one character witness, and offered 15 exhibits which were admitted as Applicant Exhibits (AE) A - O. The record was held open until September 24, 2018, to allow the Applicant to submit additional documents. He timely submitted three documents which were admitted as AE P, Q, and R. The transcript (Tr.) was received on September 19,

2018. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

Applicant is an employee of a DOD contractor seeking to maintain a security clearance. He has worked for his current employer since July 2018. He has worked for various DOD contractors since 1995. He has held a security clearance since 1995. He has had one period of unemployment between October 2013 and January 2014. He has a college degree. He is engaged. He and his fiancée have a four-year-old daughter. He has a six-year-old daughter from a previous relationship. His older daughter lives with her mother in another state. (Tr. 40 - 43; Gov 1)

On February 4, 2015, Applicant submitted a security clearance application as part of a periodic reinvestigation. In Section 26 – Financial Record of the application, he disclosed delinquent child support and an automobile repossession. (Gov 1, section 26)

A subsequent security clearance background investigation resulted in the following SOR allegations: a Chapter 13 bankruptcy that was filed in May 2015 and dismissed in June 2016 (SOR ¶ 1.a: Gov 3 at 3; Gov 5); a delinquent student loan with an approximate balance of \$28,008 that was placed for collection (SOR ¶ 1.b: Gov 3 at 2); delinquent child support with an approximate balance of \$14,846 (SOR ¶ 1.c: Gov 3 at 2; Gov 4 at 3); a \$6,347 account that was charged off (SOR ¶ 1.d: Gov 3 at 2); a \$247 cable-television account placed for collection (SOR ¶ 1.e: Gov 3 at 2; Gov 4 at 6); a \$200 delinquent medical account (SOR ¶ 1.f: Gov 3 at 2); a \$196 delinquent utility account that was placed for collection (SOR ¶ 1.g: Gov 3 at 2; Gov 4 at 6); and a \$2,065 judgment entered against Applicant for a broken apartment lease (SOR ¶ 1.h: Gov 4 at 2).

Additional delinquent accounts include: a charged-off debt for \$8,076 owed as a result of an automobile repossession (SOR ¶ 1.i: Gov 4 at 3); a \$1,162 account placed for collection related to the purchase of a television (SOR ¶ 1.j: Gov 4 at 3); an account that was charged off, but no amount is listed (SOR ¶ 1.k: Gov 4 at 3); a \$3,128 account placed for collection (SOR ¶ 1.l: Gov 4 at 6); and a \$105 traffic express-lane account placed for collection (SOR ¶ 1.m: Gov 4 at 6).

Applicant states that his financial problems started in October 2011, when he was displaced from the house he was renting. The sheriff's office notified Applicant that the house was no longer owned by the landlord and that he and his roommates had 24 hours to vacate the property. He was not financially prepared to move. In addition, he has incurred a substantial amount of legal fees regarding custody and child support of his oldest daughter. (AE A)

A summary of the SOR allegations is as follows:

SOR ¶ 1.a: Applicant's May 2015 Chapter 13 bankruptcy filing. Applicant had approximately \$10,495 in total assets and approximately \$78,689 in total liabilities. Applicant was to pay \$405 monthly under the Chapter 13 payment plan. During the first year of the payment plan, his employer changed his pay cycle from bi-monthly to 30 days after invoice. Applicant claims he notified his bankruptcy attorney of the change. He decided to mail checks directly to the bankruptcy court. In June 2016, the Chapter 13 bankruptcy was dismissed and the checks were returned to Applicant. He claims he was not provided a full explanation as to why the bankruptcy was dismissed. The cause was a material default by Applicant to make timely payments in accordance with the plan. (Tr. 43-46, 67; AE A; Gov 5)

SOR ¶ 1.b: \$28,008 delinquent student loan. Applicant claims he has a payment plan in effect and the account is in good standing. He did not provide additional documentation regarding his student loans after the hearing. (Tr. 47; AE A)

SOR ¶ 1.c: \$14,846 in delinquent child support. Applicant admits that he owes child support. He claims he is in a repayment agreement and is making consistent payments. He currently pays around \$1,400 a month. He claims the delinquency accrued because of nonpayment while he had custody of his daughter; a lapse of employment because of the federal government sequester in 2012 or 2013; and the current amount of child support is based on salary that is significantly more than what he is currently earning. As of September 7, 2018, the current balance of delinquent child support is approximately \$32,292.79. (Tr. 48 – 50 -AE A)

