



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



In the matter of:)	
)	
)	ISCR Case No. 14-01488
)	
Applicant for Security Clearance)	

Appearances

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

11/04/2014

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On May 19, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. 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.

Applicant answered the SOR on June 3, 2014, and requested a hearing before an administrative judge. The case was assigned to me on August 18, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 26, 2014. I convened the hearing as scheduled on October 15, 2014. The

Government offered exhibits (GE) 1 through 3, which were admitted into evidence without objection. Applicant testified and offered Applicant's Exhibit (AE) A through J, which were admitted into evidence without objection. The record was held open until October 27, 2014, to allow Applicant to submit additional documents. He submitted AE K, which was admitted into evidence without objection.¹ DOHA received the hearing transcript (Tr.) on October 24, 2014.

Findings of Fact

Applicant denied all the allegations in SOR, except he partially admitted ¶¶ 1.f and 1.g. I have incorporated his admissions into the findings of fact. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 40 years old. He immigrated to the United States in 1990 and became a naturalized citizen of the United States in 2009. He was enrolled in an online college from 2001 to 2004 and received a bachelor's degree. He married in 2005 and has two children ages seven and four.²

Applicant began having financial problems in 2010 when his youngest child was born. The child and his wife had costly medical problems through 2014. Applicant had costly medical insurance premiums. Once his family met the deductible the insurance covered 80%, and he was required to pay the remaining 20%. In 2012 he paid \$3,818; in 2013 he paid \$4,130; and in 2014 he paid \$3,449 for out-of-pocket medical expenses. Applicant's family's medical needs impacted his finances. He stated he has a health saving plan, but with all of the medical needs it was depleted quickly.³

Applicant stated he began contacting his creditors and paying his debts in 2013 and 2014. He explained it took time, but he realized he had a duty and responsibility to pay his debts. He paid the debts in SOR ¶¶ 1.a (\$50), 1.b (\$66), 1.c (\$180) and 1.d (\$28) in May 2014. He disputed the debt in SOR ¶ 1.e (\$42), believing it was a billing error. He contacted the creditor and it was removed from his credit report.⁴

The debt in SOR ¶ 1.g (\$23,984) is a credit card debt. Applicant stated he stopped making payments on the debt about three years ago because of financial difficulties. He attempted to negotiate a payment plan but the original creditor would not accept it. He contacted the collection company, and it accepted a payment plan of \$29.50 a month. Applicant's cumulative previous monthly payment total is \$1,239. The

¹ Hearing Exhibit I is a post-hearing request that the record be held open. I granted the request. Included in Hearing Exhibit I is Department Counsel's email forwarding Applicant's email. Department Counsel had no objection to the submission. Hearing Exhibit II is my response to the parties.

² Tr. 96.

³ Tr. 22-31.

⁴ Tr. 31-41; GE 3 page 8; AE B, C, E, J.

payment agreement is in effect until November 30, 2016, at which time the account will be reviewed. The current balance owed is \$23,689. He estimated that the principal owed on the card was originally about \$17,000 to \$18,000.⁵

Applicant purchased a house in 2006. He obtained a three-year adjustable rate interest-only loan. He was aware that the monthly payment could increase when the rate was adjusted. The purchase price of the house was \$245,000. He had to obtain two loans on the house to cover the purchase price. The first mortgage was for \$196,000 and the second mortgage was for \$49,000. His monthly combined mortgage payment was \$1,450. Three years later the adjustable rate increased and the monthly mortgage payment increased to \$1,900. Applicant stated he could not afford to make the payments. Applicant contacted an attorney to assist him in obtaining a loan modification. He was advised it was a long process. He was told to stop making the monthly mortgage payments. He stopped making the payments sometime in 2009. He continued to pay the home owner's association fees of \$290 a month. In August 2014, Applicant's began a probationary payment plan for a loan modification. He is required to pay \$904 a month for three months. After he completes the plan the lender will modify the loan and the new payment will likely be close to the probationary amount.⁶

Applicant was questioned about the current status of his house. He stated he no longer lives in the house that he is attempting to obtain the loan modification. Instead he now rents that house to tenants. The rental income from the house is \$1,200 a month. He uses the rental money to pay the \$904 for the modified mortgage loan payment and the \$290 for homeowner's association fees. He moved his family several months ago to a larger house where he pays \$2,150 a month, which is \$250 more than he was to pay when his original mortgage was adjusted. He stated he felt he needed to move his family because he was concerned the house would be foreclosed, and he would not have a place for them to live. He intends to remain in his present rental residence and retain the other house to use as a rental property. Applicant indicated his attorney told him he could move out and rent what was previously his primary residence. He does not know if the mortgage company is aware that the loan is now for a business property.⁷

From sometime in 2009 or early 2010 until August 2014, Applicant did not make any mortgage payments. He stated he used the money to pay other bills. He has about \$5,000 to \$6,000 in savings. In August 2013 he took his family on a trip to Pakistan to see his parents for a month. He supports his parents who live part-time in Pakistan. The other six months of the year, his parents reside with him in the United States, and he pays all of their living expenses. He pays their medical bills while they are in the United States. His wife is not employed outside their home.⁸

⁵ Tr. 41-44; AE A.

