



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



In the matter of:)	
)	
)	ISCR Case No. 07-02961
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Rita C. O'Brien, Esquire, Department Counsel
For Applicant: *Pro Se*

July 10, 2008

Decision

RIVERA, Juan J., Administrative Judge:

Applicant failed to mitigate the Guideline F (Financial Considerations) security concerns. Clearance is denied.

Statement of the Case

On December 13, 2005, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP).¹ On August 6, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him,² pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive),

¹ Item 4.

² Item 1 (Statement of Reasons (SOR), dated Aug. 6, 2007). Item I is the source for the facts in the remainder of this paragraph unless stated otherwise.

dated January 2, 1992, as amended, modified and revised.³ The SOR alleges security concerns under Guideline F (Financial Considerations).⁴ The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On August 31, 2007, Applicant responded to the SOR allegations, and elected to have his case decided on the written record in lieu of a hearing (Item 3). A complete copy of the file of relevant material (FORM), dated November 1, 2007, was provided to him, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation.⁵ Applicant did not respond to the FORM. On June 16, 2008, a DOHA employee contacted Appellant, and learned he received the FORM and did not have a response. The case was assigned to me on June 23, 2008.

Findings of Fact

Applicant admitted the debts in SOR ¶¶ 1.a (\$5,854), 1.b (\$3,602), 1.c (\$11,542), 1.e (\$1,131), 1.f (\$1,031), and 1.g (\$1,017). He denied the debts alleged in SOR ¶¶ 1.d (\$157), 1.h (\$103) and 1.i (\$50), stating that he had insufficient information about those debts. His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 47-year-old aerospace products technician.⁶ He married in 1988. His children were born in 1987, 1989, 1990 and 1995. He served in the Navy from 1980 to 1984.⁷ He has specialty and college education. He has never been fired from a job. He has no police record. He has not used illegal drugs in the last seven years, and has

³ On Aug. 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guideline to all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated Jan. 1987, as amended, in which the SOR was issued on or after Sep. 1, 2006. The revised Adjudicative Guidelines are applicable to Applicant's case.

⁴ When he completed his SF 86, he admitted that he had: (1) a lien placed against his property for failing to pay his taxes, but explained it was paid in full; (2) debts delinquent over 180 days in the last seven years; and (3) debts currently delinquent over 90 days. See Item 4, Sections 27c, 27d, 28a and 28b.

⁵ Defense Office of Hearings and Appeals (DOHA) transmittal letter, is dated Nov. 1, 2007. The DOHA transmittal letter informed Applicant that he had 30 days after Applicant's receipt to submit information.

⁶ Item 4 (2005 security clearance application) is the source for the facts in this paragraph, unless stated otherwise.

⁷ The file does not contain his Naval or enlistment records.

never used illegal drugs while in a sensitive position. From 1986 to the present he has been continuously employed by a defense contractor working in aerospace products.

Financial Considerations

The following table shows the status of the delinquent debts listed in the SOR:

SOR ¶ and Type Debt	Amount	Status
¶ 1.a Financial Account	\$5,854	Debt charged off in Feb. 2000 (Items 1, 3)
¶ 1.b Financial Account	\$3,602	Debt placed for collection in Sep. 2000 (Items 1, 3)
¶ 1.c Auto Loan	\$11,542	Debt charged off in July 2004 (Items 1, 3)
¶ 1.d Financial Account	\$157	Not substantiated (Items 1, 3 at 2)
¶ 1.e Department Store Account	\$1,131	Collection account reported in Nov. 2005 (Items 1, Item 3 at 2)
¶ 1.f Department Store Account	\$1,031	Collection account reported in Nov. 2005 (Items 1, 3 at 2)
¶ 1.g Department Store Account	\$1,017	Collection account reported in Nov. 2005 (Items 1, 3 at 2)
¶ 1.h Financial Account	\$103	Not substantiated (Items 1, 3 at 2)
¶ 1.i Medical Account	\$50	Not substantiated (Items 1, 3 at 2)

On June 11, 2007, Applicant responded to DOHA interrogatories asking about the status of the delinquent debts alleged in the SOR. He stated one was charged off. Regarding most of the other delinquent debts, he stated he did not have the funds to pay them. A review of Applicant's credit reports shows he has had delinquent debts since 2000, which remain unpaid to the day he received the FORM. Other debts became delinquent as recently as 2005. Applicant noted he served four years in the U.S. Navy, and he promised he would never jeopardize the security of the United States.

