



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



In the matter of:)	
)	
)	ISCR Case No. 12-11399
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: *Pro se*

06/18/2013

Decision

WHITE, David M., Administrative Judge:

Applicant has more than \$200,000 in unresolved delinquent debts, accrued over the past four years. He has made some recent progress toward addressing the debts, but offered no evidence of an effective plan to resolve the remaining debts in the next few years despite claiming surplus income, or of changes in the way he manages his finances 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 February 2, 2012.¹ On January 18, 2013, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial

 ¹Item 4.

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

Applicant submitted a written response to the SOR on February 22, 2013, and requested that his case be decided by an administrative judge on the written record without a hearing.³ Department Counsel submitted the Government's written case on March 28, 2013. A complete copy of the File of Relevant Material (FORM)⁴ 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 April 9, 2013. On May 8, 2013, he submitted the additional evidence (AE) that is contained in the blue folder in the record, made no objection to consideration of any contents of the FORM, and did not request additional time to respond. Department Counsel did not object to the admissibility of Applicant's additional evidence. I received the case assignment on May 28, 2013.

Findings of Fact

Applicant is 43 years old, and has worked for various defense contractors since graduating from college with a bachelor's degree in 1999. He left six successive employers for better offers elsewhere, but was released by the seventh in March 2011 because his security clearance did not successfully transfer. He collected unemployment compensation until November 2011, when he obtained his current position. He was granted a Top Secret clearance by DoD in 2002, and again by another Government agency in 2007. He enlisted in the Air Force in 1988, at age 18, and was honorably discharged from active duty in March 1992. He then enlisted as an active reservist in the Air National Guard, from which he was honorably discharged in April 1995. He has never married, and has no children.⁵

In his response to the SOR, Applicant admitted the truth of the factual allegations set forth in SOR ¶¶ 1.a through 1.c, with some explanations.⁶ Applicant's admissions,

²Item 1.

³Item 3.

⁴The Government submitted 12 Items in support of the SOR allegations.

⁵Item 4.

⁶Item 3.

including those made in response to DOHA interrogatories,⁷ are incorporated into the following findings of fact.

SOR ¶ 1.a: Applicant owed \$24,676 for a credit card account that he opened in April 2005, and the issuing bank charged off after he stopped making payments in July 2009. With interest, the balance rose to \$25,142 by October 2011. He entered into a debt management plan (DMP) agreement in October 2012, and made his first payment into the DMP on December 21, 2012. The DMP service reached an agreement with the bank holding this debt to make monthly payments of \$466, which were made in December 2012 and in January through April 2013 using funds Applicant paid into the plan. The DMP estimated repayment of the covered debts in 48 months. However, the present rate of payment on this debt and additional interest charges make it likely that it will take more than five years.⁸

SOR ¶ 1.b: Applicant owed \$25,187 for a credit card account that he opened in June 2003, and the issuing credit union charged off after he stopped making payments in November 2008. This debt was also included in his DMP, but the service could not reach an agreement with the credit union in December 2012 due to incorrect account information provided by Applicant. Applicant stated that the DMP service recently reached a payment agreement with the collection agency with whom this debt was placed, and his most recent (April 2013) DMP statement reflects a second monthly payment of \$630 to a collection agency doing business in his state. His DMP originally contemplated monthly payments of \$756 toward this debt, so the service is now asking Applicant to pay them \$1,146 per month including a \$50 service fee. Other terms of the service's agreement with the collection agency were not provided, but if the repayment rate remains the same, it will take between three and four years to repay this debt.⁹

SOR ¶ 1.c: Applicant purchased a home in August 1999, and lived there until April 2005. In July 2004, he took out a home equity line of credit, for about \$95,000, from the bank holding the first mortgage. He stopped making payments toward this debt in June 2010, and the account was charged off at the end of December 2010 in the amount of \$95,023 (with an additional \$3,075 in pre-charge-off fees and interest for a total due of \$98,098.) Between January 2011 and May 2012, Applicant made 14 payments toward this debt in amounts varying from \$500 to \$2,000. For some reason that he did not explain, he resumed making payments at \$300 per month from November 2012 through May 2013 (with no payment in March 2013). He claimed that his parents, who now live in the home with his sister and pay him a rent equal to the amount due on the first mortgage, also made payments toward this line of credit debt from June 2012 to October 2012. However, the email account statement from the creditor that Applicant provided with his additional evidence reflected no reduction in the balance due during those months. The \$87,997 balance due that is alleged in the SOR

⁷Items 5 and 6.

⁸Item 6 at 24-29; Item 7 at 1; Item 8 at 13; AE.