Under cross examination, Applicant admitted that he had not made consistent child-support payments from September 2017 to September 2018. He claims he is in the process of attempting to modify his child-support payments because he cannot afford them. His oldest child moved with her mother out of state and he has not been able to locate them in over two years. In January 2015, Applicant's driver's license was suspended for failure to pay child support. He appeared in court to clear up the matter. (Tr. 50-52; AE A; Gov 6)

SOR ¶ 1.d: \$6,347 charged-off automobile account: Applicant purchased a car in 2009. He could not afford the car and the car was repossessed in 2011. The car was sold and Applicant owes the amount of the deficiency. Applicant is not sure who the current owner of the debt is and whether the amount owed is accurate. (Tr. 55-56; AE A; Gov 4 at 3)

SOR ¶ 1.e: \$247 cable-television account placed for collection. Applicant claims he was unable to pay this bill because of the furlough in 2012 – 2013. The bill is included in his Chapter 7 bankruptcy. (Tr. 52-53; AE A)

SOR ¶ 1.f: \$200 delinquent medical account. Applicant does not recognize this debt. The creditor is not listed. (Tr. 53; AE A)

SOR ¶ 1.g: \$196 utility account that was placed for collection. Applicant initially denied this debt because he claimed it was paid. During the hearing, Applicant testified that this is one of the debts incurred when he vacated the apartment because he was unable to afford the rent due to the furlough. (Tr. 54; AE A)

SOR ¶ 1.h: \$2,065 judgment filed in 2013 related to a broken lease. Applicant initially claimed that he was not sure whether he owes this debt. During the hearing, he testified this is a debt related to broken lease of the apartment he vacated because of the furlough. (Tr. 55; AE A)

SOR ¶ 1.i: \$8,076 charged-off debt related to a car loan. Applicant claims this debt is a duplicate of the debt alleged in SOR ¶ 1.d. Comparing the credit report entries of the two accounts, it appears that this debt is likely a duplicate of the debt alleged in SOR ¶ 1.i. As a result, this allegation is found for Applicant. (Tr. 56; AE A; Gov 3 at 2; Gov 4 at 3)

SOR ¶ 1.j: \$1,162 store account placed for collection. Applicant purchased a television for an ex-girlfriend. His ex-girlfriend still has the property and refuses to pay for it. The debt is now included in the Chapter 7 bankruptcy. (Tr. 57-58; AE A)

SOR ¶ 1.k: Charged-off account. Applicant neither admits nor denies this account. He is unable to identify the creditor. (Tr. 58; AE A)

SOR ¶ 1.l: \$3,128 collection account related to vacating an apartment lease early. Applicant claims this is the same debt as the debt alleged in SOR ¶ 1.h. Based on the evidence in the record, I cannot conclude this allegation is a duplicate of the debt alleged in SOR ¶ 1.h. It is now included in his Chapter 7 bankruptcy. (Tr. 58-59; AE A)

SOR ¶ 1.m: \$105 debt related to fines for using highway express lanes without paying a toll. Applicant admits this debt. He claimed it was paid. His driver's license was about to be suspended for failure to pay his fines. After the hearing, Applicant provided documentation indicating that he received several fines for traffic violations in January 2017 and December 2017. The total amount of fines and court costs is \$1,508.85. The paperwork indicates Applicant entered into a payment plan on July 26, 2018, but there is no indication or proof that payments are being made and whether it was paid off in full. (Tr. 59, 77-78; AE A; AE Q) The additional traffic fines Applicant presented after the hearing are not alleged in the SOR. They will not be considered as a matter under disqualification, but will be considered when considering mitigation and the whole-person factors.

On July 4, 2018, Applicant filed for Chapter 7 bankruptcy. He anticipates his debts will be discharged in October 2018. (AE P) His student loans as well his child support are not dischargeable under the U.S. bankruptcy code. Applicant did not provide a complete copy of his Chapter 7 bankruptcy paperwork. (Tr. 60, 70, 73; AE J; AE P)

After the bankruptcy, Applicant believes he and his girlfriend will be able to maintain expenses. His monthly income is \$6,000. His fiancée just got a new job and her monthly income will be \$4,400. Their total monthly income will be \$10,400. Their total monthly expenses are \$9,325. After the expenses are paid, Applicant will have \$1,075 in discretionary funds each month. They are moving to an apartment where the rent will be reduced from the \$2,000 monthly that they currently pay to \$1,000 monthly. (AE R)