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 controlling adjudicative goal is a fair, impartial and common sense 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 avoided drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, the Government has the initial burden of establishing controverted facts alleged in the SOR by “substantial evidence,”⁸ demonstrating, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant’s access to classified information. Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to produce evidence “to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).⁹

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 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.

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 Executive Order 12968 (Aug. 2, 1995), Section 3.

⁸ See Directive ¶ E3.1.14. “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

⁹ “The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant’s past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15.” ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the relevant security concern is under Guideline F (Financial Considerations). AG ¶ 18 articulates the security concern relating to financial problems:

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.

AG ¶ 19 provides two Financial Considerations Disqualifying Conditions that could raise a security concern and may be disqualifying in this case, "(a) inability or unwillingness to satisfy debts," and "(c) a history of not meeting financial obligations." Applicant's history of delinquent debt is documented in his credit reports, his response to DOHA interrogatories and his SOR response. He admitted responsibility for six delinquent debts, totaling approximately \$24,000. His debts became delinquent between 2000 and 2005, and continue to be delinquent. The government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c).

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a)-(e) 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.

Considering the record evidence as a whole,¹⁰ I conclude that none of the mitigating conditions apply. Applicant's evidence is not sufficient to show he has dealt responsibly with his financial obligations. Applicant presented little or no evidence about how he acquired the debts, why did they become delinquent, or what efforts he has taken over the years to pay, contact creditors, or to otherwise resolve any of the debts since he acquired them. He presented little or no evidence to show he dealt responsibly with his financial obligations after receipt of the SOR (i.e., paid debts, settlements, documented negotiations, payment plans, budgets, financial assistance/counseling). He failed to disclose any circumstances beyond his control (i.e., such as loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation) that caused his financial problems.¹¹ Nor is there any evidence that he has participated in any financial counseling.

I conclude Applicant's six delinquent debts, totaling about \$24,000 are still valid, and Applicant is responsible for them. His overall conduct with his creditors casts doubt on his current reliability, trustworthiness, and good judgment. He should have been more diligent and made greater efforts to resolve his delinquent debts, especially after receipt of the SOR.

Applicant's financial history and lack of favorable evidence preclude a finding that he has established a track record of financial responsibility, or that he has taken control of his financial situation. Based on the available evidence, his financial problems are continuing and likely to recur and to be a concern in the future. Moreover, his financial problems are recent, not isolated, and ongoing.

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 the 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

¹⁰ See ISCR Case No. 03- 02374 at 4 (App. Bd. Jan. 26, 2006) (citing ISCR Case No. 02-22173 at 4 (App. Bd. May 26, 2004)). When making a recency analysis, all debts are considered as a whole.

¹¹ "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)).

individual's age and maturity at the time of the conduct; (5) 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.

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. AG ¶ 2(c).

Applicant's record of good employment weighs in his favor. There is no evidence of any security violation. Aside from his delinquent debts (which is a civil, non-criminal issue), he is a law-abiding citizen. He served in the Navy for four years. These factors show some responsibility, rehabilitation, and mitigation. The overall amount of his delinquent debt at about \$24,000 is relatively low, and some of his debts may be barred from legal enforcement by the statute of limitations.

The evidence against mitigating Applicant's conduct is more substantial. Considering Applicant's age, education, and employment history, he was well aware of his financial responsibilities. He failed to satisfactorily explain why he could not develop a payment plan and begin payment to his creditors. He learned of the security significance of these delinquent debts in August 2007 when he responded to the SOR. His efforts to resolve his delinquent debts were insufficient, and his actions were not adequate to fully resolve security concerns. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude he has not mitigated the security concerns pertaining to financial considerations.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my "careful consideration of the whole person factors"¹² and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has not mitigated or overcome the government's case. For the reasons stated, I conclude he is not eligible for access to classified information.

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 to 1.c: Against Applicant

¹² See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).

Subparagraph 1.d:	For Applicant
Subparagraphs 1.e to 1.g:	Against Applicant
Subparagraphs 1.h to 1.i:	For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue eligibility for a security clearance for Applicant. Eligibility for a security clearance is denied.

Juan J. Rivera
Administrative Judge