



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



In the matter of:)	
)	
)	ISCR Case No. 12-07948
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, Jr., Esq., Department Counsel
For Applicant: *Pro se*

04/16/2013

Decision

WHITE, David M., Administrative Judge:

Applicant accrued substantial delinquent debts over the past five years. He made little progress toward resolution of major mortgage debts, and offered no evidence of an effective plan to resolve these debts or of changes to prevent continued financial irresponsibility. Resulting security concerns were not mitigated. Based on a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SF 86) on December 21, 2010.¹ On August 10, 2012, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations).² 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*

¹Item 4.

²Item 1.

Program (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective in the Department of Defense on September 1, 2006.

Applicant received the SOR on August 21, 2012.³ He submitted a written response on August 31, 2012, and requested that his case be decided by an administrative judge on the written record without a hearing.⁴ Department Counsel submitted the Government's written case on January 15, 2013. A complete copy of the File of Relevant Material (FORM)⁵ was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant signed the document acknowledging receipt of his copy of the FORM on January 22, 2013. He provided no further response to the FORM within the 30-day period, did not request additional time to respond, and expressed no objection to my consideration of the evidence submitted by Department Counsel. I received the case assignment on March 28, 2013.

Findings of Fact

Applicant is 59 years old, and has worked for a defense contractor since November 2010. He has worked for defense contractors in the logistics field since 1998, shortly after he retired from the Navy after a 24-year career. He earned an online Masters of Business Administration degree in 2005. He has been married for almost 37 years, and has an adult son who is married and an adult daughter who resides with him. He has held a security clearance since 1973, when he joined the Navy.⁶

In his response to the SOR, Applicant admitted the truth of the account information concerning his delinquent debts set forth in SOR ¶¶ 1.a through 1.f, with some explanations. The total due on Applicant's delinquent debts alleged in the SOR, and supported by entries in the record credit bureau reports, was \$65,330.⁷ Applicant also defaulted on a \$400,000 first mortgage home loan in 2008, resulting in a foreclosure sale. His admissions, including those made in response to DOHA interrogatories,⁸ are incorporated into the following findings of fact.

³Item 3.

⁴Item 2.

⁵The Government submitted nine Items in support of the SOR allegations.

⁶Items 4, 5, and 6.

⁷Items 1, 7, 8, and 9.

⁸Items 5 and 6.

Applicant was involved in an automobile accident in January 2009, and incurred the \$1,061 medical debt for ambulance services listed in SOR ¶ 1.a. The charge was erroneously billed to his medical insurer, who refused to pay it. He says that he was unaware that it remained unpaid until he was asked about it during his security clearance interview in January 2012 [sic].⁹ After that interview, he contacted his personal injury lawyer about having the other driver's automobile insurance pay the bill, but was told it was too late since the case had been fully settled. During June 2012, he contacted the collection agency and arranged to make one payment of \$311, with payments of \$250 each during the months of July, August, and September. He submitted proof of the first three payments, and his July 2012 credit report confirmed an outstanding balance of \$500. However, he did not submit proof of having made the final \$250 payment in September 2012 to resolve this debt within the time afforded him to respond to the FORM.¹⁰

Applicant owed \$587 on a charged-off health credit card account that was opened in March 2007 and became delinquent in late 2011, as listed in SOR ¶ 1.b. Applicant paid this debt in full on May 31, 2012. He did not explain why it was not paid when due.¹¹

Applicant owed \$2,793 on a credit card account that was opened in April 2007 and became delinquent in July 2011, as listed in SOR ¶ 1.c. In May 2012 he agreed with the collection agency to settle this debt in full for a one-time payment of \$1,914. He made this payment on June 21, 2012, and submitted a copy of his bank statement to document it.¹²

Applicant and his wife purchased home A in 1983. They refinanced the mortgage on the home several times over the years, withdrawing equity to supplement their income. In 1999 they borrowed \$157,500 on a first mortgage. In July 2001 they refinanced it for \$184,000. In March 2002 they took out a second mortgage for \$46,000. In March 2003 they refinanced both mortgages with a \$248,000 first mortgage loan. In April 2004, they took out a \$100,952 home equity line of credit. In December 2004, they refinanced both outstanding loans again with a \$400,000 first mortgage loan. In May 2005 they moved into home B, as described below. In April 2007 they took out a \$50,000 home equity line of credit against home A. After the real estate market collapsed, Applicant's homes were soon worth less than he owed on their mortgages. He said, without elaborating any details concerning the amounts involved or the effect on the family budget, that his wife was also laid off from her job around this time. He decided that he owed more in loans secured by home A than he could sell it for, so he

⁹This interview occurred in January 2011, not in 2012 as Applicant asserted several times in his answer to the SOR. See Items 2 and 6.

¹⁰Item 2 at 3, Exh A; Item 9 at 1.

¹¹Item 9 at 2; Item 2 at 3, Exh B.

