



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



In the matter of:)	
)	
)	ISCR Case No. 12-04934
)	
Applicant for Security Clearance)	

Appearances

For Government: Philip J. Katauskas, Esquire, Department Counsel
For Applicant: *Pro se*

11/29/2012

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings, testimony, and exhibits, I conclude that Applicant failed to rebut or mitigate the Government’s security concerns under Guideline F, Financial Considerations. His eligibility for a security clearance is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on January 19, 2012. The Defense Office of Hearings and Appeals (DOHA) issued Applicant an undated Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. DOHA acted 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 adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on August 14, 2012, and elected to have a hearing before an administrative judge. On September 4, 2012, he submitted a second notarized answer to the SOR. The case was assigned to me on September 27, 2012. I

convened a hearing on November 7, 2012, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses and introduced four exhibits, which were marked Ex. 1 through 4 and entered in the record without objection. Applicant testified, called no witnesses, and introduced three exhibits, which were identified and marked as Applicant's Ex. A through C and entered in the record without objection. DOHA received the hearing transcript (Tr.) on November 15, 2012.

Findings of Fact

The SOR contains eight allegations of financial conduct that raise security concerns under Guideline F, Financial Considerations (SOR ¶¶ 1.a. through 1.h.) In his August 14, 2012, Answer to the SOR, Applicant denied each of the allegations and added the following statement: "Chapter 7 bankruptcy was started on July 24, and will be officially filed with the [name of state omitted] courts on August 17th. I am no longer liable for this debt." In his September 4, 2012, Answer to the SOR, Applicant admitted each of the eight allegations, and he added that his bankruptcy filing was changed to September 18. I conclude that Applicant's statement of September 4, 2012, is his final answer to the SOR, and his admissions are entered as findings of fact.

Applicant is 45 years old. He was married for the first time in 1992. He and his first wife divorced in 1995. In 1999, Applicant married for the second time. His second wife was foreign-born and a naturalized U.S. citizen. Applicant and his second wife divorced after 12 years of marriage. No children were born to either of Applicant's marriages. (Ex. 1; Ex. B; Tr. 49-50.)

Applicant has held a security clearance in the past, but he was not sure when the clearance was granted. When he filed his e-QIP on January 12, 2012, he was seeking a security clearance for a consultant position he hoped to acquire with a government contractor. (Ex. 1; Tr. 21-22.)

The SOR alleges that Applicant is responsible for eight delinquent debts totaling \$109,000. One of the debts alleged by the SOR is a past-due amount of \$13,253 on a mortgage debt of \$326,000 (SOR ¶ 1.f.).

Applicant's gross annual income in September 2011 was between \$136,000 and \$148,000. His wife's gross annual income was approximately \$60,000. Together Applicant and his wife had a combined annual gross income of approximately \$200,000. During their 12 years of marriage, both Applicant and his wife were fully employed. (Tr. 24-25, 35.)

Applicant delegated bill-paying, tax-paying, and financial management responsibilities to his wife. He provided two reasons for the delegation: "The main reason was . . . so that I could excel because of my area of expertise, computers. And I was very good at it so that I could make more and more money. The other area was I'm

kind of partially dyslexic, so it's hard, numbers and - - simple numbers and stuff like that are not exactly my forte. I'm not good at it."¹ (Tr. 35-36.)

At his hearing, Applicant reported that, in September 2011, his motorcycle was repossessed, and he learned that his wife was not paying their creditors.² After many conversations with his wife, Applicant was unable to determine why their bills had not been paid. She was unable to tell him how their finances had fallen into disarray. Applicant separated from his wife. He also stopped working. He explained: "My reasoning was to take off September up until January so I could get the house in order, figure out what I owed through the separation agreement and then start paying it back." He supported himself during this time by selling investments he had in the stock market. (Tr. 34-39.)

In September 2011, when he decided to stop working, Applicant's employer offered him full-time work. Applicant declined the position. At his hearing, Applicant acknowledged that he was unemployed and had not had gainful employment since September 2011. Since March 2012, he has received support from his parents, his brother, and his former wife. (Tr. 32-34, 42, 53-55.)

In July 2012, Applicant began proceedings to declare Chapter 7 bankruptcy. He provided documentation at his hearing establishing that his Chapter 7 bankruptcy petition was filed in September 2012. On his bankruptcy petition, Applicant listed assets totaling \$258,622 and liabilities totaling \$433,588. All of the delinquent debts listed on the SOR are listed on his bankruptcy petition. (Answer to SOR; Ex. A.)

Applicant's delinquent debts include the following: a \$551 account in collection status (SOR ¶ 1.a.); a payment of \$724 that is 90 days or more past due on an account with a balance of \$5,566 (SOR ¶ 1.b.); an account totaling \$12,396 in charged-off status (SOR ¶ 1.c.); an account totaling \$15,881 in collection status (SOR ¶ 1.d.); a \$274 account in collection status (SOR ¶ 1.e.); an account with a balance of \$326,000 that is \$13,253 past due (SOR ¶ 1.f.); an account totaling \$55,473 that is in charged-off status (SOR ¶ 1.g.); and an account totaling \$5,638 in charged-off status (SOR ¶ 1.h.) (SOR.)

