



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



In the matter of:)	
)	
)	ISCR Case No. 14-06444
)	
Applicant for Security Clearance)	

Appearances

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

10/30/2015

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 unpaid delinquent obligations resulting from a repossessed vehicle, collection accounts, and past-due student loans. When completing his security questionnaire, he failed to disclose his financial difficulties. Financial considerations and personal conduct remain a security concern. Clearance is denied.

History of the Case

On April 6, 2015, acting under the relevant Executive Order and DoD Directive,¹ 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 or continue Applicant’s security clearance. On May 11, 2015, Applicant answered the

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.

SOR and requested a hearing. On June 29, 2015, I was assigned the case. On June 29, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for the hearing convened on July 10, 2015. I admitted Government's Exhibits (Ex) 1 through 3 and Applicant's Exhibits A through G, without objection. Applicant testified at the hearing.

The record was held open to allow Applicant to submit additional information. Additional material (Ex. G and H) was submitted and admitted into the record without objection. There was no objection to the material that accompanied Applicant's SOR answer and that material also was admitted into the record. (Tr. 20) On July 20, 2015, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, he admits the 19 delinquent SOR debts and admitted falsifying his Questionnaire for National Security Positions. 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 33-year-old computer scientist who has worked for a defense contractor since March 2004, and he is seeking a security clearance. From August 2000 to December 2003, he honorably served in the U.S. Army. (Ex. 1, Tr. 28) He served overseas in Operation Iraqi Freedom. (Tr. 28) His Army military occupational specialty (MOS) was combat engineer. His current take-home pay is approximately \$1,600 every two weeks, and after paying his expenses, he has approximately \$800 remaining each month. (Tr. 31, 32) He asserted, but provided no documentation, that \$500 was automatically deducted monthly from his account to pay other creditors (Tr. 32) He has three children ages 11 months, 2, and 14. (Tr. 33)

In February 2010, Applicant and his then-fiancée purchased a \$15,535 car with \$447 monthly payments for five years. (Ex. 2) In 2011, his fiancée quit her job, moved to a new location, and stopped making payments on the vehicle. (Tr. 20) In early 2012, he received notice the vehicle was repossessed. The creditor demanded payment of \$7,587 (SOR 1.a) on the loan. (Tr. 21) The debt remains unpaid and Applicant has no recent communication with the creditor (Tr. 21) His plan to repay his delinquent accounts is to first contact the creditors to which he owes the least and start repaying them. (Tr. 21)

Applicant attended a technical institute and obtained five student loans (SOR 1.b, \$5,861; SOR 1.c, \$4,252; SOR 1.d, \$3,948; SOR 1.e, \$3,216; SOR 1.f, \$2,069) totaling approximately \$19,000. As of April 2015, he was approximately \$850 past due on the accounts. He talked with the creditors and they wanted \$200 monthly payments on the loans. (Tr. 22) He asserted he was unable to pay this amount because, as of May 2015, which was two months before the hearing, he had entered into an agreement whereby \$500 was automatically taken monthly from his account to pay other creditors. (Tr. 22)

In 2011, Applicant had gall bladder surgery. Nine of the delinquent SOR debts are medical collection debts totaling approximately \$4,700. He has started paying two of

the creditors He provided documentation showing he made two payments: one of \$25.59 and the second payment of \$29.69, both to the same creditor concerning an energy debt.² (Ex. C, E, G). Approximately \$1,100 is owed on the obligation. He also made one \$28.01 payment to collection agency concerning a \$2,661 bank debt. (Ex. F) He agreed that his bank account would be electronically debited monthly to make these payments. (Ex. C, E, F, G, Tr. 30)

Applicant asserted he was paying a \$2,690 (SOR 1.k) collection account, had paid a \$637 telephone service provider (SOR 1.o),³ and made payment on a \$549 cell telephone service collection account (SOR 1.p). (Tr. 24) No documentation showing payment was received.⁴

Applicant has more than \$31,000 in his retirement account, which he transferred from his 401(k) retirement account to an IRA. (Ex. A, C) In November 2014, he purchased a \$28,000 mobile home, which is paid for. (Ex. B, Tr. 29) He is driving a 1999 Oldsmobile. (Tr. 31) He does not have a mortgage or car payments. (Tr. 33) He is receiving calls from a cable company and some of the medical account creditors. (Tr. 31) He has discussed finances with his father. (Tr. 34)

