



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



In the matter of:)
)
) ISCR Case No. 06-22454
)
)
Applicant for Security Clearance)

Appearances

For Government: Fahryn E. Hoffman, Esquire, Department Counsel
For Applicant: *Pro Se*

July 16, 2008

Decision

HEINY, Claude R., Administrative Judge:

Applicant has 13 past due accounts totaling approximately \$22,000 arising from his 2003 divorce. Applicant has paid none of the debts. After a thorough review of the case file, pleadings, exhibits, and evidence, I conclude Applicant has failed to rebut or mitigate the government’s security concerns under financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

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 to Applicant a Statement of Reasons (SOR) on March 5, 2008, detailing security concerns

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) approved by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

under Guideline F, financial considerations, based on a history of financial problems as evidenced by delinquent debts.

On March 25, 2008, Applicant answered the SOR, and requested a hearing before an administrative judge. On April 22, 2008, I was assigned the case. On May 7, 2008, DOHA issued a notice of hearing scheduling the hearing held on May 22, 2008. The government offered Exhibits (Ex.) 1 through 4, which were admitted into evidence. Applicant testified on his own behalf and submitted Exhibits A through R, which were admitted into evidence.

The record was kept open to allow Applicant to submit additional matters. On July 14, 2008, additional documents were received. Department Counsel did not object to the material and it was admitted into evidence as Ex. S. On June 5, 2008, the transcript (Tr.) was received.

Findings of Fact

In his Answer to the SOR, Applicant admitted being incarcerated for 109 days (SOR ¶ 1. m) and denied the remaining allegations. He also provided additional information to support his request for eligibility for a security clearance. The admission is incorporated herein as a finding 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 44-year-old senior engineering technician (Tr. 87) who has worked for a defense contractor since 1991, and is seeking to maintain a security clearance. Applicant's co-workers and supervisors state Applicant is serious-minded, dependable, reliable, effective, dedicated, security conscious, and a trusted courier of classified information who displays the highest level of integrity and pride. (Ex. J)

Applicant was divorced in February 2003. (Tr. 130) In 2003, he was making \$40,000 a year. (Tr. 71) The divorce decree set forth the responsibility for the joint obligations. Applicant indicated he would submit a copy of the decree following the hearing. (Tr. 97) No copy was received.

In December 2003, ten months after the divorce decree, Applicant was cited for civil contempt for failing to comply with six of the judge's orders related to his divorce. In order to avoid arrest, Applicant stopped going to work, and moved out of his home and into a motel where he was arrested attempting to jump out the window. (Ex. 2) He had marijuana in the room for which he received a \$1,500 fine. (Tr. 106, Ex. 2) He was sentenced to 30 days in jail for each of six counts of civil contempt, for a total of 180 days. On January 15, 2004, he started his jail sentence and served 109 days in jail. (Tr. 102)

Applicant and his now ex-wife owned a home together. He was to buy out her equity in the home. (Tr. 130) He provided a check for \$18,000 that was applied to joint debts and was unable to obtain additional funds with which to buy out her equity. (Tr. 130) All utility bills were to be paid from the sale of the home. (Tr. 59) Three of the SOR

debts are utility bills related to the family home: SOR ¶ 1. h (\$248) was the cable TV box, SOR ¶ 1. k (\$22) was for long distance telephone service, and SOR ¶ 1. l (\$165) was another utility bill. (Tr. 59, 69, 88, Answer to SOR) Applicant surrendered the house to his ex-wife when he went to jail. (Tr. 74, 131) The house was later sold. Applicant never received his \$7,500 from the sale of the house. The funds were used to address obligations.

