



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



In the matter of:)
)
) ISCR Case No. 12-07158
)
Applicant for Security Clearance)

Appearances

For Government: Richard Stevens, Esq., Department Counsel
For Applicant: *Pro se*

07/23/2013

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government's security concerns under Guidelines F, financial considerations, and J, criminal conduct. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On April 1, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F and J. 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 adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

In an undated answer to the SOR, Applicant requested a hearing before an administrative judge. The case was assigned to me on June 3, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 11, 2013. I

convened the hearing as scheduled by video teleconference on July 9, 2013. The Government offered Exhibits (GE) 1 through 8, and they were admitted into evidence without objection. Applicant testified, and he offered Exhibits (AE) A-C. The record was held open until July 22, 2013, to provide Applicant the opportunity to present additional exhibits, which he did. They are marked AE D through HH. They were admitted into the record without objection.¹ DOHA received the hearing transcript (Tr.) on July 17, 2013.

Procedural Issues

Department Counsel noted an administrative error in the SOR. The SOR does not have a ¶ 1.n. He also noted that SOR ¶¶ 1.a and 1.j are duplicate debts.²

Findings of Fact

Applicant admitted all SOR allegations in ¶ 1 and denied all the allegations in ¶ 2 except ¶ 2.b. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 34 years old. He is a high school graduate and earned an associate's degree in business in 2009. He was married from 2002 to 2004. He has one child from the marriage, age 13. He remarried in 2009. He has two children from the marriage, ages three and two. He has two other children from previous relationships, ages 11 and 5. Applicant pays child support for the three children who do not live in his household.³

Applicant has 21 delinquent debts totaling approximately \$37,000. Two are judgments, eight are medical debts, and six are student loans. Applicant provided proof that he made eight payments of \$234.49, one payment of \$61.66, and one payment of \$56.62, on his student loans from October 4, 2012, to December 6, 2012. He believes he currently owes \$22,000 for his student loans. He did not provide an actual balance owed from the creditor.⁴ None of the remaining alleged debts are paid or resolved.⁵

Applicant hired a credit consolidation attorney in March 2013. The attorney is to contact Applicant's creditors and develop a monthly repayment plan to resolve his delinquent debts. The monthly fee is \$29. He was informed two weeks ago that the attorney has sent letters to Applicant's creditors and now they must wait for responses.

¹ Hearing Exhibit I is Department Counsel's memorandum.

² Tr. 10-11.

³ Tr. 33, 45-46.

⁴ AE C.

⁵ Tr. 24-26, 65-66, 69.

Applicant will eventually be advised how much he must pay monthly to the plan to resolve his debts.⁶

Applicant attributes his financial problems to unemployment. In 2006, he was laid off from a seasonal job. He was unemployed from 2006 to 2008, except for four months in 2008. He received unemployment benefits. He attended school in 2009. He worked from March 2012 to June 2012 and from August 2012 to November 2012. He was deployed overseas during his employment, and when he returned in November 2012, he had saved about \$17,000. He and his family live in a trailer that he leases to own. It was in need of repair and he made arrangements with the owner to apply the repair costs to the eventual purchase price of the home. He estimated he spent about \$15,000 on the repairs. He felt making the home habitable for his family was a priority. Applicant understands he is responsible for the delinquent debts, but is unable to pay them at this time. He thought by going to school and furthering his education he would be able to get a better job, but it did not work out that way. Instead, he accumulated more debt through student loans.⁷

Applicant's wife worked for an insurance company for six months in 2010 and then was laid off. She began working for another insurance company in March 2013. Applicant stayed home with the children when his wife worked because daycare was too expensive.⁸ Applicant's wife is making monthly payments toward about \$50,000 in student loans.⁹

Applicant had difficulty paying his child support at times. When he would get behind in his payments, his driver's license would be suspended until the arrearage was resolved. Applicant stated that he had agreements with the mothers of his children to pay them directly. They understood that it would be difficult for him to obtain a government contract job if he was delinquent on his child support payments. They agreed not to pursue the payments so Applicant could get a job.¹⁰ When the children are with Applicant during the summers and holidays he does not have to pay child support. He did not modify the terms of his child support orders, so when he did not make payments as agreed upon by the mothers, it would trigger suspension of his driver's license. Applicant stated the charges of driving on a suspended license were later reduced and he paid the fines. Applicant receives unemployment benefits that he uses to help pay his child support and other expenses.¹¹

⁶ Tr. 26-27, 63-65, 73-74; AE FF.

