



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS and APPEALS**



In the matter of:)
)
) ISCR Case No. 14-03875
)
Applicant for Security Clearance)

Appearances

For Government: Caroline Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

07/27/2015

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense's (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. He accumulated a substantial amount of delinquent debt. He failed to present evidence of having taken responsible action to address his past-due debts. Financial considerations security concerns remain. Clearance is denied.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on October 13, 2014, the DoD issued a Statement of Reasons (SOR) detailing security concerns. DoD adjudicators could not find that it is clearly consistent with the national interest to grant

¹ Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

or continue Applicant's security clearance. On October 27, 2014, Applicant answered the SOR and requested a hearing. On January 28, 2015, I was assigned the case. On January 28, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for the hearing convened on February 12, 2015. I admitted Government's Exhibits (Ex) 1 through 5 and Applicant's Exhibits A through F, without objection. Applicant testified at the hearing. The record was held open to allow Applicant to submit additional information. Two additional documents were received and admitted as Ex. G and H, there being no objection to the documents. On February 24, 2015, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, he admitted all but two of the delinquent accounts (SOR 1.n, for \$157 and SOR 1.p for \$50) listed in the SOR. His admissions are incorporated herein. After a thorough review of the pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 49-year-old aircraft painter and shift lead who has worked for a defense contractor since June 1987, and seeks to maintain a confidential security clearance. (SOR Answer) Applicant was married from 1985 through 1989. (Tr. 29) He married for a second time in 1991, separated in December 2009, and divorced in October 2011. (Ex. 1 and 2, Tr. 30) He provided no documentation or testimony as to how his finances were affected by the separation and divorce other than to say he did not owe a \$157 debt (SOR 1.n) for television service. He denied the TV service debt (SOR 1.n, \$157) because his wife failed to switch the account to her name for two months following their separation. (SOR Answer, Tr. 38) Applicant has a son and a step son. His son is in college and his step son is a 2009 U.S. Naval Academy graduate. (SOR Answer)

Applicant's co-workers, supervisors, and friends state: Applicant has a high work ethic, an exemplary record as a worker, shift lead, and inspector. (Ex. C and D) He is highly regarded by his supervisors and managers as a valuable asset to the corrosion control program. He has been employee of the month three times. (Tr. 27) He has shown only remorse for his poor judgment in these financial matters. (Ex. D)

In January 2014, Applicant completed an Electronic Questionnaires for Investigations Processing (e-QIP). On his e-QIP he listed 12 delinquent accounts totaling more than \$22,000. (Ex. 1) Approximately half of the debt (\$11,528) was due to the repossession of a 2003 Ford Mustang automobile. (Ex. 1) At the hearing he stated, "I won't deny the fact that I made poor judgments as far as my finances go." (Tr. 13) He has "thought about filing bankruptcy," but does not know whether to file now. (Tr. 27)

In 2007, Applicant had gastric bypass surgery. Prior to the surgery his doctor had given him six months to live. (Tr. 21, SOR Answer) In a year and a half he lost 300 pounds. However, six months after the surgery complications caused him to miss 10

days of work for which he was not paid. The loss of income started his financial problems.

By 2009, Applicant's credit card was at its maximum (SOR 1.o, \$10,571). (SOR Answer, Ex. 2) He applied for a loan to pay off the credit card. The loan was disapproved and his interest rate was increased because he had not made timely payments on the account. (Tr. 23) His monthly credit card payment jumped from \$200 to \$300. At that time, braces for his youngest son caused him to forgo payment on some of his debts. He stated he chose to "walk away" from the debt. (SOR Answer).

After Applicant separated from his wife, he attempted to pay all the bills. In 2008, he stopped paying his debts. (Ex. 2, page 5) In February 2014, Applicant had a Personal Subject Interview (PSI) during which he was asked in depth about his delinquent accounts. (Ex. 2) In his PSI, he states he did not try to work with his creditors to resolve his delinquent debts. (Ex. 2, page 5) He did not take calls from his creditors, but received voice message from collection agencies. He never returned any calls to collection agencies. (Ex. 2, page 6)

In Applicant's PSI, he indicated he had two credit cards (SOR 1.a, \$1,366 and SOR 1.h, \$1,797) he used for everyday purchases, which has been placed for collection. (Ex. 2, page 5 and 6) He had a \$1,431 charged-off account. (Ex. 2) The SOR lists a \$1,476 collection account (SOR 1.b), which was a credit card account used for new tires and suspension on his vehicle. (Tr. 42) He incurred a \$454 debt (SOR 1.d) for repairs to the transmission of his son's truck. (SOR 2, page 6) The debt has been charged off. He incurred a debt to a men's clothing store (SOR 1.g, \$1,025) that remains unpaid. (Ex. 2) He has an unpaid department store debt (SOR 1.c, \$503). He indicated he had two additional unpaid accounts opened in 2005 on which \$565 and \$1,500 are delinquent. In 2006, Applicant opened an account to buy drums and guitars for his sons. (Ex. 2, page 7, Tr. 44) He stopped making payments on the account. He owes approximately \$1,000 on the account, which remains unpaid. (Ex. 2)

