



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



In the matter of:)
)
) ISCR Case No. 14-04078
)
Applicant for Security Clearance)

Appearances

For Government: Braden Murphy, Esq., Department Counsel
For Applicant: *Pro se*

08/24/2015

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On January 24, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

Applicant answered the SOR on March 12, 2015, and requested a hearing before an administrative judge. The case was assigned to me on June 12, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 19, 2015. I convened the hearing as scheduled on July 29, 2015. The Government offered exhibits

(GE) 1 through 4, which were admitted into evidence without objection. Applicant testified. He offered Applicant Exhibits (AE) A and B, which were admitted into evidence without objection. The record was held open until August 17, 2015, to allow Applicant to submit additional documents. Applicant did not submit any documents and the record closed.¹ DOHA received the hearing transcript (Tr.) on August 6, 2015.

Findings of Fact

Applicant admitted all allegations in the SOR. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 57 years old. He holds a master's degree. He retired from the Army in 1998 in the rank of major after 20 years of service. He married in 1985 and divorced in 1994. He remarried in 1995 and divorced in 2004. He has children ages 28, 24, 18 and 14. The two younger children live with their mother, and he pays child support. He has been employed with a federal contractor since May 2014. Before then, from June 2012 to May 2014, he was unemployed and lived on his military pension. He was steadily employed from the latter part of 2008 to June 2012.²

In approximately 2005, Applicant had his debts discharged in bankruptcy. He estimated the amount discharged to be around \$30,000 to \$40,000. He attributed his financial problems to two divorces in nine years. He indicated his first wife ran up bills that he was then responsible for.³

Applicant stated during his hearing that in March or April 2015, he hired the Lexington Law firm to dispute his debts. The documents he provided reflect the firm sent correspondence to challenge the debts in SOR ¶¶ 1.b and 1.f on May 2, 2015.⁴

Applicant paid the debts in SOR ¶¶ 1.a (\$36); 1.d (\$493); 1.e (\$107) and 1.g (\$69) in March 2015.⁵ He disclosed on his security clearance application (SCA), signed in March 2014, that the debt in SOR ¶ 1.d was delinquent since October 2004 and the reason was "inability to pay."⁶ He disclosed in the SCA that he "arranged a payoff

¹ Hearing Exhibit I is Department Counsel's memorandum noting Applicant contacted him and advised that he would not be submitting additional documents.

² Tr. 18-22.

³ Tr. 23-25. I have not considered Applicant's bankruptcy for disqualifying purposes, but will consider it when analyzing his credibility, in applying the mitigating conditions, and in my whole-person analysis.

⁴ Other debts were also challenged, but they have either been resolved through payment or were not alleged on the SOR.

⁵ Answer to the SOR.

⁶ GE 2 is a credit report from April 2014 that shows the account was opened in December 2006 and the last activity on the account was September 2007.

schedule with agency.” No explanation was provided as to why he did not pay the debt until after he received the SOR a year later. He provided documented proof of his March 2015 payments.⁷

The debt in SOR ¶ 1.b (\$12,472) is for medical services. Applicant stated he had a heart attack in January 2012 and believed his military medical insurer was required to pay the bill. He disclosed the debt on his SCA, and stated he was unable to pay the bill and believed the debt was charged off. In his interview with a government investigator in June 2014, he indicated he was covered by TRICARE for Life, a secondary insurer to Medicare, and the bill should have been paid.⁸ He also indicated that in 2012 he was negotiating a reduced payment with the hospital. He was waiting for the creditor to contact him. He testified that he has not contacted the insurer for at least six months to follow up on the claim. He testified that about four months ago he asked the collection company for an itemized bill. He stated he needed to contact the creditor, and if he owes the debt he will pay it. He explained that TRICARE paid most of the medical bills incurred from his heart attack, but some were not paid. He stated he was still working the issue, and he does not believe he is responsible for paying this portion of the debt. He also stated he intended to pay what he may owe on the debt. The record was held open to allow Applicant to provide additional information about his entitled coverage through TRICARE and the current status of the debt. He did not provide additional information. The bill is being challenged through Lexington Law.⁹ The debt is not resolved.

The debt in SOR ¶ 1.c (\$9,862) is a judgment filed in June 2008. Applicant explained he purchased a car in 2008, and subsequently had problems with the engine while it was on warranty. The car dealer agreed to retrieve the car, but there was a disagreement as to who was financially responsible. Applicant stated he never heard from the dealer again. He moved to a different state in 2008. In 2009 he learned there was a judgment entered against him. Lexington Law challenged the debt on his credit report and reported that it was removed from two of the credit bureaus’ reports.¹⁰ However, Applicant did not provide proof that he contested the judgment or that it was vacated or released, or took any action to resolve it. Having the debt removed from a credit report after seven years does not mean the debt is no longer owed. The record

⁷ Tr. 39-40; GE 1.

⁸ TRICARE for Life (TFL) is Medicare wraparound coverage for TRICARE beneficiaries who have Medicare Part A and Medicare Part B, regardless of age or place of residence. With TFL, you have the freedom to seek care from any Medicare-participating or nonparticipating provider, or at a military hospital or clinic on a space-available basis. Enrollment is not required, but you must pay Medicare Part B premiums. It is unknown if Applicant complied with the Medicare Part B premium requirement. Due to Applicant’s age it is unknown if he qualifies at this time for TFL or is covered under a different TRICARE program with different coverage.

⁹ Tr. 26-32, 62, 66-67; GE 4; AE A.

