



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



In the matter of:)
)
) ISCR Case No. 14-06203
)
Applicant for Security Clearance)

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: William E. McCoy, Esq.

01/12/2016

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant fell behind in his payments on some credit card accounts during the 2008-2009 timeframe, when he was required to cover the health insurance premiums for his youngest child. As of March 2015, he owed \$18,819 in delinquent debt. He does not intend to repay a \$13,859 medical debt in collection because he disputes the balance. He lives within his means, but his inaction toward his past-due accounts continues to engender security concerns about his judgment and reliability. Clearance is denied.

Statement of the Case

On March 27, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, Financial Considerations, and explaining why it was unable to find it clearly consistent with the national interest to grant or continue his security clearance eligibility. The DOD CAF took the action under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (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.

Applicant answered the SOR allegations on May 7, 2015, and he requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). Counsel for Applicant entered his appearance on July 14, 2015. On July 21, 2015, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On July 23, 2015, I scheduled the hearing for August 19, 2015.

At the hearing, four Government exhibits (GEs 1-4) were admitted into evidence without objection. A chart prepared by Department Counsel as a supplement to his closing argument was marked as a hearing exhibit (HE 1) for the record, but it was not admitted as an evidentiary exhibit. Applicant testified on his behalf, as reflected in a transcript (Tr.) received on August 27, 2015.

Findings of Fact

The SOR alleges that Applicant owed \$18,819 in collection debt as of March 27, 2015. Applicant admitted that he owed consumer credit debts of \$3,159 (SOR ¶ 1.a) and \$762 (SOR ¶ 1.c) and a medical debt of \$13,859 (SOR ¶ 1.b). Applicant indicated that he had no knowledge of \$495 (SOR ¶ 1.d) and \$468 (SOR ¶ 1.e) medical debts. He believed \$76 medical debt (SOR ¶ 1.f) had been paid. After considering the pleadings, exhibits, and transcript, I make the following findings of fact:

Applicant is a 59-year-old high school graduate, who has spent most of his career in the defense industry. He worked as a detail planner for his present employer (company X), a subsidiary of a large defense contractor, from August 1979 to June 2004. He held a DOD secret security clearance, which was granted around November 1982. His clearance was administratively downgraded to a confidential security clearance in February 1987. From July 2004 to August 2012, Applicant worked for another subsidiary as a senior planner/scheduler in a position that did not require a security clearance. Applicant earned some income as a self-employed project planner for one month in late 2012, but he was otherwise unemployed from August 2012 until late May 2013, when he began working in the private sector as a material analyst for a manufacturing company. Around August 2014, he returned to work at company X, where he requires a security clearance for his duties. (GEs 1, 3; T. 17-19, 23, 25, 30.)

Applicant was married to his ex-wife from June 1978 to December 2002. They had three children together: two daughters, now ages 33 and 27 and one son now age 32. The younger daughter lived with Applicant for a couple of years, and he received no child support from his ex-wife. Applicant had to pay child support when his daughter did not live with him. (Tr. 32-33.) Applicant and his second wife (hereinafter spouse) began cohabiting in August 2005, and they married in April 2014. (GEs 1, 3; Tr. 33.)

Applicant's base income was \$42,000 annually as a detail planner at company X, although with overtime, he grossed approximately \$50,000 in 2004. (Tr. 29.) In July 2004, Applicant relocated across the country for his new job as a senior planner. In August 2004, he purchased a home, taking on a \$200,000 conventional 30-year mortgage to be repaid at \$1,496 monthly. In September 2004, Applicant took on a second mortgage of \$71,713 to be repaid at \$530 per month for 228 months. Applicant paid his mortgages on time. (GE 2.) By 2007, his income had reached \$70,000 annually because of overtime. (Tr. 29.)

Around 2008, Applicant began to have some financial problems after his ex-wife obtained a court order obligating him to cover medical insurance for their youngest child. He did not appear in court because of the distance, and he could not afford legal representation. His monthly health insurance premium increased from \$86 to \$430 because of the family coverage. After about 1.5 years, Applicant managed to have the decision reversed, but the insurance premiums had already strained his finances. (GE 3; Tr. 21-22.) In 2009, Applicant's base pay declined to \$63,000 because of a loss of available overtime, and his spouse lost her job. (GE 3; Tr. 29.) Applicant made timely payments on most of his accounts, although a few accounts went to collections. After May 2008, he stopped paying on a VISA credit card account. In November 2008, a past-due balance of \$762 was placed for collection (SOR ¶ 1.c). In January 2012, a collection agency purchased a revolving charge account with high credit of \$1,817 that had been inactive since October 2008 (SOR ¶ 1.a). A MasterCard debt, charged off for \$1,508, was satisfied in February 2009. In September 2009, a \$468 medical debt was placed for collection (SOR ¶ 1.e). (GEs 2, 4.)

