



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



In the matter of:)	
)	
)	ISCR Case No. 07-04842
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Stephanie C. Hess, Esquire, Department Counsel
For Applicant: *Pro se*

January 31, 2008

Decision

MASON, Paul J., Administrative Judge:

Applicant submitted his Security Clearance Application (SCA), on October 16, 2006. On August 3, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F). The action was taken pursuant to 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and made effective within the Department of Defense for SORs issued on or after September 1, 2006.

Applicant answered the SOR in writing on August 31, 2007, and requested a hearing before an Administrative Judge. I received the case assignment on October 25, 2007. DOHA issued a notice of hearing on December 3, 2007, and the case was heard on December 18, 2007. The government offered 4 exhibits (GE1-4). Applicant testified on his own behalf. He offered no exhibits. DOHA received the transcript of the hearing

(Tr.) on January 4, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

Applicant is 47 years old and has been employed by his employer since August 1988. He is currently a range technician. He has held a security clearance since 1989. He seeks a Secret clearance.

There are 14 delinquent debt allegations listed under paragraph 1 (financial considerations) of the SOR. Applicant admitted most of the debts and/or stated that four other debts belonged to his brother.¹ Applicant denied subparagraph 1.e. without explanation or any independent evidence to support his position.

The 14 delinquent accounts total \$19,136.00. Most of the accounts are credit cards, and one account (\$1,869.00) represents the balance due after Applicant's car was repossessed in 2005. Two debts were transferred for collection more than five years ago in 2002, and four debts were transferred for collection recently in 2006. As of the date of the hearing (December 18, 2007), Applicant had made no payment on any of the listed debts.

On June 15, 2007, Applicant provided information (GE 2, answers to interrogatories) pertaining to his financial obligations. In his personal financial statement (PFS), a form provided by the government for applicants to fill in their gross and monthly income, monthly expenses, monthly debt, net remainder, and assets, Applicant provided estimates of his monthly income and expenses. He indicated his gross monthly pay was 1,438.46, his net pay was \$1017.58 a month, with monthly expenses of \$400.00 in groceries, \$200.00 in car expenses, and \$510.50 a month in child support. He indicated in the PFS, and in other locations of the exhibit that he was making no payments towards the listed debts.

In GE 2, Applicant also stated he intended to place the listed debts in a consolidation plan to pay them off. He noted he was a single parent helping his two daughters with their education expenses. When asked at the hearing about his contributions for his daughters' education, he testified he was paying \$350.00 a month to support one daughter in nursing school, and about \$150.00 a month for the other daughter in college.

At the hearing, Applicant provided more information about his indebtedness. While all his explanations will be reviewed, I find the primary reason he slid into financial difficulty was a lack of management of his finances. He stated, "I think I just got lax on it and didn't pay attention. I make good money." (Tr. 20) Another of his explanations was that in August 1997, his mother and father lived with him for about six months while she recuperated from a broken hip. Applicant was also raising three children at the time.

¹ Applicant provided no documentation to support his claim that four of the debts belonged to his brother.

After his parents returned to their home, he began receiving phone calls from creditors demanding payment. He recalled telling them he would initiate repayment after the creditors submitted verification he was responsible for the debts.

Applicant also provided more information about his earnings at the hearing. He has been employed by his current employer for 18 years, living in a trailer on his employer's land without having to pay rent, or a mortgage, or utilities. He also provides after hours security for his employer. He quoted his net earnings at about \$2,000.00 a month.² Whether his earnings from the security job are included in his monthly net earnings is unknown. Applicant's monthly bills include (1) a car payment of \$350.00 for a car he recently purchased, (2) \$80.00 in car insurance, (3) \$500.00 in education expense for his daughters, (4) \$300.00 in groceries, and (5) a cable bill. Assuming the cable bill is \$75.00 a month, and subtracting the expenses from his net monthly earnings, the total monthly remainder is approximately \$700.00. In addition to the net remainder, Applicant estimated he had about \$10,000.00 in his retirement account.

Applicant was aware of the delinquent debts when he filled out the SCA in October 2006, and when he received the SOR in August 2007. In his answer to the SOR, Applicant indicated several of the debts were the responsibility of his brother. Those debts are identified in subparagraphs 1.c., 1.d., 1.f., 1.h., and 1.n. of the SOR. When asked why he accused his brother of certain debts, Applicant claims he did not know his brother was establishing credit in Applicant's name. No additional information was provided. Applicant testified he intended to pay off his brother's debts too.

Though he has never contacted any of the creditors, he declared he would start paying off the debts in June 2008. Applicant has never had financial counseling.

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 ultimate adjudicative goal is a fair, impartial and common sense decision. According to AG, the entire process is a careful thorough evaluation 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.