¹⁰ The judgment appears on GE 2, a credit report from April 2014, but not on GE 4, a June 2015 credit report.

was held open to allow Applicant an opportunity to provide additional evidence that the judgment is no longer valid. None was provided.¹¹ The debt remains unresolved.

The debt in SOR ¶ 1.f (\$972) is a bill from March 2012 for dental services.¹² Applicant's dental insurance did not cover the entire bill. Applicant stated he had no idea the services were put on a credit card. He indicated he was unaware the debt was still outstanding until he received the SOR.¹³ However, Applicant disclosed the debt and that it was "in collections" on his SCA and stated that the provider would not "compromise" and the original creditor "closed out the account."¹⁴ He stated in the SCA that he would "set up a payment plan when I get work."¹⁵ He indicated in his background interview that he believed the debt had been written-off, which is why he did not pay it. He indicated he would arrange a payment plan to resolve the debt. In early June 2014, he received a settlement offer and indicated his intention to pay the debt by the end of the year.¹⁶ At his hearing, he admitted he owed the debt, but he did not have an explanation for why he had not paid it. The debt is being challenged by Lexington Law.¹⁷ The debt is not resolved.

Applicant estimated that from 2008 to 2012 his annual salary was between \$42,000 and \$44,000. He estimated his current salary to be approximately \$45,000 and his military pension is \$36,000. He estimated his expendable monthly income is approximately \$500 to \$600. He indicated that he was unaware of some of the debts alleged in the SOR. He is able to pay his monthly expenses. He indicated he intended to pay the debts he owes.¹⁸

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 are used in evaluating an applicant's eligibility for access to classified information.

¹¹ Tr. 40-50, 52, 58-62, 65; GE 2; AE A.

¹² AE B is a copy of the collection company's verification of the debt.

¹³ Tr. 37-39.

¹⁴ GE 1.

¹⁵ GE 1.

¹⁶ GE 3.

¹⁷ Tr. 33-39.

¹⁸ Tr. 50-51, 54-57, 62-63.

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 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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

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.

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and the following two are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has an unpaid judgment and delinquent debts that have not been paid or resolved beginning in 2008. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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; and
- (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.

In March 2015, Applicant resolved the relatively small debts alleged in SOR ¶¶ 1.a (\$36), 1.d (\$493), 1.e (\$107) and 1.g (\$69). AG ¶ 20(d) applies to these debts.

Applicant has not resolved the judgment in SOR ¶ 1.c (\$9,862) that was entered in June 2008; the medical debt in SOR ¶ 1.b (\$12,472) for services he received in January 2012; and the debt in SOR ¶ 1.f (\$972) owed for dental care he received in March 2012. Applicant was unemployed from June 2012 to May 2014, but was able to pay his expenses from his military pension. He attributed his financial problems to two divorces in nine years. However, he had his debts discharged in bankruptcy after his second divorce and had a clean financial slate. Therefore, his divorces should not have had an impact on his finances after his bankruptcy. His reduced income during his unemployment was a condition beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly. Applicant has acknowledged he received medical and dental services. He believes his insurer is responsible for the medical debt, but he has not contacted the insurer in six months to address the debt. He admitted he owed the dental debt and does not know why he has not paid it, despite his statement in the SCA that he had a payment arrangement with the agency and again a promise to pay it made during his June 2014 interview.

The judgment against Applicant is seven years old and may have been deleted from his credit report, but he failed to show that since 2009, when he learned about it, he has taken any action to satisfy it or have it vacated. Applicant has not acted responsibly under the circumstances regarding his debts. AG ¶ 20(b) partially applies.

There is no evidence Applicant received financial counseling. Although he is challenging all of his debts through Lexington Law, he failed to provide a reasonable basis to dispute the legitimacy of the debts. To the contrary, he admitted he owed the debt in SOR ¶ 1.f for dental services. Despite promises to pay it, he never did, and now he is challenging it on his credit report. He also received medical services. He believes the costs were covered by his insurer, but failed to contact the insurer in the past six months prior to his hearing to find out the status of the debt. Instead, he is challenging it on his credit report. He acknowledged he has known about the judgment entered against him since 2009. Although the judgment may have been removed from his credit reports, it does not resolve his legal obligation to pay it or have it legally vacated. He did not provide evidence of his attempt to do either. These debts are unresolved. Applicant's financial issues are recent and did not occur under unique circumstances that are unlikely to recur. Applicant's past conduct casts doubt on his reliability, trustworthiness, and good judgment. There are not clear indications the problems are being resolved or under control. AG ¶¶ 20(a), 20(c) and 20(e) do not apply.

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 57 years old. He is a retired Army major. Applicant was aware he had delinquent debts, many of which he disclosed in his SCA and during his background interview. He has been employed since June 2014 and was employed prior to May 2012. He failed to provide sufficient evidence to conclude he is handling his debt resolution responsibly. Although he was aware of an outstanding medical bill, he failed to contact the creditor before his hearing to determine its status. He failed to pay the dental debt, despite promises to do so; instead he is now challenging it. He failed to address the judgment that he has known about since 2009. He did not pay the small delinquent debts he owed until after he was issued the SOR. Applicant has the burden of persuasion. Disputing a delinquent debt to have it removed from a credit report after acknowledging its legitimacy, as Applicant has done at least with regard to the dental debt, raises serious questions about his judgment. I considered Applicant's testimony and did not find him credible regarding his knowledge about his debts and the legitimacy of his disputes. Applicant's conduct raises questions about his reliability and trustworthiness. 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 failed to mitigate the security concerns arising under the financial considerations.

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:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant

Subparagraph 1.e:
Subparagraph 1.f:
Subparagraph 1.g:

For Applicant
Against Applicant
For Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge