



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



In the matter of:)
)
) ISCR Case No. 12-11228
)
Applicant for Security Clearance)

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

09/04/2014

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On April 30, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on May 13, 2014, and requested a hearing before an administrative judge. The case was assigned to me on July 21, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 24, 2014, scheduling the hearing for August 12, 2014. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 6 were admitted in evidence without

objection. Applicant testified and submitted Applicant's Exhibits (AE) A through C, which were admitted without objection. The record was held open until August 26, 2014, for Applicant to submit additional information. He submitted a document that was marked AE D and admitted without objection. DOHA received the hearing transcript (Tr.) on August 21, 2014.

Findings of Fact

Applicant is a 55-year-old employee of a defense contractor. He has worked for his current employer since 1983. He seeks to retain his security clearance. He has a master's degree. He married for the second time in 1991. He has three adult children and two adult stepchildren.¹

The SOR alleges a delinquent \$30,937 credit card debt (SOR ¶ 1.a) and a \$461 delinquent medical account (SOR ¶ 1.b). Applicant admitted owing the credit card debt, but he established that the medical debt was paid in May 2014.²

Applicant had extensive medical expenses for his stepdaughter and his daughter. His 26-year-old stepdaughter has an intellectual disability. She also has a temper, and she has been violent, which cost her several jobs. The emotional stress from the stepdaughter affected Applicant's daughter, and his daughter had to be hospitalized. Applicant used credit cards for living expenses. The credit cards raised the interest rates. He was unable to pay the bills and several debts became delinquent.³

Applicant listed delinquent credit card accounts of \$30,000 (SOR ¶ 1.a) and \$18,000 on his Questionnaire for National Security Positions (SF 86), which he submitted in June 2010. He wrote that the interest rates on the cards "unexpectedly rose to 30% and simultaneously had family financial demands that prevented repayment on company's terms. I sought financial counseling and am hiring an attorney. I will settle this debt in court as soon as a case is filed."⁴

Applicant's credit report from July 2010 listed delinquent debts of \$30,937 (SOR ¶ 1.a), \$17,623, and \$37,753. The \$37,753 account is in his wife's name. Applicant is only an authorized user of the account and not personally liable for the debt.⁵

¹ Tr. at 16, 24-25; GE 1.

² Applicant's response to SOR; AE A.

³ Tr. at 14, 17-18, 33-34, 40-41; GE 1, 3-6.

⁴ GE 1.

⁵ Tr. at 25; GE 6. While Applicant is not personally liable for the one account, it does affect his family's finances and therefore his finances. Any information that was not alleged in the SOR will not be used for disqualification purposes. It may be considered in assessing Applicant's overall financial situation, in the application of mitigating conditions, and in analyzing the "whole person."

Applicant borrowed \$25,500 from his 401(k) retirement plan in April 2011. He used the proceeds to pay off some car loans. He indicated that he may have paid other debts as well.⁶

In May 2012, Applicant reported to his company's security officer that the creditor alleged in SOR ¶ 1.a obtained a \$31,000 judgment against him. The judgment is accumulating interest. He also informed the security officer that he had credit card accounts for \$25,000 and \$15,000 that he could not pay. The information was forwarded by his company's security officer to the DOD.⁷

Applicant was interviewed for his background investigation in July 2012. He discussed his financial problems resulting from his children's medical expenses. He stated that he planned to pay his delinquent debts, but he did not know when he would be able to do so.⁸

Applicant and his wife saved money to be used for their debts. He settled a delinquent \$17,791 credit card debt for \$2,000 in October 2013.⁹

Applicant responded to DOHA interrogatories in January 2014. He wrote about his finances:

I plan to retire in approximately 6 years and will pay all remaining delinquent credit card debts and judgment using portions from my 401K (approx. \$215K to-date). This is not an excuse, my wife has been paying all the bills for many years so I was not aware of all debt balances. I take full responsibility. She and I are managing a financial plan forward to pay the mortgage, medical, utilities, auto, insurance and other necessities required to sustain a living, then pay the delinquent bills and judgment when I retire. This is the best way I plan to manage my finances going forward so no more obligations become delinquent.

In his response to the SOR, Applicant stated that he offered an interim payment of \$200 to the creditor holding the judgment "to begin payment until settlement agreement." He indicated that the creditor offered a \$20,000 settlement.

Applicant testified that he no longer plans to wait until he retires to pay the judgment. He stated that the \$25,500 loan from his 401(k) will be paid in October 2015. He will then take out another loan to be used to settle the judgment. As of August 8, 2014, he owed \$7,463 on the loan. He contributes 8% of his annual salary of \$112,869 (about \$9,029) to his 401(k). The balance of the 401(k) on August 8, 2014, was

⁶ Tr. at 19, 35-38.