In Applicant's e-QIP, he states he purchased a 2003 car on which he owed approximately \$11,528.² (Ex. 1) In his PSI, he stated he purchased a vehicle in 2007 for approximately \$22,000. (Ex. 2) The monthly car payments of \$500, gasoline costs, and insurance totaled \$1,100 monthly. (SOR Answer) The vehicle was classified as a high-performance vehicle, which doubled the cost of his automobile insurance. (Tr. 42) It required premium gasoline and got approximately eight miles to the gallon. (Tr. 42)

In 2008, Applicant could no longer afford the monthly payment and attempted to return the vehicle. (Tr. 24) The dealer said it would be better if the car was repossessed, and it was the following week. He believed that, at the time of repossession, he owed approximately \$20,000 on the car, and it sold at auction for around \$10,000. (Ex. 2, page 7) He had the car a year and a half before it was repossessed. (Tr. 42) Applicant

² \$9,724 was written off and \$11,578 was past due as of January 2013. (Ex. B)

has not contacted the creditor and has no plans to pay the debt. (Ex. 2) He owed \$11,578 (SOR 1.e) on the debt. In July 2007, he purchased tires for \$1,476 (SOR 1.b), and he owed \$1,375 (SOR 1.f) for repairs to his son's truck. (Ex. B, Tr. 43)

In November 2014, Applicant was notified by the IRS that his 2012 taxable income had been increased by \$8,817, which increased his tax by \$2,200. (Ex. H, Tr. 46) He asserted, but provided no documentation, that the increase was due to the forgiveness of the debt (SOR 1.e) that followed the repossession of his vehicle. (Tr. 46) He said he had not received an IRS Form 1099, Cancellation of Debt, from the creditor holding the debt. (Tr. 46)

During the PSI, Applicant was asked about all of the delinquent accounts now listed in the SOR. He did not recognize some of the creditors, but assumed that the account had been sold from one collection agency to another. He did not dispute the accounts. In his SOR answer he admitted all but two of the SOR debts. In his PSI, he admitted owing the two debts (SOR 1.n, \$157 and SOR 1.p, \$50). He asserted he paid the \$50 (SOR 1.p) medical debt. (Tr. 39)

Applicant's February 2015 credit report lists all the charged-off and collection SOR debts except four (SOR 1.i, SOR 1.j, SOR 1.p, and SOR 1.q). (Ex. B) However, his January 2014 credit report (Ex. 4) lists all four of these accounts. The credit report lists the date the accounts became past due and the date they were charged off or the date the accounts will remain on the record. (Ex. B) The February 2015 credit report lists six open accounts in good standing on which Applicant was never late with payment, 23 closed and paid accounts that were never late, and one transferred account that was never late. (Ex. B)

In his February 2014 PSI, Applicant indicated it was bad judgment in acquiring the debt, that the debt is his responsibility. However, aside from paying the one \$50 debt prior to February 2014, he has no plans to pay any of the delinquent debts because he does not have the means to do so. (Ex. 2, page 13) He has no credit cards and no intentions of obtaining credit cards. (Ex. 2, page 14, Tr. 25) He pays cash for most purchases.

In 2012, Applicant's mother was diagnosed with cancer. Her treatment was successful, but she needs assistance in day-to-day activities. Applicant is her primary caregiver. (Tr. 20) He has taken her to every doctor's appointment, chemo treatment, and radiation treatment. (Tr. 20) During the four months she was in a nursing home for rehabilitation, he was there three times a day. (Tr. 20) He currently visits her twice a day. He visits her before going to work and again after leaving work. (Tr. 21) He spends his free time surfing, motorcycle riding, running obstacle courses, and is involved in martial arts. (Ex. 2, Tr. 28) Applicant has \$65,525 in his company's retirement program. (Ex. G)

Applicant's gross income for 2012 was \$67,891. (Ex. H) His 2000 pickup truck is paid for. He pays \$900 monthly for rent and utilities. (Ex. A) He pays \$700 for

automobile insurance, gasoline, and telephone bill. He pays his son \$400 monthly, plus he pays \$150 monthly for son's vehicle repairs, pays \$257 on his son's car, and \$250 for tuition. (Ex. A, Tr. 35) In July 2014, Applicant bought a motorcycle on which he owes \$4,800. (Tr. 26) He pays \$250 monthly on his motorcycle. (Ex. A, Tr. 32, 34) He pays \$280 monthly for his, his mother's, his son's, and his son's girlfriend's telephone services. (Tr. 40) His monthly income is \$3,800 and the above listed monthly expenses total \$3,360 leaving \$440 per month for food and all other monthly expenses. (Ex. A)

Applicant stated:

. . . once I walked away from the credit card and then I turned in the vehicle, and the rest of these, I just decided, you know, I'm struggling. My life has to move forward. And, you know, I walked away from the debts. That was my bad. You know, I admit that. (Tr. 39)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the interests of 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.