Whole-Person Factors

Mr. W. testified telephonically during Applicant's hearing. He has held a Top Secret/SCI since 1995. He first met Applicant in 2010 when they worked together for the same contractor. He was Applicant's direct lead. He was not a supervisor. He had daily contact with the Applicant. He describes Applicant's duty performance as exemplary. He would rate his work ethic as nine on a scale of one to ten. He and Applicant also worked together for another contractor. He states Applicant is always aware of recent developments in the cyber security industry. He is aware of Applicant's financial issues, but finds that he is trustworthy. Mr. W. would work with Applicant again and believes Applicant would put the U.S. first in any situation. (Tr. 28 – 35)

Several of Applicant's friends and co-workers submitted written statements on his behalf indicating that Applicant is trustworthy and reliable. (AE C-I, P)

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 for several years. His financial problems were aggravated when he was laid off during the federal government furlough in 2012. In addition to several broken leases and delinquent consumer debt, Applicant has had difficulty keeping up with his child-support payments and his student loans. The total approximate amount of the debts alleged in the SOR is \$64,380. Of that amount, \$14,846 was for delinquent child support and \$28,008 was for delinquent student loans. 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) does not apply because Applicant's financial problems are ongoing. While Applicant attempted a Chapter 13 bankruptcy and recently filed bankruptcy under Chapter 7, he still has delinquent child support and his delinquent student loans which are not dischargeable in bankruptcy. Although Applicant testified that he is attempting to modify his child support, his current history of paying child support has been inconsistent. He also provided no proof that he had entered into a payment agreement and is making timely and consistent payments towards his student loans. Applicant's history of financial problems raises questions about his reliability, trustworthiness, and good judgment.

AG ¶ 20(b) partially applies because Applicant's financial situation was adversely affected by a four-month period of unemployment beginning in October 2013 and ending in January 2014 as a result of a federal government furlough. This was beyond Applicant's control. However, this mitigating condition is given less weight because I cannot conclude Applicant acted responsibly under the circumstances after the furlough, because he ignored all of the delinquent debts that were incurred during that period. He earned sufficient income to agree to some minimal payment plans with his creditors. He chose to ignore them. In addition, Applicant's delinquent child support has more than doubled from \$14,846 alleged in the SOR to approximately \$32,292. I cannot conclude Applicant acted responsibly under the circumstances.

AG ¶ 20(c) does not apply. While Applicant is required to take a financial counseling course in conjunction with his bankruptcy, he has not taken a thorough financial counseling course from a recognized institution. I am not convinced that Applicant has a plan in place to manage his finances in the future once his debts are discharged in bankruptcy. After bankruptcy, significant child support and student loan debt will remain.

AG ¶ 20(d) does not apply. While bankruptcy is a legal means of resolving one's debts, it is not a good-faith effort to repay overdue creditors and resolve one's debts. Applicant testified to actions he is attempting to do in the future, such as requesting that his child support be modified and entering into a repayment plan for his student loans. However, he presented no evidence of any steps taken towards resolving his child support issue and student loan debt.

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 1995. I considered the favorable references of his friends and co-workers.

I considered Applicant's period of unemployment for several months in late 2013 to 2014 adversely affected the household finances. However, Applicant earns a good income. The amount of delinquent debt alleged in the SOR was manageable. If Applicant had followed through with financial counseling, he would have likely learned how to manage a budget. He neglected to pay any of his delinquent debts over a long period of time. In 2015, he filed for bankruptcy under Chapter 13, but it was ultimately dismissed for failure to make timely payments towards the plan. In July 2018, he filed bankruptcy under Chapter 7. His debts will be discharged in October 2018. It is too soon to conclude that Applicant is now on a successful path towards financial rehabilitation. Most concerning is Applicant's delinquent child support which has more than doubled since the SOR was issued. While Applicant states he is attempting to modify his child support, it does not explain his missed child-support payments. Applicant also has unresolved delinquent student loans, which will not be discharged in his Chapter 7 bankruptcy. Security concerns under financial considerations are not 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:	AGAINST APPLICANT
Subparagraphs 1.a - 1.h, 1.j – 1.m:	Against Applicant
Subparagraph 1.i:	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 security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

ERIN C. HOGAN
Administrative Judge