¹²Item 7 at 115; Item 9 at 3; Item 5 at 18, 50; Item 2 at 3, Exh C.

stopped paying the mortgage and line of credit secured by it. In June 2008, as alleged in SOR ¶ 1.e, the lender foreclosed on the \$400,000 first mortgage and took possession of home A. The lender holding the \$50,000 secured line of credit declined Applicant's request to settle for a reduced sum and obtained a judgment for \$59,453 in June 2011, as alleged in SOR ¶ 1.d. Applicant failed to pay this judgment. In August 2011 the creditor obtained a garnishment order in the amount of \$60,114 against Applicant's current employer, resulting in collection of about \$560 every two weeks (25% of his after-tax pay) starting September 23, 2011.¹³

Applicant entered into a one-year contract for home-alarm service for home A with free installation on condition that service continue for at least a year. The home was foreclosed upon before the year was complete, and the company billed Applicant \$1,437. He did not pay the debt, which was placed for collection. He said that he was made aware of this debt during his January 2011 security clearance interview, and in June 2012 he agreed with the collection agency to settle the debt for \$1,078. He made this payment on June 25, 2012, as documented by his bank statement.¹⁴

Applicant and his wife bought home B in January 2007, with a first mortgage loan of \$552,500 and a second mortgage of \$97,500. He could not afford to make those mortgage payments and began to fall behind on payments during mid-2009. He told the security investigator that he deliberately stopped paying them around September 2010 in order to qualify for a loan modification. In early 2011 he succeeded in obtaining a loan modification under which he owed about \$600,000 on the first mortgage and more than \$98,000 on the second mortgage. The payments on these loans started falling behind after his 25% wage garnishment, for the defaulted second mortgage on home A, began in August 2011. His combined monthly payment on the two home B mortgages was \$3,107, and his net monthly income was \$3,466. In November 2011 he deliberately stopped making payments toward either of these mortgages and listed home B on the market for \$269,900 to attempt a short sale. He provided no further information on the status of home B or the outstanding mortgage debts. These home-B-related delinquencies were not alleged on the SOR.¹⁵

Applicant submitted no evidence of financial counseling, although he may have taken some related classes while earning his online MBA. He submitted a receipt for a \$500 payment toward the \$5,056 attorney fees he was charged on February 28, 2012, in connection with the preparation and filing of a Chapter 13 bankruptcy.¹⁶ No further information concerning this bankruptcy proceeding was provided. He provided no budget or personal financial statement to show the means by which he could resolve current or avoid future financial delinquencies.

¹³Item 2 at 4, Exh D; Item 4; Item 5 Exh B; Items 7 through 9.

¹⁴Item 5 at 39; Item 2 at 4, Exh E.

¹⁵Item 2 Exh D; Item 5 at 19-36, 40-46, 51-71; Item 6 at 15; Items 7 though 9.

¹⁶Item 5 at 73.

Applicant provided no evidence concerning the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. He submitted no character references describing his judgment, morality, trustworthiness, integrity, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions (DCs) and mitigating conditions (MCs), which are to be 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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, "[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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.

Analysis

Guideline F, Financial Considerations

The security concerns under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

Department Counsel asserted, and the record evidence established, security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

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

Applicant's SOR-listed delinquent debts arose over the past five years, and several major debts remain unresolved. His financial problems were not shown to have arisen from incidents beyond his control, but rather resulted from his choices to incur large mortgage debt obligations he could not afford to pay, while withdrawing and spending substantial amounts of equity as the properties were appreciating. He provided no evidence of available income, or other assets, from which to satisfy these debts or avoid incurring additional delinquencies. This evidence raises substantial security concerns under DCs 19(a) and (c), thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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.

Applicant's SOR-listed delinquent debts arose over the past five years, totaled more than \$465,000, and major financial problems continue to date. They are recent, and arose under circumstances that involved Applicant's voluntary choices. He showed no capacity to avoid additional delinquent debt. The ongoing nature of these debts precludes a finding of unlikely recurrence. Applicant failed to demonstrate that his reliability, trustworthiness, or judgment have improved. He documented resolution of most of the debt alleged in SOR ¶ 1.a, and full resolution of the debts alleged in SOR ¶¶ 1.b, 1.c, and 1.f. The judgment debt alleged in SOR ¶ 1.d is being resolved through an involuntary garnishment that is preventing him from remaining current on other financial obligations, and will continue for more than four years. The foreclosure on home A resolved the \$400,000 first mortgage on that property, but he has also defaulted on more than \$700,000 in debt on home B. He earned an MBA and retained a bankruptcy attorney, but the education preceded his financial irresponsibility and no progress on the bankruptcy was documented. The evidence does not support the application of any AG ¶ 20 provisions, except mitigation under AG ¶ 20(d) for the security concerns arising from the four debts he resolved between June and September 2012.

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 pertinent facts and circumstances surrounding this case. Applicant is an accountable and well-educated adult, who is responsible for his voluntary choices and conduct that underlie the security concerns expressed in the SOR. His financial irresponsibility spans many years, and continues at present. It involves delinquent debts and defaulted obligations totaling more than \$1,100,000, toward which he showed insufficient capacity to resolve when the record closed. He did not demonstrate that these debts arose under circumstances that were beyond his control, or that he initiated any changes to prevent additional financial difficulties. He offered insufficient evidence of financial counseling, rehabilitation, or responsible conduct in other areas of his life. The potential for pressure, coercion, and duress remains undiminished.

Overall, the record evidence leaves me with substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from his financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a to 1.c:	For Applicant
Subparagraphs 1.d and 1.e:	Against Applicant
Subparagraph 1.f:	For 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.

DAVID M. WHITE
Administrative Judge