In response to DOHA interrogatories, Applicant provided a June 2011 settlement offer from the creditor identified at SOR ¶ 1.c. The creditor agreed to settle the debt for \$11,510, to be paid by one check of \$1,920 in June 2011 and five checks of \$1,918 paid between July and November 2011. Applicant provided documentation corroborating the June 2011 payment. He also remitted a check for \$1,918 in July 2011, but it was

¹ Later in his hearing, Applicant stated that he paid all of his financial obligations himself before he married his second wife. He also asserted that he had no disability that prevented him from carrying out financial responsibilities. (Tr. 50-52, 57.)

² In his March 2012 interview with an authorized investigator, Applicant stated that he learned of his financial delinquencies when his motorcycle was repossessed in June 2011. He also stated that he had paid the debts alleged at SOR ¶¶ 1.c. and 1.d. (Ex. 2.)

returned to his bank because he had insufficient funds to pay the amount indicated on the check. (Item 2.)

Applicant's second wife provided a letter of character reference for him. She stated that Applicant was a hard worker and a trustworthy employee. She also stated: "He is totally immersed in his career and takes his job very seriously, that during our marriage he left everything in the household, including budget and finances, under my care even to the point that most of the time I [had] to make a decision by myself." (Ex. B.)

Applicant's brother also provided a letter of character reference for him. Applicant's brother stated that he was honest, trustworthy, and capable. (Ex. C.)

Applicant was interviewed by an authorized investigator in February 2012. He told the investigator that he had not had consumer credit counseling. At his hearing he stated that he felt responsible for his debts, but his circumstances prevented him from paying them. (Ex. 2; Tr. 55-57.)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 have access to such information." *Id.* at 527. The President has 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." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider and apply 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 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, the administrative judge applies these guidelines 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, 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 in seeking 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 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

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly, under AG ¶ 19(c), “a history of not meeting financial obligations” may raise

security concerns. Applicant accumulated substantial delinquent debt and was unable or unwilling to pay his creditors. This evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant's financial delinquencies. Unresolved financial delinquency might be mitigated if it "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." (AG ¶ 20(a)) Additionally, unresolved financial delinquency might be mitigated if "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." (AG ¶ 20(b)) Still other mitigating circumstances that might be applicable include 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" (AG ¶ 20(c)) or "the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." (AG ¶ 20(d)) Finally, if "the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of options to resolve the issue," then AG ¶ 20(e) might apply.

Applicant admitted a history of financial difficulties and inattention to his financial responsibilities. He and his former wife had steady employment for their 12 years of marriage, and they had a combined annual income of approximately \$200,000. When he learned that his wife had not paid their debts and they had financial delinquencies, Applicant declined an offer of full-time employment and elected not to take gainful employment for almost 14 months. While Applicant's financial problems may have been a circumstance initially beyond his control, he did not act responsibly under the circumstances.

Applicant's unresolved delinquent debts total approximately \$109,000. Three of the debts alleged on the SOR are for less than \$750. One of those debts is for \$274. The record reflects that the eight delinquencies alleged on the SOR remain unsatisfied and have occurred under circumstances that are likely to recur.

Applicant sought protection from his creditors in September 2012 by declaring Chapter 7 bankruptcy. While bankruptcy is a legitimate legal tool in the resolution of debt, it does not erase concerns about an individual's good-faith efforts to satisfy his creditors and his current and future financial stability.

DOHA's Appeal Board has explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the “good-faith” mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant’s debts. The Directive does not define the term “good-faith.” However, the Board has indicated that the concept of good-faith ‘requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.’ Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the “good-faith” mitigating condition.]

(ISCR Case No. 02-30304 at 3 (App. Bd. April 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001))).

Applicant was inattentive to his financial responsibilities. He delegated all financial matters and bill-paying to his wife. When his wife’s actions caused the couple to have financial difficulties, he failed to address them and to demonstrate that he had made good-faith efforts to satisfy his delinquent debts. Moreover, Applicant has not had financial counseling, and there is no evidence that his financial situation is under control. He remains unemployed and continues to accept support from family members. I conclude that AG ¶¶ 20(a), 20(b), 20(c), and 20(d) do not apply in mitigation in Applicant’s case.³

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 relevant 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.

³ AG ¶ 20(e) does not apply to the facts of Applicant’s case.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is a mature person of 45 years. He has had a successful career, and he has earned a high income. His financial problems began several years ago and are ongoing. Despite these financial problems, he has failed to take an interest in and carry out his financial obligations. He has relied on bankruptcy to resolve his delinquent debts. While Applicant has a legal right to pursue resolution of his debts through bankruptcy, his failure to act in good faith to carry out his financial obligations continues to raise security concerns about his judgment and reliability.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising from his financial delinquencies.

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.h.: 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.

Joan Caton Anthony
Administrative Judge