² These figures are different from those provided in his answers to interrogatories. (GE 2) Applicant provided no explanation for the discrepancy.

The protection of the national security is the paramount consideration. AG ¶ 2b. 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.

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 applicant or proven by Department Counsel. . . .” The Applicant has the ultimate burden of persuasion as to obtaining 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 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Financial Considerations (FC)

Inability to pay bills on time places the individual debtor at risk of committing illegal acts to generate funds.

Analysis

Applicant’s financial problems percolated in August 1997 when his parents came to live with him. He recalled the creditors began contacting about delinquent accounts shortly after his parents departed. Ten years later, Applicant owes 14 creditors \$19,136.00. Some of the debts became delinquent in 2002 while others did not reach the delinquent status until various dates in 2006. The disqualifying conditions (DC) raised by Applicant’s overdue debts are FC DC 19.a. “inability or unwillingness to satisfy debts,” and FC DC 19.c. “a history of not meeting financial obligations.” Applicant’s accumulation of more than \$19,000.00 in debt by August 3, 2007 shows an inability to pay creditors, and also demonstrates a record of not paying debts that he voluntarily creates.

There are only two mitigating conditions (MC) potentially available for Applicant. FC MC 20.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.” The accumulation of four of 14 delinquent debts falling delinquent less than two years ago militates against the applicability of FC MC 19.a.

FC MC 19.b. “the conditions that resulted in the financial problem were largely beyond the person’s control, and the individual acted reasonably under the circumstances” receives some favorable consideration based on the financial burden Applicant confronted when he had to provide for his parents and three children. However, the passage of nine years of uninterrupted employment provides little or no mitigation for Applicant’s failure to pay his past due debts.

Applicant also attributed his failure to pay the listed debt on the \$500.00 a month contribution he is making towards his daughters’ education. Applicant is to be commended for helping his daughter’s realize their educational dreams. However, his decision to help his daughters was his own choice, not a circumstance beyond his control. Based on Applicant’s living accommodations that have existed for about 18 years, where he pays no mortgage or rent, no utilities or telephone, and given the earnings and expense estimates he provided, he currently has at least a \$700.00-a-month remainder. This sizeable remainder could have been used to pay off about six of the past due debts in one payment or a limited number of payments. Payments of some of the smaller debts would have interposed more credibility in Applicant’s statement of intention to satisfy the creditors. Instead, the little mitigation he does receive under FC MC 20.b. is insufficient to meet his ultimate burden of persuasion.

The remaining two mitigating conditions are not applicable. FC MC 20.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” is not applicable based on Applicant’s admission he has never had financial counseling. Without financial counseling or indications of control over the problems, FC 20.c. is inapplicable. The most effective way to show control of the problem is through payment of debts. Since Applicant has paid none of the creditors, he gets no mitigation under FC MC 20.d. “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolved debts.” All factual allegations under the FC guideline are resolved against Applicant.

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 pages 18 and 19 of the AG: “(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) 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 ¶ 2c., 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.

The disqualifying and mitigating conditions of the FC guideline have been evaluated in light of all the facts and circumstances surrounding this case. When Applicant’s parents came to live with him during his mother’s recuperation, Applicant was 36 years old and living on his employer’s property with no major expenses except his three children. Though it had to be an extra financial burden to take care of his parents, their stay was only for a short period. Applicant had plenty of time to readjust his lifestyle to address his creditors. Yet, he did nothing. He furnished no evidence to even suggest a constructive change in his financial habits. While he gets credit for providing money to help his two daughters finish school, he should have been redirecting these funds toward payment of his overdue debt. Alternatively, he could have applied the monthly remainder to some of the smaller debts in the SOR. Without any documented action showing that some of the creditors have been paid or that a plan has been set in motion to pay the creditors, Applicant’s current financial difficulties will persist in the future. Applicant has not overcome the adverse evidence under the FC 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 (Financial Considerations, Guideline F): AGAINST APPLICANT

Subparagraph 1.a.	Against Applicant
Subparagraph 1.b.	Against Applicant
Subparagraph 1.c.	Against Applicant
Subparagraph 1.d.	Against Applicant
Subparagraph 1.e.	Against Applicant
Subparagraph 1.f.	Against Applicant
Subparagraph 1.g.	Against Applicant
Subparagraph 1.h.	Against Applicant
Subparagraph 1.i.	Against Applicant
Subparagraph 1.j.	Against Applicant
Subparagraph 1.k.	Against Applicant
Subparagraph 1.l.	Against Applicant
Subparagraph 1.m.	Against Applicant
Subparagraph 1.n.	Against Applicant

Conclusion

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

Paul J. Mason
Administrative Judge