⁹Item 6 at 29; Item 7 at 1; Item 8 at 10; AE.

was correct after his December 2012 payment was posted, and is the balance reflected on the most recent record credit report dated January 14, 2013. Subsequent payments reduced the outstanding balance to \$86,797 in May 2013.¹⁰

Although not listed on the SOR, Applicant owes the same bank about \$67,600 for a charged-off second mortgage on another home that he purchased in April 2005 and occupied until it was conveyed in a short sale during September 2011. The lender considered the first-mortgage loan (for approximately \$560,000) to be satisfied by the proceeds of the short sale, but the second mortgage loan became an unsecured debt. Applicant provided proof of one \$300 payment toward this debt in November 2012, but provided no other information on its current status.¹¹

Applicant claimed in general terms that his financial difficulties stemmed from his former fiancée's decision to break up and move out of their home in 2007, leaving him to pay all their formerly combined debts on his single income. He did not provide details concerning how much she contributed to their formerly combined income. He submitted a personal financial statement, dated November 24, 2012, showing his annual gross income from his current employment to be about \$148,800, with a net monthly surplus of \$1,168. This statement also reflected his receipt of \$1,057 per month in rent from his family who occupy the home he owns, and his payment of that amount toward the first mortgage loan on that home. It also reflected monthly payments of \$1,312 to his DMP, and \$300 monthly payments toward the delinquent line of credit on that home and toward the charged-off second mortgage debt from his former home. After the short sale of that home he moved back into his first home with his family from September 2011 to January 2012, when he rented an apartment in a nearby community for \$2,337 per month. As Department Counsel alertly noted, Applicant borrowed \$33,371 in July 2012 to purchase a new car, with a monthly payment due of \$736.¹²

Applicant did not submit a budget, or any evidence of savings or other net worth. He submitted no evidence of financial counseling or other efforts to establish financial responsibility, except for his brief work with the DMP service company. He 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.

¹⁰Item 4; Item 7; Item 8; AE.

¹¹Item 4 at 9, 39, 43; Item 5 at 2; Item 6 at 9, 16, 32-34; Item 7 at 2; Item 8 at 10-11; AE.

¹²Item 4 at 7-9, 23-25, 39-44; Item 6 at 9, 30-31; Item 7 at 2; AE.

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: "[a]ny 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 four years, and remain substantially unresolved. His financial problems were not shown to have arisen from incidents beyond his control, but rather resulted from his choices to incur debts for goods and services while his lack of income would prevent him from meeting those obligations. He provided no evidence of available income, or other assets, from which to satisfy these debts or avoid incurring additional delinquencies in the next several years. 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 four years, and more than \$134,000 in such debt remains unresolved to date. These financial problems are recent, and arose under circumstances that involved Applicant's voluntary choices. He demonstrated neither the capacity, nor a plan, to avoid incurring additional delinquent debt. The ongoing nature of these debts precludes a finding of unlikely recurrence. Applicant failed to show that his reliability, trustworthiness, and judgment have improved, and failed to take action to resolve several of these debts until very recently, even though their security implications were apparent to him before he filed his present security clearance application. The evidence does not establish mitigation under MC 20(a).

Applicant offered insufficient evidence to support mitigation under MC 20(b). The undefined economic impact of his breakup with his former fiancée may or may not have arisen from conditions beyond his control, but he did not demonstrate that incurring these obligations without the means to satisfy them other than reliance on her continued good will was responsible activity under those circumstances. His work with the DMP service toward resolution of two delinquent credit card debts, and his payments toward his charged-off line of credit, provide some evidence of responsible action under the circumstances. However, the former did not start until late last year and he substantially reduced his recent monthly payments toward the latter. Neither pattern of payments has yet established a pattern of responsibility or achieved sufficient debt reduction to mitigate security concerns.

Applicant offered no evidence of financial counseling, and did not establish clear indications that the problem is being resolved or is under control. He provided insufficient evidence to establish that his current financial situation has stabilized, or that he has accumulated any net worth to cushion possible unanticipated setbacks in the future. MC 20(c) and 20(d) are therefore inapplicable.

Applicant failed to provide proof to substantiate a basis to dispute the legitimacy of any of the debts alleged in the SOR, for which the record evidence provides substantial evidence. Accordingly, he failed to mitigate those allegations under MC 20(e).

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 adult, who is responsible for his voluntary choices and conduct that underlie the security concerns expressed in the SOR. His financial irresponsibility spans several years, and continues at present. It involves delinquent debts still totaling more than \$134,000, not including more than \$67,000 he owes the lender for the delinquent second mortgage loan on his second home after its short sale. He did not demonstrate that these debts arose under circumstances that were beyond his control, or that he initiated any budgetary changes to prevent additional financial difficulties. Instead, he incurred more than \$3,000 per month in new obligations for apartment rent and a new car loan in 2012. He offered no 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 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.

DAVID M. WHITE
Administrative Judge