



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



In the matter of:)	
)	
-----)	ISCR Case No. 06-21256
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro Se*

March 16, 2010

Decision

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

Applicant completed a security clearance application (SF-86) on February 6, 2006. On September 9, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising 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 revised Adjudicative Guidelines (AG) promulgated by the President on December 29, 2005, which are effective for SORs issued after September 1, 2006.

In an undated response to the SOR, received by DOHA on October 9, 2009, Applicant admitted three of 21 allegations set forth in the SOR and requested a hearing. DOHA assigned the case to me on November 3, 2009. The parties agreed to a hearing date of December 18, 2009. A notice of hearing was issued to that effect on November 13, 2009. The hearing was convened as scheduled. Department Counsel introduced six documents, which were accepted into the record without objection as exhibits (Exs.) 1-6. Applicant gave testimony and offered eight documents, admitted into the record without objection as Ex. A-H. Applicant was given until January 8, 2010, to supplement

the record with any additional documents. The transcript (Tr.) of the proceeding was received on December 28, 2009. On January 7, 2010, a 14-page document was received from Applicant without objection and accepted into the record as Ex. I. The record was closed on January 8, 2010. Based on a thorough review of the testimony, submissions, and exhibits, I find Applicant failed to meet his burden regarding the financial considerations security concerns raised. Security clearance denied.

Findings of Fact

Applicant is a 57-year-old senior systems engineer working for a defense contractor. He has worked for the same employer since August 2007. Applicant earned a high school diploma and has completed two years of college. He is married and has a child from a previous marriage.

Applicant was separated from his first wife in 2001. Paying for two households and providing spousal and child support proved to be financially devastating. His ex-wife would not sign a balloon loan on the family home which would reduce Applicant's house payments and forestall foreclosure. Applicant was advised to file for Chapter 7 bankruptcy as a method to gain approval for refinancing his home. Once his home was secure, he let the bankruptcy action be dismissed.¹ Applicant was granted a divorce in January 2004.² His spousal support has since been reduced to about \$300 a month in support.

In February 2005, Applicant married his current spouse, who works part-time in daycare. Applicant pays for their household expenses while his wife pays for groceries and miscellaneous expenditures, such as eating out.³ His daughter, now a teen, moved in with them in about 2006. Consequently, he ceased paying child support around that time.⁴ His daughter suffers from diabetes, for which medical attention has been required and, on at least one occasion, has demanded emergency medical treatment.⁵ In 2007, he was laid off for about two months during a reduction in force at his previous place of employment.⁶

Since his separation, Applicant has accumulated some debts which became delinquent. Most of those debts appear to have been owed since the early to mid-2000s. Regarding those debts which Applicant wrote after the hearing that payments had been made or would soon be made, he stated that evidence could be later

¹ SOR allegation ¶ 1.a.

² Ex. 1 (SF-86), *but see* Tr. 59. Applicant testified his divorce occurred in 2005.

³ Tr. 64.

⁴ *Id.*

⁵ Tr. 49-50.

⁶ See Tr. 62. Applicant was also unemployed for about four weeks in 2003.

“provided upon request.”⁷ Regarding those accounts Applicant cannot identify, he testified that he formally disputed their entry, but failed to submit evidence of such disputes.⁸ As noted in the SOR allegations, ¶¶ 1.b – 1.u., the debts at issue are:

1.b. CREDITOR (MEDICAL) – \$431 owed. Unknown account. Applicant stated that he has disputed this debt’s inclusion on his credit report, but has yet to receive a response.⁹

1.c. CREDITOR (MEDICAL) – \$360 owed. Unknown account. Applicant stated that he has disputed its inclusion on his credit report, but has yet to receive a response.¹⁰

1.d. CREDITOR – \$199 owed. Paid.¹¹

1.e. UTILITY – \$915 in collection. Under investigation. Applicant stated that he remembers paying this utility balance, but did not retain evidence of payment.¹² After the hearing, he attempted to obtain alternative proof of payment from the collection agency, but stated that he has not yet received a response.¹³

1.f. CREDITOR – \$7.00 owed. Paid.¹⁴

1.g. CREDITOR (MEDICAL) – \$827 owed. Prepared to pay. Applicant states he has made arrangements to pay off this balance in two payments in February and March 2010.¹⁵

1.h. CREDITOR – \$272 owed. Paid.¹⁶

1.i. CREDITOR – \$117 owed. Paid.¹⁷

⁷ See Ex. I (Post-hearing submission) at 1-4. At the hearing, however, both parties were told the record would close upon my receipt of any post-hearing submissions, the deadline for which was January 8, 2010. Tr. 69-70.