⁷ Tr. 23-24, 27-36, 44, 50-53.

⁸ AE DD.

⁹ Tr. 29, 32, 66.

¹⁰ AE J, K, L, M.

¹¹ Tr. 28, 36-41, 47-49, 67-70.

The \$4,757 judgment in SOR ¶ 1.a (duplicate in ¶ 1.j) is for a personal loan.¹² Applicant had two loans with the creditor and paid one with his tax refund. He has six medical debts. He indicated these were incurred in 2006 or 2007 when he broke his hand. He had medical insurance, but was later told it was a preexisting condition and not payable. He did not provide proof the debts are being resolved.¹³

Applicant was charged with criminal trespass in 1998. It was a dispute with a person he believed stole his dog. He was acquitted of the charge.¹⁴

Applicant was found guilty in March 2001 of two counts of theft by receiving stolen property. He purchased video equipment from a friend and later learned it was stolen. He was sentenced to pay a \$400 fine and 12 months of probation. In December 2001, he purchased furniture on credit. He moved and later defaulted on the contract. The furniture was repossessed. Applicant was found guilty of destruction, removal, concealment, encumbrance, transfer of property subject to a security interest. He was fined \$400 and sentenced to 12 months probation. In April 2004, Applicant had a car accident. He waited for the police to arrive, but later left the scene and walked to his house. He then called the police again. He was charged with duty of driver to stop at or return to the scene, which was later dismissed.¹⁵

Applicant was charged in July 2010 with driving on a suspended license. He paid a \$729 fine. Court documents verify the original charge and sentence. Applicant disputes the conviction, stating the charge was dropped because he was not given notice of the suspension. He did not provide proof of the reduction of the charge.¹⁶

Applicant was charged in August 2010 with four counts of driving on a suspended license. The charges were reduced to driving without a license on his person. He was found guilty of the reduced counts and paid a \$450 fine and was given 12 months probation.¹⁷

In November 2010, Applicant and his wife were having a loud discussion. She attempted to leave and he got in her car. There was some type of altercation. He was arrested for aggravated assault, a felony, and driving with a suspended license. The aggravated assault charge was dismissed. Applicant claims the driving with a

¹² GE 6.

¹³ Tr. 58-61, AE R, T, V.

¹⁴ Tr. 74; GE 5.

¹⁵ Tr. 74-77; GE 5.

¹⁶ Tr. 36-40; GE 5; AE E.

¹⁷ AE D.

suspended license charge was reduced to failure to have license on person. There is no evidence as to the disposition of this offense.¹⁸

Applicant was charged with driving on a suspended license in September 2011. He was convicted and was fined \$67.¹⁹

Applicant was charged with driving on a suspended license and failure to have insurance in November 2011. The charges were reduced to no proof of insurance and driving without a license on his person. He was fined \$450 and \$700 respectively. He paid the fine.²⁰

Applicant estimated he receives about \$378 a week in unemployment benefits. His wife earns about \$340 a week. They have no other income or savings. He wants to pay his debts, but does not have the money.²¹

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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

¹⁸ Tr. 41-43; GE 5.

¹⁹ GE 5.

²⁰ AE F.

²¹ Tr. 78.