Applicant was the primary wage earner in his household. His spouse worked in the collections industry for about six months in 2010 or 2011, but she has not held a full-time position since then. (Tr. 33.) In August 2012, Applicant was laid off from his employment. (Tr. 23.) Applicant had emergency treatment at a local hospital when he lacked medical insurance. He received unemployment compensation, but he could not afford to pay the medical bills. (Tr. 24, 34.) In December 2012, two medical debts of \$13,859 (SOR ¶ 1.b) and \$495 (SOR ¶ 1.d) were placed for collection. Applicant maintains that the initial balance of the hospital debt in SOR ¶ 1.b was about \$3,000 (Tr. 24), but he provided no corroborating documentation.

In late May 2013, Applicant began working as a material analyst with a manufacturing company at wages of \$52,000 annually. (Tr. 25.) A year into that job, he applied to return to work for company X. On May 1, 2014, Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP). In response to the financial record inquiries, Applicant disclosed one delinquent debt of \$4,000. He listed the account number as unknown and admitted that he had not dealt with the issue. (GE 1.) As of May 13, 2014, Applicant had six outstanding collection balances totaling \$18,819 on his credit record (SOR ¶¶ 1.a-1.f), of which \$3,159 (SOR ¶ 1.a) and \$762 (SOR ¶ 1.c) were consumer credit card obligations. (GE 2.)

In mid-May 2014, Applicant refinanced his mortgage loans through a new conventional 30-year mortgage of \$241,925, to be repaid at \$1,854 per month. Two days

after he took on the new mortgage, he opened a truck loan of \$30,188, to be repaid at \$458 per month for 73 months. (GE 4; Tr. 42.)

On May 28, 2014, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). He had an offer of employment from company X contingent on a favorable background investigation for security clearance eligibility. About the adverse information on his credit record, Applicant could not recall when accounts were first opened, when he stopped making payments, when they became past due, or when he started receiving collection notices. When confronted with the details as reflected on his credit record, Applicant disagreed with the \$3,159 balance of the debt in SOR ¶ 1.a, although he acknowledged that he had not made any contact with the creditor about the account. As for the medical debts, Applicant acknowledged the \$13,859 collection balance in SOR ¶ 1.b. He explained that he had offered to make monthly payments to the collection agency, but the terms were not accepted. He had not listed the debt on his e-QIP because he had contested his liability for repayment, albeit unsuccessfully, with his former health insurance provider. Applicant did not recognize or accept responsibility for the delinquencies in SOR ¶¶ 1.c and 1.f. He acknowledged the medical collection balances of \$495 and \$468 (SOR ¶¶ 1.d and 1.e), which he believed were for his medical care in 2012. Applicant indicated that he was making timely payments on his household financial obligations, including \$1,700 [sic] for his mortgage and \$450 for his truck, but he could not afford to pay his outstanding medical debts. He expressed his intent to contact all his creditors and to start making payments on his outstanding accounts or negotiate balances, but also a plan to pursue legal remedies against his former medical insurance provider for the medical debts, which according to Applicant, were incurred one day after his health insurance coverage expired. (GE 3.)

Sometime before early August 2014, Applicant and his spouse relocated to their present locale for his job at company X. Applicant rented out his home in his previous locale. In January 2015, a pipe burst in the home. Insurance covered the \$12,000 in restoration expenses, but Applicant was out-of-pocket around \$12,000 to replace the piping in the house because it was not up to code. Applicant testified that he had planned to put available funds toward his old debts, except for the medical debt in SOR ¶ 1.b. (Tr. 26, 49.) Half of the funds for the plumbing repairs came from his income tax refund. He also borrowed \$6,000 from his 401(k), which is being repaid through wage deduction. (Tr. 26-27, 31, 43-44, 51.) Applicant has not considered selling his house in his previous locale to settle his delinquent debts. (Tr. 43.)

A check of Applicant's credit on June 30, 2015, revealed that the balance of the collection debt in SOR ¶ 1.a had increased to \$3,331. He had also not paid the \$76 medical debt from 2009 (SOR ¶ 1.f). Additionally, a medical debt of \$231 from 2013 had been placed for collection in March 2014. The other debts on his consolidated credit report of May 2014 were being reported by Equifax as of June 2015. (GE 4.)

