



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



In the matter of:)	
)	
)	ISCR Case No. 07-00553
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert E. Coacher, Esquire, Department Counsel
For Applicant: *Pro Se*

February 14, 2008

Decision

HEINY, Claude R., Administrative Judge:

Applicant had five past due debts totaling in excess of \$ 23,000. He has sent his creditors a single \$100 post dated check. Based upon a review of the case file, pleadings, exhibits, and testimony, the record evidence is insufficient to mitigate or extenuate the negative security concerns. Applicant has not successfully mitigated financial considerations concerns. Clearance is denied.

Applicant contests the Defense Department's intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) on July 3, 2007, detailing the security concerns under Guideline F for financial considerations based on a history of financial problems as evicenced by delinquent debts.

¹ 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

On August 28, 2007, DOHA received Applicant's answer to the SOR that requested a hearing before an Administrative Judge. On October 11, 2007, I was assigned the case. On October 17, 2007, DOHA issued a notice of hearing scheduling the hearing held on November 14, 2007. The government offered Exhibits (Ex.) 1 through 4, which were admitted into evidence. Applicant testified on his own behalf and submitted Exhibits A and B, which were admitted into evidence.

The record was kept open to allow Applicant to submit additional matters. Additional documents were received on November 30, 2007. Department Counsel did not object to the material and the items were admitted into evidence as Exs. C and D. On November 26, 2007, DOHA received the transcript (Tr.) of the hearing.

Findings of Fact

In his Answer to the SOR, dated June 25, 2007, Applicant admitted the factual allegations in ¶¶ 1.a, 1.b, and 1.d of the SOR, with explanations. He denied the factual allegations in ¶¶ 1.c and 1.e of the SOR. The admissions are incorporated herein as findings of fact. After a thorough review of the record, case file, pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 35-year-old systems engineer who has worked for a defense contractor since January 2003, and is seeking to maintain a security clearance.

In July 1998, Applicant married. Within days of his marriage he purchased a time share. (Tr. 42) A credit collection agency is attempting to collect the \$9,396 foreclosure debt (SOR ¶ 1.d) now increased to \$17,000 due to interest, late fees, charges, and attorney fees. In October 2007, Applicant sent the law firm that was attempting to collect the debt a letter stating he did not owe the debt. (Ex. A) Applicant sent a second letter (Ex. B) stating he believed the debt was incurred due to "grossly false and extremely misleading information" from the seller. The law firm sent a letter stating \$17,000 was owed and they were continuing with foreclosure. (Ex. D) The beginning loan balance was \$9,508. Monthly payments were \$158.68. Payments were made between August 1999 and March 2002 during which time \$1,131 in principal had been paid.

In March 2002, Applicant's first child was born and he realized he would no longer be taking vacations or using the time share. He was told he could not use the property unless he was current on his payments. (Tr. 42) Applicant believed he did not have to make payments on the time share if he was not using it. (Tr. 26) The balance as of March 2002, when the Applicant made his last payment, was \$8,376. Since the last payment interest continues to accrue. (Ex. D)

In April 2000, Applicant purchased a home for \$150,000 on which is owed \$135,000. (Tr. 50) He has two loans on the home. He pays 9.3 percent interest on one note and 13.2 percent interest on the second. (Tr. 34) Two months before the hearing he was late on paying the second note. (Tr. 35) In 2005, he was more than two months late on his payments, but was able to bring them current.

In May 2000, he purchased a refrigerator, washer, and dryer for his new house. Since the purchase, Applicant made no payments on the refrigerator debt. (Tr. 23) A credit collection agency is attempting to collect \$1,965 on the debt (SOR ¶ 1.b). Another credit collection agency is attempting to collect a \$3,081 debt (SOR ¶ 1.c) for a washer and dryer purchase. In May 2007, Applicant answered interrogatories about his finances. (Ex 2) At that time, he stated he did not know the collection agencies and would be contacting them to attempt to make a repayment arrangement.