⁸ Tr. 52-53.

⁹ Tr. 21.

¹⁰ Tr. 22.

¹¹ Tr. 22; Ex. A (Receipt).

¹² Tr. 23.

¹³ Ex. I, *supra*, note 7 at 2.

¹⁴ Tr. 25; Ex. B (Receipt).

¹⁵ Tr. 25; Ex. I, *supra*, note 7 at 2.

¹⁶ Tr. 26; Ex. C (Receipt).

¹⁷ Tr. 26; Ex. DI (Receipt).

1.j. TELECOMMUNICATIONS – \$57 owed. Unpaid. Applicant contacted this creditor. He was told that the account was so old, no record of the debt was maintained.¹⁸

1.k. SUMMARY JUDGMENT REGARDING BOAT – \$44,833 owed. Unpaid/Unresolved. This entry is related to a recreational boat purchased by Applicant and his ex-wife in 1992. He made regular payments on the purchase until 2002, about the time he was separated and money was scarce due to support payments.¹⁹ After several months of being behind in his payments, the vehicle was voluntarily repossessed. Applicant testified the boat was auctioned, but has been unable to discover the purchase price of the boat or discern what liability he now has, if any, on the vehicle.²⁰ He is still researching the status of this debt “to resolve this matter in the best interests of all parties involved.”²¹ His current credit report does not include this debt, but earlier credit reports note a date of last activity in May 2004.²²

1.l. CREDITOR – \$2,146 owed. Payment plan arranged. Applicant received a settlement offer from this creditor on January 4, 2010. He was poised to pay the agreed upon amount (\$2,343.63) after the record closed.²³

1.m. TELECOMMUNICATIONS – \$314 owed. No evidence of payment. Applicant testified that he paid this balance “a long time ago,” but provided no evidence of payment.²⁴

1.n. CREDITOR – \$60. No evidence of payment. Applicant testified that he paid this balance, but provided no evidence of payment.²⁵

1.o. CREDITOR – \$3,082. No evidence of payment. Applicant provided evidence that he satisfied an account with this creditor, but his credit report notes that he has had more than one account with that creditor. Lacking evidence that the card upon which Applicant paid the balance is the card at issue, he was to provide evidence confirming

¹⁸ Tr. 27; Ex. I, *supra*, note 7 at 3.

¹⁹ Tr. 28.

²⁰ Ex. I, *supra*, note 7 at 3.

²¹ *Id.*

²² Tr. 30-32. While it was agreed among the parties that this may indicate that the debt was resolved, it was also agreed that Applicant would provide some evidence that the matter was appropriately addressed. Tr. 30-33. None was forthcoming.

²³ Ex. I, *supra*, note 7 at 3.

²⁴ Tr. 37.

²⁵ Tr. 39.

that the account at issue has been paid.²⁶ Although Applicant later wrote that the creditor had confirmed that this account was addressed, he provided no documentary evidence to this effect.²⁷

1.p. CREDITOR – \$2,283. Unpaid. Applicant is trying to determine the status and origin of this obligation.²⁸

1.q. CREDITOR – \$301 owed. Paid. Applicant stated that he paid this balance a number of years ago through a settlement offer. While he no longer retains a copy of the receipt, the parties' examination of the credit reports lead to the conclusion that the debt was paid.²⁹

1.r. CREDITOR (MEDICAL) – \$1,149 owed. No evidence of payment. Applicant testified that while he is willing to pay this debt, he "has done everything in [his] power to find out who this is owed to [but] hasn't been able to identify the creditor on [it]."³⁰ The debt no longer appears on his credit report.³¹ He believes it may be related to medical for his daughter, who first suffered from diabetes and required emergency medical care around the time the debt was acquired.³²

1.s. PUBLISHING ACCOUNT – \$93. No evidence of payment. Applicant has been aware of this entry on his credit report "for a while," but has never ordered anything from this company.³³ At the hearing, he expressed his willingness to pay the balance. After the hearing, he wrote that he submitted a check for \$93.99 to the company, but had not yet received evidence the check had cleared or had been received.³⁴

1.t. TELECOMMUNICATIONS – \$587. No evidence of payment. Applicant provided evidence of payment to this entity which he then believed showed payment of the debt at issue. Some question remained, however, as to whether his evidence corresponded

²⁶ Tr. 40-47.