⁷ Tr. at 26; GE 2. The \$25,000 account appears to be the account that is in his wife's name.

⁸ GE 3.

⁹ Tr. at 18-19, 36; GE 3.

\$267,234. He also has a pension plan through his employer. His wife earns about \$45,000 per year. She has a pension through her work and about \$40,000 in her 401(k). Applicant investigated withdrawing funds from his 401(k) to settle the judgment, but he did not qualify for the hardship conditions that would enable him to do so.¹⁰

Applicant and his wife took cruises in 2011 and 2013. He stated that the cruises were good for him and his wife as breaks from the mental anguish that his stepdaughter causes the family. He testified that they saved for the cruises and that the 2013 cruise was not expensive, about \$600 to \$800 in total, because it was a short cruise with just him and his wife. Applicant's testimony that just he and his wife took the cruise is contradicted by his response to DOHA interrogatories in which he wrote: "I took a pleasure related (3 days at sea) vacation cruise . . . with my wife, two sons, one daughter and one stepdaughter to [location] in August 2013."¹¹

Applicant has not received financial counseling, but he has a budget. His wife has about \$40,000 in student loans that are currently deferred. The balance of the credit card debt in his wife's name is about \$55,000. He stated they plan to settle the debt. Applicant and his wife have four cars in their name: one each for Applicant, his wife, his youngest daughter, and his intellectually-disabled stepdaughter. Applicant's wife bought his stepdaughter a car in late 2013 for \$5,000. The stepdaughter was convicted of driving while intoxicated (DWI). Applicant's wife bought the car after the stepdaughter's driver's license was reinstated. The car was necessary for the stepdaughter to drive to meet her probation officer and to complete her community service.¹²

Applicant submitted a performance evaluation that reflects that he is a valued employee. It states that he "holds himself to high professional standards and exhibits a strong sense of accountability and willingness to take on new and difficult tasks."¹³

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 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, administrative judges apply the 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

¹⁰ Tr. at 14-16, 24, 26-31; GE 2; AE B, C.

¹¹ Tr. at 20-21, 32-33; GE 1, 2.

¹² Tr. at 20, 23-26, 33, 39-42; GE 2.

¹³ AE D.

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.”

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 the applicant or proven by Department Counsel.” The applicant 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 EO 10865 provides that adverse 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 under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant was unable or unwilling to pay his financial obligations for a period. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

The medical costs for Applicant's daughter and stepdaughter were outside his control. For the full application of AG ¶ 20(b), Applicant must also have acted responsibly under the circumstances.

Applicant paid the \$461 medical account in May 2014. SOR ¶ 1.b is concluded for Applicant. He settled a delinquent \$17,791 credit card debt for \$2,000 in October 2013. He receives credit in mitigation for that action.

Applicant has owed more than \$30,000 to one creditor since at least 2010. He borrowed \$25,500 from his 401(k) retirement plan in April 2011, but he did not use the proceeds to settle the debt. Instead, he paid off some car loans. The creditor obtained a \$31,000 judgment against him in 2012. While not in his name, his wife has a delinquent credit card debt of about \$55,000 and about \$40,000 in deferred student loans. In 2013, they bought a car for Applicant's stepdaughter who does not work and had a DWI. Applicant and his wife both have pension plans and 401(k) retirement plans. He contributes about \$9,000 per year to his 401(k). He went on cruises in 2011 and 2013. The inconsistent statements about who went on the cruise in 2013 are troubling.

Applicant has not made paying the judgment a priority. He initially planned to pay the judgment after he retires. He now states that he will settle the judgment in late

2015 with a loan from his 401(k). The Appeal Board has held that “intentions to pay off debts in the future are not a substitute for a track record of debt repayment or other responsible approaches.” See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013) (quoting ISCR Case No. 08-08440 at 2 (App. Bd. Sep. 11, 2009)).

There is insufficient evidence for a determination that Applicant’s financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(c), and 20(d) are not applicable. AG ¶ 20(b) is partially applicable. I find that financial considerations concerns remain despite the presence of some mitigation.

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 Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered Applicant’s favorable character evidence and his stable work history. I also considered the circumstances surrounding his financial problems. However, Applicant has not convinced me that he has made a legitimate effort to address those problems.

Overall, the record evidence leaves me with questions and doubts as to Applicant’s eligibility and suitability for a security clearance. I conclude Applicant has not mitigated the financial considerations security concerns.

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:	Against Applicant
Subparagraph 1.b:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge