



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



In the matter of:)	
)	
)	ISCR Case No. 15-02531
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

April 28, 2016

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant was alleged to be delinquent on two Federal income tax liens totaling \$119,144; two state tax liens totaling \$92,483; and 14 other debts in the total amount of \$482,742. He resolved one delinquent mortgage debt; he paid one small debt in full; and one other debt was cancelled by the creditor. He failed to show he has taken responsible actions on his remaining financial obligations. Eligibility for access to classified information is denied.

Statement of the Case

On February 25, 2014, Applicant submitted a signed Electronic Questionnaires for Investigations Processing (e-QIP.) On October 30, 2015, 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 September 1, 2006.

On December 2, 2015, Applicant answered the SOR (Answer), and requested a hearing before an administrative judge. The case was assigned to me on January 19, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 21, 2016, scheduling the hearing for March 1, 2016. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 6, which were admitted without objection. Applicant testified on his own behalf, called one witness, and presented one exhibit, marked Applicant Exhibit (AE) A. Department Counsel had no objection to AE A, and it was admitted. The record was left open for receipt of additional documents until March 15, 2016. On March 16, 2016, Applicant submitted additional exhibits. They were marked AE B through AE J. Department Counsel had no objections to AE B through AE J, even though they were produced after the deadline, and they were admitted. The record then closed. DOHA received the transcript of the hearing (Tr.) on March 9, 2016.

Findings of Fact

Applicant is a 45-year-old employee of a defense contractor. He is married and has two children, ages 14 and 10. He earned a doctorate degree in 1996. He has worked for his current employer since September 2015. (GE 1.)

As listed in the SOR, Applicant was alleged to be delinquent on two Federal income tax liens totaling \$119,144 (SOR ¶¶ 1.a and 1.b); two state tax liens totaling \$92,483 (SOR ¶¶ 1.c and 1.d); and 14 other debts in the total amount of \$482,742 (SOR ¶¶ 1.e through 1.r). Applicant denied the delinquent debts alleged in SOR ¶¶ 1.a through 1.r. (Tr. 12.) His debts are identified in the credit reports entered into evidence. (GE 2; GE 3; GE 4; GE 5; GE 6.) After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant's Federal and state tax liens resulted from an Internal Revenue Service (IRS) audit that was performed on his 2011 individual income tax returns. He used a tax preparation company to do his taxes and believed that his deductions were appropriate when he filed them. However, the IRS found that Applicant and his wife did not qualify as real estate professionals. As a result, Applicant's Federal and state income tax returns for 2009, 2010, and 2011 were recalculated, and Applicant was found liable for an undisclosed amount owed to both the state and Federal governments. A Federal tax lien in the amount of \$70,091 was filed against Applicant in 2013. A second Federal tax lien was filed against Applicant in 2014, in the amount of \$49,053. Two state tax liens were also filed against Applicant in 2013 and 2014, in the amounts of \$49,053 and \$43,430, respectively. (Tr. 29-49.)

In 2011 Applicant's income was \$245,000 per year, not including stock options, and he had become accustomed to the life style which that salary afforded. Shortly after Applicant's tax audit, he was terminated by his employer as a result of the employer closing the division in which Applicant worked. His income fell to \$155,050 in 2012 and he lost his unvested stock options. He received a severance package that covered two years of medical benefits, plus "some months of salary." (AE A; Tr. 64-67.) He was

unemployed until 2013. During his unemployment, he reported he applied for over 8,000 jobs. He also started a small consulting firm to help pay his bills. (AE A; Tr. 56-75.)

In March 2013 Applicant became fully employed by another company, but when that company downsized in June 2013, Applicant was terminated. Applicant was unemployed from June 2013 to October 2013. In October 2013 he was hired by a Government contractor, at a reduced income. In 2013 he earned \$103,498. In 2014 his income rose to \$179,785. He worked in that position until October 2015, when he was hired by his current employer. From 2014 to 2015 he also worked several part-time jobs to generate income. His 2015 income was reported to be \$236,000. His wife is not employed outside their home. Applicant attributes his financial delinquencies to unemployment and under employment since losing his position in approximately 2012. (AE A; Tr. 70-79.)