Applicant failed to pay his divorce attorney's fees (\$4,870) and failed to pay his appellate attorney's fees (\$3,765) owed since January 2004. A garnishment was started to recover payment on one of the debts. The garnishment stopped before the debt was paid. In his written interrogatories (Ex. 2), dated November 2007, Applicant said he planned to pay this debt "within the next 10 years." (Ex. 2, page 8) In May 2007, he started making \$100 monthly payments on the appellate attorney's bill. (Tr. 56)

In 2003, Applicant sought credit counseling the Consumer's Credit Counseling Service (CCCS). He did not attend a financial management class, but filled out paperwork. (Tr. 189) In discussing his financial situation with CCCS, he listed 17 debts totaling approximately \$58,000 and later added an additional \$3,800 debt owed his Appellate attorney. Applicant made no payments under the CCCS plan, which would have required monthly payments of \$952. (Tr. 42, 134, Ex Q) CCCS suggested Applicant file for bankruptcy protection. (Tr. 38, 135) Applicant met with a bankruptcy attorney and learned most of his debt could not be discharged. (Tr. 42-43, 180)

In the CCCS list of debts, three debts (creditors 3, 4, and 5) totaling approximately \$17,400 were for joint obligations. Applicant withdrew \$18,000 from his retirement plan and provided his ex-wife's attorney with the \$18,000 check. The check was supposed to pay the debts listed to the three creditors, however, Applicant does not know if any of the creditors were paid from the \$18,000. (Tr. 94)

In October 2005, Applicant completed an Electronic Questionnaires for Investigations Processing (eQIP). In response to question 27, financial record, he listed the \$4,870 garnishment for unpaid attorney's fees and a \$1,500 garnishment for a major credit card company. In response to question 28, financial delinquencies, he listed \$3,765 owed his appellate attorney, \$2,600 owed a credit card company, \$4,021 owed a credit card company, \$441 owed on a credit card, and \$2,500 owed on a credit card.

A credit card company obtained a judgment against Applicant, which he paid by garnishment from April 2005 to June 2006 and with money orders after July 2006. (Tr. 51) In February 2008, the judgment was satisfied. (Ex. D) An action was brought by a credit card company against Applicant and his ex-wife. In the CCCS material this debt was listed as creditor 9 in the amount of \$2,500. Applicant is unsure if this is the same debt listed in SOR ¶ 1. c. (Tr. 54) In October 2007, the matter was dismissed without prejudice and could be re-filed. (Tr. 54, Ex. E) As of April 2008, Applicant had paid a law firm approximately \$1,800 by garnishment and money order on a judgment. (Ex G) Applicant paid \$357.65 on another account. (Ex H)

On May 5, 2008, Applicant sent letters (Ex. I) to eight creditors disputing that he was solely responsible for the debts listed in the SOR ¶ 1. b (\$4,292), ¶ 1.j (\$379), and ¶ 1.k (\$22) He also sent letters asking that he be shown he was solely responsible for debts which he previously admitted were his debts: SOR ¶ 1. e (\$365) (Ex. L, Creditor 13) and SOR ¶ 1. g (\$665, acknowledged as a garnishment listed on his eQIP). He also sent letters to creditors listed in his credit report that are not listed as being debts of concern on the SOR: two debts (\$3,479 and \$665, Tr. 94, SOR ¶ 1. g) with the same creditor, and a debt (\$3,700) owed on another credit card. (Tr. 58) Applicant listed on his CCCS form (Ex. Q, Creditor 3 and 5) he owed the creditor and acknowledged he had a joint credit card with this creditor. (Tr. 152) This last creditor agreed to delete the account from his credit report. (Ex. S)

Following the hearing, Applicant submitted letters to creditors stating he was not solely liable for the debt and demanding they show he was. Items 4 and 5 were utility bills (SOR ¶ 1. h, \$248 and SOR ¶ 1. l, \$165) on the home he and his now ex-wife owned before the divorce. Item 6 relates to a \$37 medical bill (SOR ¶ 1. a).