As of August 2015, Applicant had tenants in his house in his previous locale. The rental income was sufficient to cover the mortgage on the property. (Tr. 27.) He and his spouse were paying their living expenses and current bills on time despite her present

unemployment. His base salary was \$67,000 annually, although with overtime, he expected to gross \$75,000 in 2015. (Tr. 28-33.) Applicant had made no payments on the debts in the SOR. (Tr. 35.) Claiming that the balance has quadrupled in collections, Applicant does not intend to take any steps to resolve the \$13,859 medical debt in SOR ¶ 1.b.¹ (Tr. 36-37, 48.) He has not formally disputed the debt with any of the three credit reporting agencies. He had offered to make small payments to the hospital in the fall of 2012, but the creditor wanted \$3,000, which he could not afford. A collection agency has pursued him for the \$13,859 balance, most recently in July 2015. (Tr. 47-48.)

At his hearing, Applicant testified that he also received a billing notice from the creditor in SOR 1.a, although he does not recall when he was last billed. (Tr. 47.) He believes he had paid the \$762 credit card debt in SOR ¶ 1.c around 2011. (Tr. 38.) He no longer has any documentation to corroborate his payment because of his relocation and inability to find some of his records. (Tr. 39.) Applicant expressed no knowledge about the \$495 medical debt (SOR ¶ 1.d) and uncertainty about whether the \$468 medical debt (SOR ¶ 1.e) was from his hospitalization in 2012. (Tr. 39-41.) When asked about his inaction toward his old debts, Applicant responded, “I’m trying to figure out why the Government is sweating me on this many details.” (Tr. 40.) He later testified that he had looked into the debts, that he had prioritized, that he had paid a couple of them, and that he was going to satisfy additional debts but had not been in position to do so. (Tr. 40-41.) When asked whether he had any documentation to corroborate his claim of payment of the \$76 medical debt (SOR ¶ 1.f), Applicant responded, “I don’t know.” (Tr. 41.) Applicant did not dispute that he incurred the \$231 medical debt (not alleged in SOR) placed for collection in 2014. He apparently attempted to pay the debt several times, but he has been told there was a billing error. (Tr. 44.)

Applicant and his spouse rent their current residence. According to Applicant, after paying the mortgage on the house in their former locale and their other expenses, they have about \$300 in net discretionary income at the end of the month. (Tr. 42.) When asked to explain his inattention toward his delinquencies given his positive cash flow, Applicant responded that he has “had a really bad run of luck . . . it’s been pretty much all [he] can do to stay above water.” In addition to the pipe replacement costs, he has had veterinary expenses, although he did not have the figures. Applicant surmised that some of his discretionary income is spent on occasional restaurant meals. (Tr. 50-51.) He testified that he does not have a good grasp on his monthly bills and that the \$300 in reported discretionary income was a guess on his part. (Tr. 52.) Applicant has health insurance now and does not intend to incur new bills that he cannot afford. (Tr. 53.) He has no open active credit card accounts. (GE 4; Tr. 54.)

¹ Applicant explained that he had talked to the hospital about the debt in the fourth quarter of 2012:

I tried to make arrangements and they said it was—for it to be paid off, I would have to pay the \$3,000 off then. Otherwise, it was going to be a much larger debt, and it was, and they—it—this is kind of what the medical community does now. It takes a bill and it quadruples it and gives it to—sells it to a credit bureau and that’s why I’m not going to pay it. (Tr. 36-37.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to 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 overall 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 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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 about financial considerations is articulated 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 F concerns are established by Applicant's unaddressed collection debts totaling approximately \$18,819. Disqualifying conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations," are implicated in this case.

The credit card debt in SOR ¶ 1.a first became delinquent in October 2008. The credit card debt in SOR ¶ 1.c is also from 2008. The medical debts in SOR ¶¶ 1.e and 1.f are from 2009. While these debts were not incurred recently, the medical debts in SOR ¶¶ 1.b and 1.d are from a hospitalization in 2012. A \$231 medical debt from 2013 was placed for collection in March 2014. A debt not alleged in the SOR cannot serve as a basis for disqualification, but it is relevant to assessing Applicant's financial judgment generally and the risk of recurrence of financial problems.² Applicant claims that he tried to pay the debt, but it remains on his credit record. AG ¶ 20(a), "the behavior happened so long ago, was so infrequent, or occurred under circumstances that it is unlikely to recur and does not cast doubt on the individual's current, reliability, or good judgment" cannot reasonably apply when Applicant has done little to address the debts in the SOR.

Applicant's financial problems stem from a combination of circumstances contemplated within AG ¶ 20(b), which provides for mitigation when debts are incurred beyond a person's control:

(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.

²The DOHA Appeal Board has long held that the administrative judge may consider non-alleged conduct to assess an applicant's credibility; to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; to decide whether a particular provision of the Adjudicative Guidelines is applicable; or to provide evidence for a whole person analysis under Section 6.3 of the Directive. See, e.g., ISCR Case No. 03-20327 (App. Bd. Oct. 26, 2006); ISCR Case No. 09-07219 (App. Bd. Sep. 27, 2012).