Applicant's tax preparer testified on his behalf. He explained that Applicant sought his services in 2013. Prior to that time, Applicant had established payment plans with both the IRS and the state tax authority. However, when they submitted an offer in compromise to the IRS, those payments were placed on hold. Applicant's 2013 offer in compromise was rejected by the IRS, because the IRS wanted more documentation. A second offer in compromise, along with one payment of an undisclosed amount, was submitted in January 2015. The IRS reviewed it for six months, and then rejected it. A third offer was submitted in June or July of 2015, along with another payment of an undisclosed amount. It too was rejected. The IRS has assigned a revenue agent to Applicant's case, and Applicant will either submit a new offer in compromise or set up a payment plan. His Federal tax liens are unresolved at this time. (Tr. 29-58, 114-115.)

Applicant claims he had been making payments of \$1,500 per month to his state taxation authority toward resolution of the 2013 and 2014 tax liens. His tax preparer testified those payments apparently stopped in October 2015, when Applicant was hired by his new employer. Applicant failed to provide documentation to substantiate his claims of payments. These debts remain unresolved. (Tr. 36.)

Applicant was delinquent in the amount of \$104,554 on a \$535,318 mortgage, as stated in SOR ¶1.e. Applicant testified this debt was for a home he purchased in 2002. It was his primary residence until approximately 2012 or 2013, when he became unemployed. Applicant rents this house to tenants, but hopes to reoccupy it in the near future. He did not use the rental income to pay the mortgage. Instead, he used the rental income for living expenses and to satisfy other debts. Applicant applied for loan modifications on this property, but his applications were denied. However, he resolved the delinquency in full in June 2015. His February 29, 2016 credit report reflects this account as current, with \$0 past due. Applicant is resolving this debt. (GE 6; AE D; AE I; Tr. 82-88.)

Applicant was delinquent in the amount of \$3,115 on a \$416,947 mortgage, as stated in SOR ¶1.f. Applicant's February 29, 2016 credit report reflects this account as past due in the lesser amount of \$1,673, which indicates Applicant has made some payments to this creditor. It has been delinquent since October 2015. Applicant claimed

to have a dispute with this creditor because it was making excessive escrow charges. However, he failed to produce evidence to support his claim or document regular payments. This debt is unresolved. (GE 6; Tr. 88-91.)

Applicant was delinquent in the amount of \$72,636 on a \$420,000 mortgage, as alleged in SOR ¶1.g. Applicant claims “this property has been in modification review for four years.” (Tr. 91.) Applicant’s February 29, 2016 credit report reflects this account as past due in the amount of \$93,173. It has been delinquent since September 2013. It is unresolved. (GE 6; Tr. 91-94.)

Applicant is delinquent on a charged off account in the amount of \$205,478, as stated in SOR ¶1.h. Applicant’s February 29, 2016 credit report reflects this account as past due in the amount of \$205,478. It first became delinquent in December 2012. Applicant presented documentation that shows he applied for a loan modification on this mortgage. A letter, dated December 1, 2015, from this creditor offered to settle this debt for \$61,643. Applicant has not made a payment to this creditor despite the offer to settle the debt because he does not want to damage his negotiations with the IRS. (GE 6; AE G; AE J; Tr. 94-95.)

Applicant is past due on a \$52,206 home equity line of credit in the amount of \$8,492, as stated in SOR ¶1.i. This debt became delinquent in October 2012. Applicant plans to restructure this debt but it is currently unresolved. (GE 6; Tr. 95-97.)

Applicant is delinquent on a \$21,642 charged-off debt, as stated in SOR ¶1.j. Applicant produced a letter from this creditor, dated August 2015, indicating this debt was forgiven by the creditor. It is resolved. (AE C; Tr. 97-98.)

Applicant is delinquent on a \$19,940 charged-off line of credit, as stated in SOR ¶1.k. This debt became delinquent in August 2014. Applicant’s February 29, 2016 credit report reflects this account as past due in the amount of \$19,918. While he claimed to have paid this debt through the services of a debt management company, he produced no evidence to support his claim. It is unresolved. (GE 6; Tr. 98.)

Applicant is delinquent on a \$17,274 charged-off debt, as stated in SOR ¶1.l. Applicant’s February 29, 2016 credit report reflects this account as charged off. It has been delinquent since August 2010. (GE 6.)

Applicant is delinquent on a \$13,857 charged-off debt, as stated in SOR ¶1.m. Applicant’s February 29, 2016 credit report reflects this account as “paid and closed” as of July 2015. It also shows that this creditor charged off \$13,857 of this debt. This debt is resolved. (GE 6; Tr. 111-112.)