In July 2006, Applicant received a notice to cure from a law firm related to the debts listed in SOR ¶ 1. b (\$4,292) and 1. c (\$6,364). In July 2006, Applicant sent the law firm a letter disputing the debts because he had not done business with the listed creditors. (Ex. R) The record fails to contain creditor's response to Applicant's letter, however, the debts continue to appear on Applicant's credit reports. (Tr. 72) Applicant has not followed up with the creditor since his initial 2006 response. (Tr. 120)

Applicant lives in an apartment and has a 1993 pick up truck and a 1994 car. (Ex O) Since 2004, he has not been late on his rent. (Tr. 48, Ex. M) In April 2008, he paid his work expenses and is current on his travel expenses. (Tr. 68, Ex. N) In May 2003, he obtained an \$18,000 loan from his IRA. (Ex. P) In June 2008, his last payment repaying the loan was due. (Tr. 43)

Applicant's current salary is approximately \$50,000 per year. (Tr. 165) Applicant's gross income is approximately \$1,000 per week. (Ex B) Applicant has \$4,000 in savings and approximately \$46,000 in his company's retirement savings plan. (Ex C) Eight percent of his weekly income goes to a saving's plan. (Tr. 50) He also purchases U.S. savings bonds monthly. (Tr. 50) Applicant's weekly child support obligation of \$132 is deducted from his pay. (Tr. 76)

Applicant stated he would pay the debts if they are proven to be his debts. (Tr. 193) The SOR alleged Applicant owed approximately \$22,000 on 13 debts. A summary of the current status of the debts follows:

	Creditor	Amount	Current Status
a	Medical Services	\$37	Unpaid. Ex. 4.
b	Bank credit card.	\$4,292	Unpaid. Ex. 4. Listed as a closed account on Applicant's March 2008 credit report. (Ex. L)

			The balance was 4,292 with the last payment made in March 2003. Applicant admits this debt, but disputes the amount owed.
c	Collection account for credit card debt.	\$6,364	Unpaid. Ex. 4. Listed as a closed account on Applicant's March 2008 credit report. (Ex. L) High credit was \$2,679 and amount past due is \$6,717. Applicant admits this debt. (Tr. 122) In his CCCS plan it was creditor 11. (Tr. 117, Ex. Q)
d	Collection account for credit card debt.	\$8,083	Unpaid. Ex. 4. Listed as a closed account on Applicant's March 2008 credit report. (Ex. L) High credit was \$3,479 and amount past due is \$8,429. Applicant recalls the debt (Tr. 55, 119), but disputes the amount owed. In his CCCS plan it was creditor 7. (Tr. 117, Ex. Q)
e	Credit card debt.	\$365	Unpaid. Applicant listed as his debt on his CCCS form. (Ex. Q, Creditor 13) Listed as a closed account on Applicant's March 2008 credit report. (Ex. L) Last payment made in February 2004. Amount charged off \$365.
f	Collection service.	\$610	Unpaid. Ex. 4. Listed as a closed account on Applicant's March 2008 credit report. (Ex. L) Amount past due \$621.
g	Collection service on a credit card debt.	\$665	Unpaid. Ex. 4. Listed as a closed account on Applicant's March 2008 credit report. (Ex. L) Amount past due \$665. Applicant admitted as his debt. He is waiting for a response from the creditor. (Tr. 154)
h	Collection for utility bill.	\$248	Unpaid. Ex. 4. Applicant admits owing for the return of the cable box.
i.	Collection agency.	\$904	Unpaid. This is a collection company attempting to collect the debt Applicant listed as his debt owed to a different creditor on his CCCS form. (Ex. Q, Creditor 10) Ex. 4. Listed as a closed account on Applicant's March 2008 credit report. (Ex. L) Amount past due \$915.
j	Collection agency collection on a joint department store credit card debt.	\$379	Unpaid. Ex. 4. Listed as a closed account on Applicant's March 2008 credit report. (Ex. L) Amount past due \$388. Applicant admitted owing the department store debt, but sent letters to creditor demanding proof that he was solely responsible for the debt. (Tr. 148, Ex. I, Ex. S)

k	Telephone service at home owned by Applicant and his ex-wife. (Tr. 59)	\$22	Unpaid. Listed as charged off in Ex. 4. Listed as a closed account on Applicant's March 2008 credit report. (Ex. L) Amount past due \$22.
l	Collection for utility bill.	\$165	Unpaid. Ex. 4. Applicant admits this is a utility debt owed on his prior home.
m	Contempt of County court.		Served 109 days in jail for failing to follow judge's orders. (Tr. 74)
	Total of debts listed in SOR	\$22,134	

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 (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

An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial 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.

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 holding 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.