Applicant made a last payment on the credit card debts in SOR ¶¶ 1.a and 1.c in 2008. He did not foresee the increase in his medical insurance premiums from \$86 to \$430 after the court ordered him to cover his youngest child under his health insurance. His current spouse was laid off from her employment in 2009, which compromised their household finances. His largest debt is owed a hospital for treatment following a medical emergency when he lacked medical insurance coverage due to a job layoff.

Yet, for AG ¶ 20(b) to fully apply, Applicant is required to have acted reasonably once the situations giving rise to the financial issues had stabilized. In that regard, Applicant's evidence falls short of demonstrating financial responsibility. About his sizeable medical debt in SOR ¶ 1.b, Applicant's uncorroborated but also unrebutted testimony is that his health insurance was cancelled one day prior to his emergency medical treatment at the hospital. He told the OPM investigator in May 2014 that he had contacted the health insurance company to appeal the debt but was refused coverage. He did not dispute the account balance at that time. At his security clearance hearing, Applicant testified that he contacted the hospital during the last quarter of 2012 and was told he would have to pay the \$3,000, which he could not afford. He now does not intend to pay the debt because he disputes the balance, which he submits is more than four times the original debt. His objection to what he characterized as a practice of the medical community to quadruple a bill and sell it is somewhat understandable, but only if he was not given a reasonable opportunity to pay the debt before it was placed for collection. Applicant has not provided any documentation that would enable a finding of timely repayment offers that were unreasonably rejected.

Available evidence is conflicting as to whether Applicant has the means and willingness to address his other debts. Applicant has been employed by company X since August 2014 at \$67,000 in annual base salary. He initially estimated his net discretionary income at \$300 per month after paying expenses, although he then indicated that "it's been pretty much all [he] can do to stay above water." (Tr. 50.) His mortgage payment has been \$1,854 since May 2014, which is less than the \$2,042 he had previously paid on his two mortgage loans. The rental income he receives from his tenants is apparently covering the mortgage payment. It is unclear whether he has additional expenses for the property not covered by the rental income. He pays rent in his current locale and is repaying the \$6,000 borrowed from his 401(k) to replace the pipes in his rented-out home. While he has shown some financial responsibility in not incurring new credit card debt, it is difficult to fully apply AG ¶ 20(b) because he has largely ignored the collection debts since becoming aware that they are of concern to the DOD. Applicant has not responded to collection notices received for the debts in SOR ¶¶ 1.a and 1.b. He believes the \$76 debt has been paid, but it is still listed as an outstanding delinquency on his credit record. He has not taken any steps to dispute its listing on his credit record or to educate himself about the medical debts in SOR 1.d and 1.e.

As of mid-August 2015, the debts in the SOR remained unresolved, and there is no evidence that Applicant has received financial counseling. Neither AG ¶ 20(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," nor AG ¶ 20(d), "the individual

initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” is established. The financial considerations concerns are not fully mitigated under the Adjudicative Guidelines.

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 his conduct and all the 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.

The financial analysis under Guideline F is incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant has had his share of unfortunate circumstances, most notably his need for emergency medical treatment apparently the day after his medical insurance lapsed. However, his “really bad run of luck” does not relieve him of his legal responsibility to repay his legitimate debts. Applicant largely ignored the hospital debt for years and so he bears some responsibility for its high balance. Applicant has not shown that he did not incur the debts in the SOR, and he has not been proactive about addressing even his undisputed debts. He expressed his intent to repay all but the hospital debt, but promises to pay off delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner. *See, e.g.,* ISCR 14-04565 (App. Bd. Sep. 18, 2015), citing ISCR Case No. 14-03069 (App. Bd. Jul. 30, 2015.)

A determination of an applicant’s eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of the evidence to determine if a nexus exists between established facts and a legitimate security concern. Applicant knew that he owed the credit card debt in SOR ¶ 1.a when he completed his e-QIP in May 2014. He has yet to contact the creditor about that debt, even though it remains on his credit record as an open, past-due debt. This behavior reflects poor financial judgment and leaves doubt whether Applicant can be counted on to act on his stated intent to repay his undisputed delinquent debts. The Government can re-validate Applicant’s financial status at any time through credit reports, investigation, or interrogatories. Approval of classified access to Applicant now would not bar the

Government from revoking it, if required.³ Yet, without some progress toward addressing his delinquencies, it would be premature to conclude that it is clearly consistent with the national interest to grant or continue security clearance eligibility for Applicant.

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:	Against Applicant
Subparagraph 1.f:	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.

Elizabeth M. Matchinski
Administrative Judge

³ The DOHA Appeal Board has held that the Government has the right to reconsider the security significance of past conduct or circumstances in light of more recent conduct that has negative security significance. See ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012).