²⁷ Ex. I, *supra*, note 7 at 3.

²⁸ Tr. 47.

²⁹ Tr. 47-48.

³⁰ Tr. 48.

³¹ *Id.*

³² Tr. 49-50.

³³ Tr. 51.

³⁴ Ex. I, *supra*, note 7 at 3.

with the account at issue.³⁵ After the hearing, Applicant confirmed that this is a separate account and valid debt. He wrote that payment was to be made in February 2010.³⁶

1.u. CREDITOR (MEDICAL) – \$264. Unpaid. Applicant has tried to identify this creditor, but has been “unable to discover any additional information” regarding this debt.³⁷

Regarding Applicant’s current finances, he testified that he does not “live beyond” his means and he is not irresponsible, “these things happened do [sic] to a divorce and a change of family life. And if you look at my current credit and my obligations, they’re all paid on time, every month. I haven’t been late on anything in several years now.”³⁸ His budget indicates that each month after expenses, he has a net monthly remainder ranging from \$1,311 to \$6,060 per month.³⁹ Although his savings account only has about \$60, his wife maintains a savings account with a balance of approximately \$54,000. Applicant does not participate in a 401k or other retirement plan with his present employer, but he participates in a stock purchase plan which will roll into a 401k-type program in 2010.⁴⁰ He was scheduled to meet with a certified financial planner two weeks after the record closed.⁴¹ Applicant has not considered a debt consolidation plan after a bad experience in the 1990s in which he “found out the hard way that those trash your credit almost as bad as not paying your bills. So [he has] stayed away from that stuff since then.”⁴²

Policies

When evaluating an applicant’s suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. 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. Under AG ¶ 2(c), this process is a conscientious scrutiny of a

³⁵ Tr. 53-55.

³⁶ *Id.* at 4.

³⁷ *Id.*

³⁸ Tr. 57-58.

³⁹ Ex. I, *supra*, note 7 at 5-6.

⁴⁰ *Id.*

⁴¹ *Id.* at 10. See *also* 65-66. Applicant was apprised of the fact that financial counseling is a consideration in the mitigating of financial considerations security concerns.

⁴² Tr. 64.

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.

The government must present evidence to establish controverted facts alleged in the SOR. 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. . . .”⁴³ The burden of proof is something less than a preponderance of evidence.⁴⁴ The ultimate burden of persuasion is on the applicant.⁴⁵

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 an 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). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁴⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁴⁷

⁴³ See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

⁴⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁴⁶ *Id.*

⁴⁷ *Id.*

Based upon consideration of the evidence, Guideline F (Financial Considerations) is the most pertinent to this case. Conditions pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

Analysis

Under Guideline F, “failure or an inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or an 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.”⁴⁸ The guideline sets out several potentially disqualifying conditions. Here, Applicant was alleged to have approximately \$58,000 in delinquent debt. He provided evidence that he has paid approximately \$900 of that sum. A debt of about \$44,833 may have been resolved through the repossession of a boat, reducing his debt to approximately \$12,260, but Applicant failed to provide evidence that the debt has been satisfied. Given the debts at issue and the lack of evidence of payments, Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts) and FC DC AG ¶ 9(c) (a history of not meeting financial obligations) apply. With such conditions raised, the burden shifts to Applicant to overcome the case against him and mitigate security concerns.

The vast majority of debts at issue were incurred and became delinquent several years ago. Most remained neglected until the issuance of the SOR. Although Applicant may not have known all of these accounts were derogatory entries on his credit report, he has at least been aware of the derogatory publishing company debt “for awhile.” Consequently, it may be assumed he has consulted his credit report at some point in the past few years or otherwise knew of its contents. Further, he was informed at the hearing that the record would close in January 2010. He ultimately chose to rely on post-hearing representations that additional evidence regarding payments made in 2010 could be later provided “upon request” in lieu of making arrangements to either pay some or all of the debts during the three weeks provided, or request further time to present appropriate evidence of payment.⁴⁹ Such representations do not equate to documentary evidence showing that a debt has been paid, settled, satisfied, or otherwise resolved. FC MC AG ¶ 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) does not apply.