⁶ Tr. 48-70, 91-95.

⁷ Tr. 48-70, 77, 91-95.

⁸ Tr. 48-76, 90-91.

Applicant provided an email after the hearing that stated: "Besides above mentioned medical bills, in 2010 we've also invested approximately \$10,000 in an online business [name of business] which turned out to be a failure and we lost all our investment."⁹

When Applicant began working for his present employer in 2007, he earned approximately \$70,000. He received incremental pay increases of \$1,000 annually since then. Applicant's current annual income is approximately \$77,000. He received a bonus in December 2013 of about \$6,000 to \$7,000. He also received a 2013 federal income tax refund of about \$4,000. He believed this amount was consistent with previous tax year refunds.¹⁰

Applicant stated he stopped using general credit cards and only uses a debit card. He has two department store credit cards that each have a \$1,500 balance. He used them recently to purchase furniture. His payments have not started yet because he made the purchases only a week ago.¹¹

Applicant has a \$40,000 government student loan and a \$20,000 private student loan. He stated he has been paying the private student loan for four years and recently began paying the government student loan.¹²

Applicant stated that in the past he mismanaged his finances, but now he is living within his means and has made progress with his finances. He believes based on cutting down on expenses he can now afford to pay all of his bills. He also stated he saves the bonuses he receives from work and uses them for other things. He stated he is more diligent about how he spends his money.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 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

⁹ AE K.

¹⁰ Tr. 61, 80-85, 93-94.

¹¹ Tr. 44-48.

¹² Tr. 88-89.

¹³ Tr. 78-79, 96.

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.

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 had delinquent debts that he was unable or unwilling to pay for several years. 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 debts 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 paid the small debts alleged in SOR ¶¶ 1.a-1.d. He makes minimal payments for the large consumer debt he owes in SOR ¶ 1.g. He disputed the debt in SOR ¶ 1.e, and it was removed from his credit report. AG ¶¶ 20(d) and 20(e) apply to these debts.

Applicant's family had medical expenses that affected his finances. However, the biggest impact on his finances was when his mortgage payment increased when the interest rate was adjusted upward. He could not afford to pay the \$450 increase and sought a loan modification. Applicant's family's medical expenses were beyond his

control. The increase in his mortgage was not beyond his control because he was aware when he secured an interest-only adjustable rate loan that the payments could increase. For the full application of AG ¶ 20(b) Applicant must have acted responsibly under the circumstances. Applicant did not make any payments on the house he was living in for more than four years. He essentially lived in the house for free for that time. He used his mortgage payment to pay his other bills. He took a trip to Pakistan with his family, and he provided financial support for his parents. He no longer lives in the house because he moved to a bigger house where the monthly rental payment is \$2,150, which is more than what he was to pay when the original monthly mortgage payment increased. He is now using the house as a rental property. Over the four years of not paying anything for housing, Applicant had approximately a \$69,000 financial windfall. He could not explain where all the money was spent, except as noted above. He provided information that he invested \$10,000 in 2010 in a business that later failed. It is unclear why he could not afford the increase in his mortgage payments, but he could afford to make a \$10,000 investment. He did not explain where he obtained the investment money or why he did not use it to repay his large consumer debt or to resolve his delinquent mortgage loan. AG ¶ 20(b) only partially applies. Applicant is still resolving his mortgage debt. His actions raise concerns about his judgment. AG ¶ 20(a) does not apply.

I am unable to conclude that there are clear indications Applicant's financial problems are resolved or are under control. He had \$1,450 extra each month for more than four years to pay his expenses and debts because he was not paying for housing. Now he is living in a more expensive home with substantially the same income. AG ¶ 20(c) does not 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 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.

Applicant is 40 years old. Due to his family's medical problems he incurred substantial medical expenses that impacted his finances. Of greater impact was when his adjustable rate mortgage payment increased. Applicant stopped paying his mortgage and instead used the funds to pay other debts, support his parents, and take an international trip. He also invested \$10,000 in 2010 in a business that failed. Applicant's actions raise questions about his trustworthiness, reliability, and good judgment. 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 guideline.

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.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	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 a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge