



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



In the matter of:)	
)	
)	ISCR Case No. 14-06051
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

11/15/2015

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. Applicant has more than \$42,000 in delinquent collection and charged-off accounts. He secured the services of a credit correction firm, but has made no payments on his delinquent obligations. Applicant mitigated the personal conduct security concerns; however, he has failed to mitigate the financial considerations security concerns. Clearance is denied.

History of the Case

On February 9, 2015, acting under the relevant Executive Order and Department of Defense (DoD) Directive,¹ the DoD issued a Statement of Reasons (SOR) detailing

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.

financial considerations and personal conduct security concerns. DoD adjudicators could not find that it is clearly consistent with the national interest to grant or continue Applicant's security clearance. On March 6, 2015, Applicant answered the SOR and requested a hearing. On April 15, 2015, I was assigned the case. On April 21, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for the hearing convened on May 4, 2015.

At the hearing, Government's Exhibits (Ex) 1 through 5 were admitted without objection. Applicant testified at the hearing. The record was held open to allow Applicant to submit additional information. Applicant's Exhibits A and B were received and admitted without objection. On May 12, 2015, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, he denied two medical collection debts (SOR 1.a, \$477 and SOR 1.g, \$151) and admitted the remaining debts with explanations. In his SOR answer, he stated he did not recall the majority of the SOR delinquent accounts. He admitted the 2005 Extreme Driving Under the Influence (DUI) conviction and five-day suspension from work. He denied resigning from his job after being disciplined for fraternization. I incorporate Applicant's admissions as facts. After a thorough review of the pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 46-year-old security supervisor who has worked for a defense contractor since December 2013. (Ex. 1, Tr. 23) His annual salary is \$57,000 and his wife recently obtained a position as a nanny with a \$36,000 annual salary, making the household's gross annual income \$93,000. (Tr. 23)

From April 1988 through April 1992, Applicant honorably served in the U.S. Marine Corps separating as a corporal (E-4). (Ex. 1, Tr. 24) After separating from the Marine Corps, he was unemployed for six months to a year. (Tr. 25) From August 1995 to February 2009, he was employed as a border patrol agent. (Ex.2, Tr. 26) After he left his job as a border patrol agent, he was unemployed for a period of time. Between July 2005 and December 2013, when he obtained his current job, he was unemployed 21 months. (Ex. 2) He was unemployed October 2009 through January 2012, October 2012 through February 2013, and October 2013 through December 2013.

Applicant's financial problems started in 2008, when his job transfer resulted in him maintaining a mortgage at his previous location and renting at the new location. The transfer came with a guaranteed home buy-out from the Government. However, he owed \$222,000 on his home and the Government offered to pay \$202,000. (Tr. 28) The difference between the amounts was a \$21,919 home equity loan (SOR 1.c). He attempted, but was unsuccessful, at obtaining a home loan modification. The home went to foreclosure. (Tr. 27) The delinquent account appears on Applicant's January 2015 credit report. (Ex. 5)

Applicant acknowledged his 2005 extreme DUI with a blood alcohol content (BAC) of .15 or more and indicated it was a “stupid act.” (SOR Answer, Ex. 3) He indicated he was an alcoholic. (Tr. 47) August 2009 was the last time he drank alcohol. (SOR Answer, Tr. 18)

On Applicant’s June 2009, Electronic Questionnaires for Investigations Processing (e-QIP), he indicated there was pending administrative discipline for violation of the fraternization policy. He denied resigning from his job after being disciplined for violation of the policy. In February 2009, Applicant was informed of a fraternization violation when he, as an instructor, was drinking with newly hired employees. He was never disciplined for this violation. (Tr. 49)

The November 2009 Notification of Personnel Action indicated he resigned for “Personal Reasons.” (SOR Answer) His job transfer took him from one border location to an even more remote border location. The fraternization problem arose in February 2009, and he resigned eight months later, in October 2009. (Tr. 51) At the hearing, he stated he received no disciplinary action or threat of disciplinary action for the fraternization incident.

On Applicant’s June 2009 e-QIP, he indicated he had entered into an agreement with a consumer credit counseling service (CCCS) related to a department store account. (Ex. 1, Tr. 30) He made monthly payments to the CCCS for three years. (Tr. 30) He made his monthly payments to the CCCS, and the CCCS then made payments to his creditors. (Tr. 30)

In Applicant’s April 2014 e-QIP, he listed 25 delinquent accounts, which included 11² of the 12 SOR delinquent accounts. He stated his financial problems commenced in 2009 following his resignation from his job. (Tr. 33) He resigned without having another job lined up. (Tr. 43) At that time, neither he nor his wife were working. (Tr. 33) He remained out of work from October 2009 through January 2012. On his most recent e-QIP, he indicated he had obtained the credit repair service to assist him with his credit issues. (Ex. 2)

In April 2014, Applicant employed a firm to assist him in improving his finances. He paid the firm \$99.95 monthly for their services. Payments were made monthly from April 2014 through April 13, 2015. (Ex. A, Tr. 32) He provided documents showing he had made 13 payments. (Ex. A, B) At the hearing, Applicant stated he was unsure what the credit repair service did or how they did their job. (Tr. 31) He did not know if the credit correction firm actually made payments to his creditors. (Tr. 41)

The credit correction firm sends letters to creditors challenging any negative entry on an individual’s credit report. Challenge letters are sent even on accounts an individual acknowledges are their valid debts. The firm sent out letters on Applicant’s

² The \$1,158 jewelry debt (SOR 1.i) may be the same \$1,158 amount he listed on his e-QIP as owed to a different creditor.

behalf on 36 occasions challenging even the delinquent obligations he acknowledged were his debts in his SOR answer. As a result of the letters, Experian removed eight entries from his credit report, TransUnion removed eight entries, and Equifax removed six entries. The only debt removed from all three credit reporting agencies was for a non-SOR debt. Four of the SOR delinquent obligations (SOR 1.a, \$455; SOR 1.b, \$1,165; SOR 1.i, \$162; and, SOR 1.l, \$1,158), totaling \$2,530 were removed by two of the credit reporting agencies. Four of the SOR delinquent obligations (SOR 1.d, \$1,893; SOR 1.e, \$7,551; SOR 1.f, \$338; and, SOR 1.g, \$151), totaling \$9,933 were removed by one of the three credit reporting agencies.