In 2001, when Applicant filed for bankruptcy to save his home from foreclosure, he had recently separated from his first wife. The debt at issue mostly arose between that time and 2004, when Applicant was finally divorced. Finances continued to be tight,

⁴⁸ AG ¶ 18, which also notes, “An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.”

⁴⁹ Neither this forum nor this tribunal is designed for or amenable to open-ended monitoring of financial progress in terms of evidentiary submissions.

albeit to a lesser degree, until his daughter came to live with him in about 2006 and he was no longer responsible for child support. Additionally, he was unemployed for about two months in 2007. Such factors give rise to FC MC AG ¶ 20(b) (the conditions that resulted in the behavior 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) applies.

Applicant was apprised of the fact that financial counseling was a consideration that could be applied toward the mitigation of finance-based security concerns, but he failed to begin or complete such counseling before the record was closed. Consequently, FC MC ¶ 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) does not apply.

Applicant provided documentary evidence of payment constituting about \$900 of the approximately \$58,000 at issue. Such effort is minimal. Giving him the benefit of the doubt regarding the boat debt, which may have been resolved, Applicant still owes over \$12,000. Under either scenario, FC MC ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) would not apply.

Applicant's progress on his debt balance rests highly on whether the boat debt has been addressed. Applicant failed, however, to timely submit evidence that this debt is no longer owed or that it has been substantially reduced. Consequently, his outstanding debt still appears to remain somewhere between about \$12,000 and approximately \$57,000. Either sum is significant and sustains security concerns. Moreover, while he has made some nominal progress in actual payments to some of his creditors, he failed to provide evidence regarding accounts he testified he has disputed. Furthermore, while his testimony was consistently credible, he failed to substantiate his claims that those payments set to be made in the near future were actually transacted before the record closed, or to, on his own initiative, request leave to submit such evidence as soon as it became available. Lacking tangible evidence of more significant progress on the debts at issue, financial considerations security concerns remain unmitigated.

Whole Person Concept

Under the whole person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the circumstances. An 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 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, as well as the “whole person” factors. Applicant is a mature, educated, and credible witness who incurred significant debt during and after his 2001 separation from his first wife. He did so because spousal and child support, plus the maintenance of two households, proved to be financially onerous. In the interim, his debt became delinquent. By 2006, however, payment of child support was obviated when his daughter came to live with him. Around that same time or shortly thereafter, payments to his ex-wife were reduced to about \$300 a month. Despite the lessening of these financial burdens, his debts remained neglected while Applicant otherwise continued to live significantly within his means.

The evidence shows that Applicant knew about at least some of the debts at issue, but took no, or exercised minimal, effort to address them before the SOR was issued. He eschewed the pursuit of a consolidation loan and chose not to seek financial counseling to help him address his debt. He provided only minor evidence that prior to the hearing he had applied any of his substantial monthly net income toward satisfying his delinquent debts. With regard to those debts Applicant testified he has disputed, he presented no evidence of formal dispute with either his creditors or the credit reporting bureaus. With regard to the largest debt alleged, the boat judgment, he apparently failed to seek documentation confirming that his debt was either reduced or relieved.

In short, while it is very possible that a significant portion of the debt at issue has been properly disputed or otherwise addressed, Applicant only provided documentary evidence that approximately \$900 dollars of the approximately \$58,000 at issue has been paid. In these cases, the burden is placed squarely on the Applicant to provide mitigating evidence. In that burden, Applicant failed. While Applicant’s representations indicate sufficient evidence of significant progress may be available in the near future that would adequately mitigate security concerns, consideration of the debts enumerated in the September 2009 SOR is not open-ended. For lack of adequate documentation, financial considerations security concerns remain unmitigated. Clearance is denied.

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	For Applicant
Subparagraph 1.e	Against Applicant
Subparagraph 1.f	For Applicant
Subparagraph 1.g	Against Applicant
Subparagraph 1.h	For Applicant
Subparagraph 1.i	For 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	For Applicant
Subparagraph 1.r	Against Applicant
Subparagraph 1.s	Against Applicant
Subparagraph 1.t	Against Applicant
Subparagraph 1.u	Against Applicant

Conclusion

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

ARTHUR E. MARSHALL, JR.
Administrative Judge