



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



In the matter of:)	
)	
)	ISCR Case No. 12-04554
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

04/30/2014

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations security concern. Eligibility for access to classified information is denied.

Statement of the Case

On November 19, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. DOHA acted under Executive Order (EO) 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 adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

Applicant answered the SOR on December 27, 2013, and elected to have his case decided on the written record. Department Counsel submitted the Government's File of Relevant Material (FORM) on February 25, 2014. The FORM was mailed to

Applicant who received it on March 11, 2014. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He submitted exhibits (AE) A and B, which were admitted into the record without objection. The case was assigned to me on April 24, 2014.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations. Those admissions are adopted as findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 50 years old. He is divorced and has two children from an earlier marriage. He has worked for his current employer, a defense contractor, since January 2009. He received an associate's degree in 1998 and is currently working towards completion of his bachelor's degree. He served on active duty in the Air Force from 1983 to 2004 and retired with an honorable discharge.¹

The SOR lists three delinquent debts, the first, a credit card account in the amount of about \$3,164 (SOR ¶ 1.a), the second, a credit card account in the amount of \$8,217 (SOR ¶ 1.b), and the third, also a credit card account in the amount of \$15,380 (SOR ¶ 1.c). These debts are supported by credit reports dated December 2011 and June 2013.²

Applicant's financial difficulties resulted from his divorce in February 2008. He was ordered to pay alimony in the amount of \$850 monthly, child support in the amount of \$850, and the court awarded his ex-wife \$980 monthly as her one-half share of his military retirement pay. He said he was left with receiving \$650 monthly as his retirement pay. In 2010, Applicant gained custody of his two children. He continued to pay child support to the state where his divorce was filed and an accumulated balance of about \$30,000 resulted. Applicant claims his ex-wife received about one-half of that amount and he received about \$16,000. He claims he paid current accounts with this money without providing any specific documentation. He used the credit cards listed above to pay for living expenses after his divorce. He fell behind in making the payments and they eventually became delinquent.³

Although not alleged in the SOR, Applicant's financial history also includes owing federal income taxes for tax years 2008 through 2010 for which he has established a payment plan of \$170 monthly on a balance of \$11,000. Under this plan the debt will be

¹ Item 4.

² Items 1, 7-8.

³ Items 5-6.

paid in July 2016. In December 2007, his residence was foreclosed for failing to make the monthly payments. The property was sold by the lender and no deficiency resulted.⁴

Applicant entered into a debt consolidation plan in August 2013. The plan only encompasses two of the SOR debts (§§ 1.a and 1.b). Applicant has been making monthly payments of \$272 since October 2013 towards the payment plan, but so far none of those payments have been disbursed to the creditors. He claims he has telephonically contacted the collection agency responsible for SOR debt § 1.c, but that a representative refused to talk with Applicant unless he gave the representative his bank account number, which Applicant refused to do. This account is unresolved.⁵

Applicant's personal financial statement indicated he has a \$151 net monthly remainder after his expenses and debt payments. This does not account for any payments toward the SOR-related debts.⁶

Policies

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 used 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 overarching 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, an "applicant is

⁴ Items 5-6. This information was not specifically alleged in the SOR and will only be used in assessing Applicant's whole-person qualities.

⁵ Items 5-6; AE A-B.

⁶ Items 6.

responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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 an 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

AG ¶ 18 expresses the security concern for financial considerations:

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 notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has delinquent debts that remain unpaid or unresolved. I find both disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

(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;

(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;

(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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's debts are recent and remain unresolved. He did not provide sufficient evidence to show that the debts are unlikely to recur. AG ¶ 20(a) does not apply. Applicant provided evidence that in 2008 he went through a divorce, which resulted in significant financial hardship, and contributed to his financial problems. However, in order for this mitigating condition to fully apply, Applicant must demonstrate responsible behavior in light of the circumstances. He waited until August 2013 to arrange a debt consolidation plan, which did not include the highest balance debt. There is no evidence that payment towards any debts have been made under this plan. I find AG ¶ 20(b) partially applies. Applicant presented some evidence of financial counseling by contacting a debt consolidation company, but there is no clear evidence that Applicant's financial problems are being resolved or under control because the debts remain unpaid. There is some evidence that he has made a good-faith effort to pay the SOR debts ¶¶ 1.a and 1.b. I find AG ¶¶ 20(c) and 20(d) partially apply.

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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant's past military service, and his divorce. However, he has not shown a track record of financial stability, to include his past federal tax debt, his foreclosure, and the unpaid SOR-related debts. Although some mitigation is present, his record lacks sufficient evidence to mitigate the security concerns.

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 failed to mitigate the security concerns arising under Guideline F, 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
Subparagraphs 1.a – 1.c:	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.

Robert E. Coacher
Administrative Judge