The record evidence supports a conclusion Applicant has a history of financial problems. The SOR lists 13 debts totaling approximately \$22,000 that have remained unpaid since 2003. Six of the debts are under \$400, ranging from \$22 to \$379. Disqualifying Conditions (DC) ¶ 19(a), “inability or unwillingness to satisfy debts” and 19(c), “a history of not meeting financial obligations,” apply.

In 2003, Applicant sought financial assistance from CCCS. He completed a form listing the majority of the debts in the SOR. Different collection companies are attempting to collect some of the debt, so the names in the CCCS form and on the SOR differ. Applicant does not recognize the new collection companies. In October 2005, when Applicant completed his eQIP, he listed two garnishments and a number of past

² Revised adjudicative guidelines (AG) ¶ 18.

due debts. In November 2007, when he answered financial written interrogatories, he again acknowledged a number of the debts. Now he claims he will pay the debts if it is proven to him that they are his debts. They are his debt and he has not paid them.

Applicant has written to various creditors asking they prove he was “solely” liable on the debts and not jointly liable. Under the law, he is liable on his joint obligations. If the divorce decree required his wife to pay a certain debt, he could seek financial redress from his ex-wife, but he would still be liable to the creditor to pay the debt.

Even the small utility bills (SOR ¶ 1.jk, \$22; SOR ¶ 1.1, \$165; SOR ¶ 1.h, \$248; and SOR ¶ 1.j. 379) and the \$37 clinic bill (SOR ¶ 1.a) have not been paid. Applicant is making payment on his appellate attorney debt knowing his wages will be garnished if he does not continue to make voluntary payments.

Under AG ¶ 20(a), the disqualifying condition may be mitigated where “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.” Applicant’s financial problems were contributed to by his 2003 divorce. The debts were incurred long ago, but remain unpaid. The debts are frequent and his failure to pay them does cast doubt on his good judgment. AG ¶ 20(a) does not apply.

AG ¶ 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,” applies. Applicant was divorced, but that occurred five years ago and even the small bills from that divorce have yet to be paid. Applicant has not acted responsibly concerning the debts. Both his divorce attorney and his appellate attorney had to resort to garnishments for payment. Civil contempt orders were required to force Applicant to comply with the judge’s orders related to the division of property in the divorce. AG ¶ 20(b) does not apply.

Evidence that “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” under AG ¶ 20(c), does not apply. Applicant went to CCCS, but received no financial counseling. He merely completed some forms and was told he should file bankruptcy.

Similarly, AG ¶ 20(d) which applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” does not apply. Payment by garnishment or making payment knowing garnishment is likely fails to show good faith. None of the other bills have been paid.

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) 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. Applicant was 39 or 40 when he was divorced. The divorce resulted in civil contempt under which Applicant spent 109 days in jail. The divorce occurred five years ago and none of the bills have been paid. He took out a loan against his retirement plan and turned the check over to his ex-wife's attorney. He says, but provided no documentation, the funds were to pay joint obligations. This debt has now been repaid, but it was not a debt of concern listed in the SOR. None of the debts listed in the SOR have been paid.

Applicant does not appear to be living beyond his means. His vehicles are not new and his has never been late on his rent in the past four years. The unpaid debt relates to his divorce. There is no evidence of delinquent debt unrelated to the divorce.

In 2003, when he listed the debts in CCCS papers, in 2005, when he listed some of his debts on his eQIP, and in 2007, when he listed some debts in response to the interrogatories, he acknowledged the debts were owed. Now, five years later, he is not sure the debts are his. I find they are his debts even if they were initially joint obligations.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial considerations.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a security clearance. The awarding of a security clearance is not a once in a life time occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under the Applicant's current circumstances, Applicant has paid none of his past due obligations and a clearance is not recommended, but should the Applicant be afforded an opportunity to reapply for a security clearance in the future,

having paid the delinquent obligations, established compliance with a repayment plan, or otherwise addressed the obligations, he may well demonstrate persuasive evidence of his security worthiness. However, a clearance at this time is not warranted.

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 -1m.: 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.

CLAUDE R. HEINY II
Administrative Judge