A credit collection agency is attempting to collect a \$417 debt (SOR ¶ 1.a) on behalf of a telephone company. Applicant stated he did have a delinquent account several years ago, but thought he had paid it. (Tr. 23) Applicant is unsure of this debt for he has his telephone service with this company. A credit collection agency is attempting to collect a \$740 debt (SOR ¶ 1.e). In November 2007, Applicant agreed to pay \$100 per month on the debt until it is paid. He provided a post dated check for the first payment. (Ex. C)

Applicant is married and has two children, ages three and five. (Tr. 44, Ex 2) His salary is \$78,000 per year (Tr. 37) and his take home pay is \$54,600. His wife did work as a case coordinator bringing home \$800 every two weeks.(Tr. 44) Due to medical issues and taking care of their young children, she no longer works. Applicant anticipates his wife will return to work when the children start school. Applicant has no car payments and does not live extravagantly. Applicant hopes to use his next tax refund to address his debts. His tax refund last year was \$9,000. (Tr. 49) He has money in his 401(k) company retirement fund, but does not know how much is in it and does not wish to touch it. (Tr. 38)

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 over-arching adjudicative goal is a fair, impartial and common sense 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 avoided drawing 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, 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 as to obtaining 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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

Under Guideline F for financial considerations a security concern typically exists due to significant unpaid debts. 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.²

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong 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 the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances so as to meet his financial obligations.

Financial considerations become a security concern when a person has significant delinquent debts. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial

² Revised adjudicative guidelines (AG) ¶ 18.

obligations. 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.

The record evidence supports a conclusion Applicant has a history of financial problems. Applicant owes approximately \$23,000 on five past due debts. Disqualifying conditions AG ¶ 19a inability or unwillingness to satisfy debts and AG ¶ 19c a history of not meeting financial obligations, apply.

In May 2000, Applicant purchased a refrigerator and has yet to make a single payment on the purchase. He also purchased a washer and dryer on which he owes approximately \$3,000. He disputes the \$17,000 debt on the time share. He was told he had to be current on his payments or could not use the time share. He interprets the comment to mean he does not have to make any payment on the debt if he chose not to use the time share. The debt is owed. He acknowledged he was delinquent a few years ago on his telephone bill, believes he paid the bill, but provided no documents supporting such. He was asked about his debts in May 2007 and said he would contact the creditors and arrange payment. The only debt he has made any payment on was a \$740 debt on which he sent the creditor a \$100 post-dated check.

None of the mitigating conditions under Guideline F apply. AG ¶ 20a 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, does not apply. The debts remain unpaid so the behavior did not happen long ago, was not infrequent, or occurred under circumstance that it is unlikely to recur. Buying appliances and having telephone service are not unusual events. There is no showing the debts were incurred by factors beyond Applicant's control. AG ¶ 20b 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, does not apply.

There is no evidence Applicant has sought financial counseling or demonstrated a positive change in his financial management. It is not clear the problem is being resolved or under control. AG ¶ 20c the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control, does not apply nor does AG ¶ 20d the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

For AG ¶ 20d to apply there must be an "ability" to repay the debts, the "desire" to repay, and evidence of a good-faith effort to repay. A systematic, concrete method of handling his debts is needed, which is not present here. One post-dated check is insufficient.

Applicant has made few efforts to resolve the delinquent indebtedness nor made any real progress in addressing his debts. Given these circumstances, in light of the

unaddressed delinquent debts, his efforts do not amount to a good-faith effort within the meaning of the guideline.

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 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) 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 is 35 years old and sufficiently mature to make prudent decisions about his finances. He knows if one buys a refrigerator, washer, dryer, or has telephone service, he must pay the debt. He disagrees with the time share debt, but he entered into a contract and has provided no documentation to establish the contract allowed him to stop making payments if he was not going to use the time share. He has done little to resolve his financial problems. What is missing is: (1) a realistic and workable plan to clean up his past due obligations, (2) documented actions taken in furtherance of the plan, and (3) a measurable improvement in the situation. Given the current circumstances, it is likely that the financial problems will be resolved

To conclude, Applicant did not present sufficient evidence to explain, extenuate, or mitigate the financial considerations security concern. Applicant did not meet his ultimate burden of persuasion to obtain a favorable clearance decision. In reaching this conclusion, the whole-person concept was given due consideration and that analysis does not support a favorable decision. I find against Applicant as to 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-e:	Against Applicant

Conclusion

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

CLAUDE R. HEINY II
Administrative Judge