In 2004, Applicant divorced after a three-year marriage. (Tr. 35) He was required to pay \$320 monthly child support for his now 14-year-old son until 2012, when custody changed. (Tr. 35) His ex-wife is not currently paying child support and will not do so until she gets back on her feet. (Tr. 35) The divorce cost him \$1,800. (Tr. 36)

In March 2013, Applicant completed a Standard Form (SF) 86, Questionnaire for National Security Positions. (Ex. 1) In Section 26, Financial Record, he was asked if there had been a repossession of his property, if he had an account turned over to a collection agency or had an account charged off, or if he had ever been 120 days or more delinquent on a debt. He answered "no" to the question. He asserted in 2013 he was at a low point in his life and had forced himself to believe he did not have any issues. (Tr. 27) Since completing his SF 86, he has had a change of attitude and is no longer in denial over his debts. If asked in the future, he would fully disclose his financial difficulties.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief

² This energy account may or may not be the same \$429 electrical collection account listed in SOR 1.q. The collection agencies, amounts due, and electric companies are not the same. He asserted he had made no payments on the debt listed in SOR. 1.q. (Tr. 25)

³ Applicant provided a letter dated June 2015 indicating a different cable television service provider was processing a \$239 payment on a debt of \$341. (Ex. D) There is no indication or assertion that this payment settled the debt.

⁴ Throughout the hearing, Applicant was informed that he needed to provide documentation supporting any assertions of payment.

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. Applicant had a vehicle repossessed resulting in a \$7,500 debt, five past-due student loans, which total more than \$19,000, nine medical collection accounts totaling approximately \$4,700, and four additional delinquent accounts totaling more than \$4,000. 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 presented documents indicating he had made a \$240 payment on a non-SOR debt two weeks prior to the hearing. He also provided documents indicating he had established three automatic monthly debits to address \$3,730 of delinquent debt. The agreements required automatic monthly payments of \$25, 28, and \$29. He provided documentation showing one payment was made on each agreement for a total of \$82. He asserted, but failed to document, that he was making \$500 monthly payments to other creditors. No additional evidence of payment was provided following the hearing.

Under AG ¶ 20(a), Applicant's numerous delinquent obligations remain unpaid. The nature of the debts, student loans, medical bills, and a repossessed vehicle are not so unusual that they are unlikely to recur. AG ¶ 20(a) does not apply. In 2004, Applicant divorced and paid child support until 2012. Additionally, in 2011, he had gall bladder surgery. These are events beyond his control. However, they occurred long enough ago as to not have a significant impact on his current finances. He has been employed since 2004 with no periods of unemployment. AG ¶ 20(b) does not apply.

Under AG ¶ 20(c) and ¶ 20(d), Applicant made a \$240 payment to one television service provider and one payment on each of three accounts. A single payment in compliance with a repayment agreement is insufficient to establish good faith. He talked to his father about finances. There is no clear indication his finances are under control. The mitigating factors listed in AG ¶ 20(c) and AG ¶ 20(d) do not apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct, which is conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Applicant's concealment of relevant and material information demonstrates a lack of candor required of cleared personnel. Failing to provide truthful and complete information on a security clearance application and to background investigators is never a minor offense. The Government has an interest in examining all relevant and material adverse information about an applicant before making a clearance decision. The Government relies on applicants to truthfully disclose that adverse information in a timely fashion, not when it is perceived to be prudent or convenient. An applicant's willingness to report adverse information about himself provides some indication of his willingness to report inadvertent security violations or other security concerns in the future, something the government relies on to perform damage assessments and limit the compromise of classified information.

Applicant had a vehicle repossessed, had accounts that were in collection and past due, and he was more than 120 days delinquent on other debts. He falsified his SF 86 because he had convinced himself his debts were under control. Applicant's conduct suggests he is willing to put his personal needs ahead of legitimate government interest. I resolve Guideline E, personal conduct, against Applicant.

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 considered Applicant's service to the U.S. military in hostile territory. Applicant did not list his financial problems on his SF 86 because he was at a low point in his life and had forced himself to believe he did not have any issues. He has since had a change of attitude and is no longer in denial over his debts.

In April 2015, Applicant received an SOR informing him of the Government's concern about his delinquent financial obligations. At the hearing, he documented he had made approximately \$220 in payments on his delinquent debts. This is insufficient to establish a meaningful track record in paying his delinquent obligations.

The concept of "meaningful track record" includes evidence of actual debt reduction through payment of debts. However, 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. The repossessed vehicle, past-due student loans, and other collection accounts have yet to be addressed. 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.s: Against Applicant

Paragraph 2, Personal Conduct: AGAINST APPLICANT

Subparagraph 4.a: 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