



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



In the matter of:)	
)	
-----)	ISCR Case No. 06-25790
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Rita C. O'Brien, Esquire, Department Counsel
For Applicant: *Pro Se*

February 27, 2008

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. As required by Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan. 2, 1992), as amended, DOHA issued a Statement of Reasons (SOR) on November 6, 2006, detailing the basis for its decision: security concerns raised under Guideline F (financial considerations) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006. Applicant answered the SOR in writing on June 15, 2007, by admitting to all 25 allegations raised. Applicant again admitted to all 25 allegations on August 21, 2007, in an amended response which included his request for “a decision without a hearing.”

Department Counsel submitted a file of relevant materials (FORM) on September 25, 2007. Applicant was instructed to file any objections to the information in the FORM within 30 days of receipt of that package. Applicant received the FORM on October 4, 2007. No information was submitted in response to the FORM within the 30 day period provided. The case was forwarded by the Director, DOHA, on February 21, 2008, for assignment of the case. I was assigned the case that same day.

Findings of Fact

Applicant's response to the 25 allegations raised is limited to his 25 admissions. Consequently, there are scant available facts as to his life, his financial history, and his current fiscal situation. He is a 42-year-old machinist who has worked for the same federal contractor since February 2005. He is married and the father of six children, ranging in age from 25 to 5 years. He also has three grown stepchildren. Applicant received approximately three years of training at a regional education center.

On September 8, 2000, Applicant filed a voluntary Chapter 7 petition for bankruptcy.¹ His total listed liabilities were approximately \$28,433 and his total listed assets were approximately \$1,653. Those debts subject to the bankruptcy proceeding were discharged on December 29, 2000.

On or about September 2000, a judgment was entered against Applicant in the amount of \$85. On or about May 2002, another judgment was entered against Applicant in the amount of \$359, and a debt to a state utilities entity was placed in collection in 2002 for the approximate amount of \$257. On or about August 2003, a third judgment was entered against Applicant in the approximate amount of \$1,434. As of January 3, 2007, these obligations remained unpaid.²

Also outstanding as of January 3, 2007, are debts for two collection accounts in the approximate amounts of \$49 and \$461, respectively, a child support arrearage of approximately \$4,170 and a debt to a state employment commission that was charged off in the approximate amount of \$2,566.³ Three medical accounts were referred for collection between June 2004 and June 2005. These collection efforts concerned approximate amounts of \$302, \$75, and \$304, and were similarly outstanding as of January 3, 2007.⁴

On or about September 2, 2005, Applicant suffered an accident while working, injuring his left shoulder, knee, and wrist. Between that date and February 22, 2007, Applicant's condition has been medically addressed approximately 27 times, including three surgeries, multiple MRIs, and control of several localized infections requiring antibiotics and additional care; related pain was pharmaceutically managed. His diagnosis as of March 2007 was "Left RTC SLAP tear," indicating rotator cuff and labrum⁵ tears, and "Left knee, torn meniscus." Also noted was continued knee

¹ SOR ¶ 1.a.

² SOR ¶¶ 1.b through 1.e.

³ SOR ¶ 1.s and ¶¶ 1.v through 1.x.

⁴ SOR ¶ 1.r, ¶ 1.t, and ¶ 1.u.

⁵ The labrum is the cartilage ring surrounding the shoulder socket.

discomfort despite overall improvement.⁶ He was released for light duty in March 2007. Projections regarding Applicant's maximum medical improvement and permanent partial disability were listed as "to be determined." Starting February 22, 2007, he was permitted to return to full time, transitional work with "no prolonged standing or walking, no climbing, stooping, squatting, crawling, or kneeling, can't carry heavy objects, no duty involving unprotected heights. No lifting with left arm."

In response to DOHA inquiry as to his current financial obligations Applicant wrote the following: "I was injured back in Sept. of '05. Since then I have managed to pay my most important bills first which was child support and back taxes. My employment allowed me to start catching up on past bills until these three surgeries within the last year are better [sic] that have had a large impact on my income."⁷ As to his efforts toward his finances, he wrote: "Doing the best I can with what I have until able to return to work. Also I am not able to pay off full amount of my monthly child support. Also can't afford to pay on bill[s] until returning to work."⁸ In response to an inquiry regarding his past chapter 7 bankruptcy, Applicant stated: "My debts outweighed my income after my divorce and I wanted a fresh start."⁹

Between Applicant's September 2005 injury and the issuance of the May 2007 SOR, 12 medical accounts were referred for collection, amounting to approximately \$2,237.¹⁰ While still restricted to light duty, Applicant completed a Personal Financial Statement, DSS Form 154, on March 9, 2007.¹¹ It showed Applicant's monthly expenses and payments to equal his net monthly income without accounting for any payments on his delinquent debts. The monthly income shown was \$1,240 acquired as "work comp/short term disability." Nothing else is known of his current financial situation or current physical condition.

Policies

"[N]o one has a 'right' to a security clearance."¹² As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a

⁶ See Item 6 (Applicant's Response to DOHA Interrogatory, dated March 9, 2007) at 16-18 (marked as pages 48-50).

⁷ Item 6, *supra*, at 4 (marked as page 36).

⁸ *Id.*

⁹ *Id.* at 5 (marked as page 37).

¹⁰ SOR ¶¶ 1.f through 1.q.

¹¹ Item 6, *supra*, at 6-9 (marked as pages 38-41).