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 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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 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. I have considered all of the disqualifying conditions under AG ¶ 19, and the following two are potentially applicable:

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

Applicant has 21 delinquent debts, totaling approximately \$37,000, that he is unable or unwilling to pay. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

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

AG ¶ 20(a) is not established because Applicant's debts are numerous, recent, and unresolved. Applicant attributed his history of financial problems to periods of unemployment. His unemployment was beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant made some effort to make payments on his student loans when he was employed, but does not have the money to pay his debts. He saved about \$17,000 when he was working overseas. He felt it was important to use that money to repair his home for his family. Although his actions are understandable, he also had a duty and responsibility to begin addressing at least some of his smaller delinquent debts. He recently hired an attorney to help him negotiate and resolve his debts, but at this time no action has been taken to pay his creditors. I find AG ¶ 20(b) only partially applies.

Applicant is not in a stable financial position, and his financial problems are not under control. He did not provide evidence that he is receiving financial counseling, but I will consider his hiring an attorney to help him resolve his debts as some effort in that regard. I find AG ¶ 20(c) marginally applies. I find AG ¶ 20(d) does not apply because he has not initiated a good-faith effort to repay his delinquent debts at this time. AG ¶ 20(e) does not apply because Applicant did not dispute any of the debts alleged.

Guideline J, Criminal Conduct

AG ¶ 30 expresses the security concern pertaining to criminal conduct:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

I have considered all of the disqualifying conditions under criminal conduct AG ¶ 31 and the following are potentially applicable:

- (a) a single serious crime or multiple lesser offenses; and
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

Applicant has numerous criminal charges, including for driving on a suspended license and receipt of stolen property. I find the above disqualifying conditions apply.

I have also considered all of the mitigating conditions for criminal conduct under AG ¶ 32 and the following are potentially applicable:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under unusual circumstances that is it unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness or good judgment;
- (c) evidence that the person did not commit the offense; and
- (d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

Applicant's conviction for receipt of stolen property was more than 12 years ago. The passage of time would normally mitigate the criminal concerns with regards to this charge if that was the only offense. Applicant also has numerous charges for driving on a suspended license, some that were later reduced to having no license on his person. Although he stated these charges were tied to his child support payments, and that he had made agreements with the mothers of his children, he was still on notice that his failure to pay his child support would trigger the suspension of his license. He had a duty to notify the appropriate agency and modify the agreements. He did not provide evidence he did that. Instead, he repeatedly was charged with driving on a suspended license. Even if the charge was subsequently reduced to failing to have a license on his person, it shows a pattern of unreliable conduct. This was not an unusual circumstance, but was rather a recurring event that he was aware of but failed to address. Considering

his financial problems, he repeatedly was paying fines that could have been used to pay his child support and other delinquent debts. His actions show a disregard for following rules. I find none of the above mitigating conditions 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 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and J in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is 34 years old. He has had long periods of unemployment. His wife has been unemployed. He supports his five children and pays child support for the three children who do not live with him. I found Applicant credible in that he earnestly wants to pay his debts, but has had difficulty finding a job. He has numerous delinquent debts that remain unpaid and his finances remain a security concern. Applicant's recent conduct of repeatedly being charged with driving on a suspended license reflects on his unwillingness to comply with rules. Applicant was aware that his failure to pay his child support would trigger suspension of his license. If he had an agreement with the mothers of his children that they would forgo child support payments for a period, he had a duty to ensure the proper agency was aware so as not to trigger the suspension of his driver's license. Instead, he repeatedly was charged. In some cases the charge was reduced, but he still paid a fine. This was money that could have been used to care for his family and pay his delinquent debts. Applicant's finances and criminal conduct are a security concern. He has not met his burden of persuasion. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the

security concerns arising under the financial considerations and criminal conduct guidelines.

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.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraphs 1.k-1.v: ²²	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraphs 2.b-2c:	Against Applicant
Subparagraph 2.d:	For Applicant
Subparagraphs: 2.e-2.f:	Against Applicant
Subparagraph: 2.g:	For Applicant
Subparagraphs: 2.h-2.i:	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 a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge

²² As noted above, there is no paragraph 1.n.