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 to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order (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 *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or 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 repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

Applicant has a history of financial problems starting in 2008. Applicant owed more than \$38,000 on 17 past-due obligations. Five of Applicant's debts are each approximately \$500 or less. Disqualifying Conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, 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 meets none of the mitigating factors for financial considerations. He has not made a good-faith effort to satisfy his debts. He has no plans to pay his delinquent debts and has chosen to simply "walk away" from the debts. He has not made any recent payment on his delinquent debts, nor has he had recent contact with the majority of his creditors. His only recent communication was with the creditor regarding the debt listed in SOR 1.e.

Applicant's delinquent debts and financial difficulties are both recent and multiple. There is little evidence that he was substantially affected by circumstances beyond his control. His 2007 surgery resulted in being unpaid for ten days in 2007 or 2008. He failed to show the financial impact of his 2009 separation and 2011 divorce. He has not acted responsibly in addressing his debts. He has not demonstrated that his financial problems are under control, or that he has a plan to bring them under control.

In 2008, Applicant "walked away" from his \$220 monthly payment on his credit card debt and the \$500 monthly payment on his car. Even though he was no longer paying the \$700 monthly obligation on these two debts, he was unable to pay his other credit card obligations or other debts. Numerous accounts went delinquent and remain unpaid.

Applicant has been employed at the same job since June 1987. In February 2014, he was questioned in depth about his delinquent debts. At that time he had paid a \$50 debt (SOR 1.p). He has made no payments since. Applicant has failed to act timely or responsibly under the circumstances. He failed to resolve his debts and failed to reduce his delinquencies.

Good-faith requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his or her control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. January 12, 2007)(citing ISCR Case No. 03-13096 at 4 (App. Bd. November 29, 2005); ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. December 1, 1999).

The mitigating condition listed in AG ¶ 20(e) does not apply because the only debt Applicant disputes is the \$157 television service debt. The mitigating condition listed in AG ¶ 20(d) has limited application and applies to the \$50 medical debt he paid prior to February 2014. To date, his efforts to address the majority of his delinquent accounts have been minimal. He has failed to act aggressively, timely, or responsibly to resolve his delinquent debts. It appears, the creditor holding the debt following the repossession of his automobile has written off the debt and that income was included as part of Applicant's 2012 taxable income. I find for him as to this debt. I find for him as to the \$157 television service debt that he says is his ex-wife's responsibility. Even with these three debts addressed, more than \$26,000 in delinquent debts remains.

Applicant has little or no funds to address his past-due obligations. He has \$3,360 in monthly income of which he pays more than \$1,000 monthly to his son, to pay for his son's car repairs, car loan, tuition, and telephone, and also his son's girlfriend's telephone. He has \$440 per month for food and all other expenses.

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 relevant 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.

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. There is very limited evidence in favor of mitigating Applicant's conduct. He is an excellent worker. He has been in his position 27 years, and been employee of the month three times. He no longer has credit cards and is making timely payments on his current obligations. However, he has not initiated any effort to address his delinquent debts.

Applicant has little ability and no intention of paying his delinquent accounts. He incurred the debts and simply chose to walk away and not pay the debts. He acknowledged he has shown poor judgment concerning his finances.

An applicant is not required to establish that he has paid off each and every debt listed in the SOR. All that is required is for him to demonstrate he has established a plan to resolve his delinquent debt and has taken significant action to implement that plan. I must reasonably consider the entirety of Applicant's financial situation and his actions in evaluating the extent to which that plan is credible and realistic. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan may provide for payment on such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

The issue is not simply whether all Applicant's debts have been paid – they have not – it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(a)(1).) Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial considerations.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a security clearance. The awarding of a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under Applicant's current circumstances, a clearance is not warranted. In the future, if Applicant has paid his delinquent obligations, established compliance with a repayment plan, or otherwise substantially addressed his past-due obligations, he may well demonstrate persuasive evidence of his security worthiness. However, a clearance at this time is not warranted.

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, Financial Considerations: AGAINST APPLICANT

Subparagraphs 1.a – 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f – 1.m:	Against Applicant
Subparagraph 1.n:	For Applicant
Subparagraph 1.o:	Against Applicant
Subparagraphs 1.p:	For Applicant
Subparagraph 1.q:	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 a security clearance. Eligibility for access to classified information is denied.

CLAUDE R. HEINY II
Administrative Judge