¹² *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

position . . . that will give that person access to such information.”¹³ The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “ only upon a finding that it is clearly consistent with the national interest to do so.”¹⁴ An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”¹⁵ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.¹⁷ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.¹⁸ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.¹⁹

The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive to be considered in evaluating a person’s eligibility to hold a security clearance. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the revised adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

Based upon consideration of the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

¹³*Id.* at 527.

¹⁴Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

¹⁵ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

¹⁶*Id.*

¹⁷*Id.*; Directive, Enclosure 2, ¶ E2.2.2.

¹⁸Executive Order 10865 § 7.

¹⁹See Exec. Or. 10865 § 7.

Guideline F- Financial Considerations: Finances are a concern because 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guideline are set forth and discussed in the conclusions below.

Conclusions

I have carefully considered all the appropriate legal standards and facts in evidence, including Applicant's admissions to all the allegations raised in the SOR. I have also considered the foregoing in light of the applicable guideline, including both the disqualifying and mitigating conditions available under that guideline.

Guideline F, Financial Considerations

Applicant accumulated delinquent debts that he failed to pay. He admits he owes the cumulative debt and it remains delinquent. Based on such evidence, Financial Considerations Disqualifying Condition (FC DC) 19 (a) (*inability or unwillingness to satisfy debts*) and FC DC 19 (c) (*a history of not meeting financial obligations*) apply. Consequently, the burden shifts to Applicant to mitigate financial considerations security concerns.

Applicant's 2000 chapter 7 bankruptcy put him on fresh financial footing after his divorce from his first wife. Judgments and obligations adding up to several thousand dollars, however, were acquired between that time and his 2005 accident. Since the accident, the financial chasm between financial stability and his current debt problems has grown, amounting to over \$13,500 in delinquent obligations. Although he is committed to meeting his child support obligations and back taxes, the recent and unbridled growth of additional debt does not give rise to Financial Considerations Mitigating Condition (FC MC) 20 (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*).

With the exception of SOR ¶ 1.w (child support arrearage), Applicant has not referenced any attempt to address the obligations noted in the SOR. Nor has Applicant noted whether he has sought and received financial counseling to help him address his debts and manage his finances in the future. Consequently, neither FC MC 20 (d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) nor FC MC 20 (c) (*the person received or is receiving counseling for the problem*)

and/or there are clear indications that the problem is being resolved or is under control) applies.

Applicant's September 2005 accident resulted in debilitating and painful injuries to his shoulder, wrist, and knee. Such injuries highly limited his mobility, required multiple surgeries, and necessitated a protracted recuperation period. Although his current health and ability is unknown because he chose to have a determination on the record and because he declined to respond to the September 2007 FORM, such situations generally trigger the application of FC MC 20 (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*).

In this situation, however, Applicant's medical bills and his interim inability to make payments on his debts are but small parts of a bigger picture. No facts were presented as to any efforts exerted to address the non-child support related obligations incurred before his September 2005 accident and at issue in the SOR. Because no evidence was offered as to what his former earned income was or projected earned income might be, it cannot be determined whether his return to work and a regular income will be an increase or decrease from the level of disability compensation income demonstrated. He similarly failed to posit or project a strategy for addressing his debts, commit to financial counseling, or otherwise address ameliorative plans regarding his finances after he returns to full health and vigor as well as full-time employment. Although the accident may mitigate him from some of his obligations during his period of recuperation, it does not absolve him from either nominally addressing his debts or, at least, demonstrating a calculated plan to address them in a responsible, determined manner in the future.

Whole Person Analysis

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

Based on the scant facts in the record, I considered the whole person in evaluating the case. I considered Applicant's age, education, and profession. I also considered his financial situation over the past eight years, his income, and his debts, and his attempts to address his obligation. In light of these considerations, I have also considered Applicant's 2005 injury, medical needs, physical limitations, and general recuperation; it is acknowledged that his injury is the sort that would be particularly debilitating to a machinist. Applicant was debt free after his 2000 bankruptcy. By the

time he was injured in September 2005, he had already acquired new delinquent debt. There is no indication he addressed any of the accounts noted in the SOR before his injury, nor is there evidence he has since address that debt. There is no indication that he ever conceived a plan or received financial counseling to address those debts, before or after his accident. Consequently, his injury cannot be cited as the cause of his inability to pay the vast majority of his delinquent debt.

Although his final submissions were dated around the time he was returning to work, Applicant presented little more than admissions to the SOR allegations and an explanation as to his injury. Without some indication as to how a return to salary might help ameliorate his financial situation, and absent some projection regarding a workable repayment plan to address his debts, there is no indication Applicant has considered when, or if, he might meet these obligations in the future.

Applicant admitted all 25 financial allegations and failed to mitigate the financial security concerns to which those allegations gave rise. Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information. Based on the little information provided, Applicant failed to mitigate security concerns. Therefore, based on the totality of the evidence in this case, I conclude it is not clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline F is against Applicant.

Formal Findings

The following are my conclusions as to each allegation in the SOR:

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
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant

Subparagraph 1.r:	Against Applicant
Subparagraph 1.s:	Against Applicant
Subparagraph 1.t:	Against Applicant
Subparagraph 1.u:	Against Applicant
Subparagraph 1.v:	Against Applicant
Subparagraph 1.w:	Against Applicant
Subparagraph 1.x:	Against Applicant
Subparagraph 1.y:	Against Applicant

Conclusion

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

ARTHUR E. MARSHALL, JR.
Administrative Judge