Applicant's May 2014 credit report listed a foreclosure, three accounts being paid late, 23 collection accounts, and 30 accounts being or having been "paid as agreed." (Ex. 4) None of the delinquent accounts were contested on the credit report. On his January 2015 credit report, seven delinquent accounts are listed as disputed by the consumer. Six accounts are listed as transferred or sold and four are listed as paid or having a zero balance. Six accounts totaling more than \$27,000 appear as valid collection accounts even though five of them were listed as disputed by the consumer. (Ex. 5)

At the hearing, Applicant stated he did not believe he should be liable for the \$1,165 telephone service debt (SOR 1.b) because, following his job transfer, the telephone service provider did not provide coverage for the new area. (Tr. 35) When he contacted the company, they cancelled his service contract due to the inability to receive service at his new location. (Tr. 35) He asserts he paid the \$338 utility bill (SOR 1.f) when he transferred to his new location in 2009. (Tr. 36) However, after 14 letters challenging this debt, the account was removed from only one of the three credit reporting agencies. (Ex. B) He said he had paid the \$162 furniture bill (SOR 1.i). (Tr. 36) The letters challenging this \$162 debt resulted in it being removed from two of the three credit reporting agencies. The record was held open to allow for documentation that he had paid these two debts. No documents showing payment were received.

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 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 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 or her 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 their finances to meet their financial obligations.

Applicant had delinquent accounts including seven collection accounts and five charged-off accounts including a mortgage of approximately \$22,000. 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's financial difficulties were contributed to by periods of unemployment and by an equity home loan not covered by a government buy out when he was transferred from one border location to another. Between July 2005 and December 2013, when he obtained his current job, he was unemployed 21 months. In April 2014,

he sought the assistance of a credit correction firm. He provided documentation showing he made 13 payments of \$100 each. Four SOR delinquent accounts were removed from two of the three credit reporting agencies, and four other SOR accounts were removed from one the credit reporting agencies as a result of the letters sent by the debt correction firm. However, none of the delinquent SOR obligations were removed by all three of credit reporting agencies. Even though these SOR obligations have been removed from some of his credit bureau reports, however, he admitted owing all of the SOR delinquent account in his SOR answer.

None of the mitigating factors for financial considerations extenuate the security concerns. Applicant's financial difficulties are both recent and multiple. He has been employed with his current employer since December 2012. In February 2015, he was made aware of the Government's concerns about his delinquent debt. He has made no payments on his delinquent obligations. By failing to document the payment of delinquent debts he has failed to act responsibly under the circumstances.

Applicant's household income has recently increased to approximately \$93,000, with his wife's recently obtained job. Since April 2014, he has only paid \$1,300 to a credit correction firm. With this small amount paid, he has failed to act responsibly or aggressively in addressing his debts. He provided no evidence he has received credit or financial counseling. Nor has he demonstrated that his financial problems are under control or that he has a plan to bring them under control. The mitigating conditions listed in AG ¶¶ 20(a), 20(b), 20(c), and 20(d) do not apply. AG ¶ 20(e) does not apply because Applicant admitted the SOR delinquent obligations.

Although Applicant has paid none of the delinquent SOR obligations, the telephone account listed in SOR 1.b (\$1,265) does not appear to be a valid obligation. He had a cell phone account when his job transferred him to a location not covered by the cell phone provider. This cell phone account should have ended when the transfer occurred since the cell phone company could no longer provide service. This debt is found in Applicant's favor.

Guideline E, Personal Conduct

Personal conduct is a security concern when conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations, which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified and sensitive information. Personal conduct is always a security concern because it asks whether the person's past conduct justifies confidence the person can be trusted to properly safeguard classified or sensitive information.

In 2005, Applicant was convicted of Extreme Driving Under the Influence. The event occurred ten years ago. He no longer drinks alcohol. This event is sufficiently remote in time as to no longer be of security concern. In 2009, Applicant left his job for personal reasons. There is no indication that he left due to a fraternization incident that had occurred nine months before he resigned. His resignation does not involve conduct

of questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations. His resignation fails to raise a security concern. The personal conduct security concern is resolved in Applicant's favor.

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. Applicant served honorably in the U.S. Marine Corps. Applicant's 2005 DUI and 2009 resignation are not of security concern. He has experienced periods of unemployment between July 2005 and December 2013. Although Applicant has made 13 payments of \$100 each to a credit correction firm, no payments were made on any of the delinquent SOR obligations. These payments, when compared to his income, fail to show he aggressively addressed his delinquent obligations.

In sum, Applicant should have been more diligent and made greater efforts sooner to resolve his delinquent SOR debts. He did not provide proof of any payments to his SOR creditors. He has not provided documentation showing sufficient progress on his SOR debts. His documented steps are simply inadequate to fully mitigate financial considerations security concerns.

The issue is not simply whether all his debts are paid—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 recommended. 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:	Against Applicant
Subparagraphs 1.b:	For Applicant
Subparagraphs 1.c – 1.l:	Against Applicant

Paragraph 2, Personal Conduct: FOR APPLICANT

Subparagraphs 1.a and 1.b:	For Applicant
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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