Applicant is delinquent on a \$12,940 charged-off credit card debt, as stated in SOR ¶1.n. Applicant’s February 29, 2016 credit report reflects this debt as delinquent since January 2014. Applicant claimed he is making \$272 payments to this creditor on a monthly basis and that it will be resolved by next year. He failed to produce documentation to support his claim. (GE 6; Tr. 98-99, 112.)

Applicant is delinquent on a \$1,625 charged-off debt, as stated in SOR ¶ 1.o. Applicant's February 29, 2016 credit report reflects this account was placed for collections with a collection agency. Applicant claimed that this debt was being resolved through a debt management company. He failed to produce documentation to support his claim. It remains unresolved. (GE 6; Tr. 99, 112.)

Applicant is delinquent on a \$527 charged-off debt, as stated in SOR ¶ 1.p. Applicant claimed that this debt was being resolved through a debt management company. He failed to produce documentation to support his claim. It remains unresolved. (Tr. 99, 112.)

Applicant is delinquent on a \$134 charged-off debt, as stated in SOR ¶ 1.q. Applicant's February 29, 2016 credit report reflects this account has been delinquent since April 2014. Applicant claimed that this debt was being resolved through a debt management company. He failed to produce documentation to support his claim. It remains unresolved. (GE 6; Tr. 99, 112.)

Applicant is delinquent on a \$528 charged-off debt, as stated in SOR ¶ 1.r. Applicant's February 29, 2016 credit report reflects this account as "unpaid." It has been delinquent since April 2014. Applicant claimed that this debt was being resolved through a debt management company. He failed to produce documentation to support his claim. It remains unresolved. (GE 6; Tr. 99, 112.)

Applicant hired debt resolution firms twice to help him resolve his delinquencies. He hired the first firm in October 2012. The firm calculated Applicant's assets at that time to equal \$1,468,000. However, his total liabilities of \$1,657,021 left him with a negative net worth of \$189,021. He failed to show he made any payments to this debt resolution company. (AE F.) He hired a second debt management firm in May 2013 to resolve five consumer debts. However, Applicant's documentation failed to show any payments were made under that plan. (AE B.) Additionally, Applicant presented documentation showing he has made attempts to resolve other accounts, but I was unable to match those account numbers with the debts alleged on the SOR. (AE E.) He intends to resolve his remaining debt with anticipated bonuses and stock options. (Tr. 79.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing 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 national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18, as follows:

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.

AG ¶ 19 describes three conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.

Applicant has a history of financial indebtedness documented by the credit reports, which substantiate all of the SOR allegations. He had a negative net worth as a result of overspending on real estate investments and relying on stock options that never vested. He lost his high-paying job in 2012, and found himself indebted to the IRS and his state tax authority. Additionally, he incurred substantial delinquencies to 14 other creditors. He has done little to resolve the majority of his debts. The evidence raises security concerns under all three of these disqualifying conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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's financial problems are ongoing. He has resolved or is resolving only three of the 18 allegations. Given his lack of effective action on the remaining debts, he has not demonstrated that future financial problems are unlikely, despite his anticipated bonuses and stock options. Mitigation under AG ¶ 20(a) was not established.

Applicant blamed his financial problems on periods of unemployment and underemployment. While these are conditions beyond Applicant's control, his financial problems are also due, in significant part, to his poor judgment including excessive spending and reliance on bonuses and stock options that were not guaranteed. He continues to make commitments for money which he has not yet received. Further, he failed to act responsibly under the circumstances, and did not address his debts in a timely manner. Mitigation under AG ¶ 20(b) was not fully established.

Applicant presented documentation and testimony that he has sought the help of two debt management firms and a tax professional. However, he failed to show clear indications that his financial problems are being resolved or are under control. Only three debts have been addressed in a meaningful manner. The rest, including two Federal income tax liens totaling \$119,144 and two state tax liens totaling \$92,483, remain unresolved. Mitigation under AG ¶¶ 20(c) nor 20(d) was not fully established.

Applicant provided no documented proof of any disputes with the SOR-listed creditors. AG ¶ 20(e) has not been established.

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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant is a

mature adult and responsible for his choices and financial obligations. For over five years, he has not acted responsibly with respect to his finances. He was accustomed to a lavish lifestyle until 2012, and did not significantly reduce his debt or expenses when he lost his high-paying job. Further, when he was reemployed in a stable position, he did little to address his past delinquencies. Moreover, his credit reports show that despite earning \$179,785 in 2014, several additional debts became past due that year. Overall, the record evidence leaves me with significant questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate 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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Jennifer I. Goldstein
Administrative Judge