



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



In the matter of:

ISCR Case No. 07-08159

Applicant for Security Clearance

Appearances

For Government: Paul DeLaney, Esquire, Department Counsel

For Applicant: *Pro Se*

August 20, 2008

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the case file, pleadings, and exhibits, I conclude that Applicant failed to rebut or mitigate the Government's security concerns under Guideline F, Financial Considerations. His eligibility for a security clearance is denied.

Applicant submitted his Electronic Questionnaires for Investigations Processing (EQIP) Questionnaire on April 13, 2006. On April 23, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

On May 1, 2008, May 5, 2008, and May 7, 2008, Applicant answered the SOR in writing and elected to have a hearing before an administrative judge. The case was

assigned to me on June 3, 2008. I convened a hearing on June 30, 2008, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses and introduced seven exhibits, which were marked Ex. 1 through 7 and admitted to the record without objection. Applicant testified on his own behalf and called no witnesses. He attached four exhibits to the SOR, which were identified and marked as Applicant's Ex. A through D and admitted to the record without objection. At his hearing, Applicant introduced an additional exhibit, which I mistakenly marked as Ex. A. The correct identification for the exhibit is Ex. A-1.

Department Counsel objected to the admission of Ex. A-1, stating that the document, which Applicant represented as a communication from a national consumer credit reporting organization, failed to identify Applicant and his address of record with specificity and failed to explain why it no longer listed two debts on Applicant's credit report. Applicant stated he offered Ex. A-1 to show that a credit repair company he had hired had been communicating with the consumer credit reporting organization on his behalf. I overruled Department Counsel's objection and admitted Ex. A-1 for any probative value it might have.

During the hearing, Department Counsel moved to amend the SOR by changing the amount of the delinquent debt identified at ¶ 1.a from \$1,371 to \$1,361. Department Counsel stated that the evidence provided at the hearing established the lesser debt. Applicant did not object to Department Counsel's motion, and the SOR was amended accordingly.

At the conclusion of the hearing, I left the record open for one week, until close of business July 7, 2008, so that Applicant could provide additional information for the record. Applicant did not file any additional information, and I closed the record on July 8, 2008. DOHA received the transcript (Tr.) of the hearing on July 14, 2008.

Findings of Fact

The SOR contains 19 allegations of disqualifying conduct under Guideline F, Financial Considerations (SOR ¶¶ 1.a. through 1.s.) In his Answer to the SOR, dated May 1, 2008, May 5, 2008, and May 7, 2008, Applicant admitted 18 of the allegations (¶¶ 1.a. through 1.r); he denied one allegation (¶ 1.s.) and provided documentation to corroborate his statement that the debt had been paid. Applicant's admissions are admitted as findings of fact. (Answer to SOR; Tr. 15-16, 76, 85; Ex. D.)

Applicant is 42 years old, a high school graduate, never married, and without children or other dependents. From October 2005 until April 26, 2008, when his eligibility for a security clearance was suspended as a result of receiving the SOR, Applicant was employed as a security guard by a government contractor. (Ex. 1; Tr. 33, 95-96.)

In addition to his current unemployment, Applicant has been unemployed two times since graduating from high school in 1984. In 2003, he suffered a heart attack and was unemployed for four months. From March 1990 to February 1991, he was laid off from a job and collected unemployment compensation. (Tr. 39-41.)

When he was interviewed under oath by an authorized investigator in December 2006, Applicant acknowledged several financial delinquencies that were not listed on his SF-86. He told the investigator that his financial delinquencies were attributable to a six-month period of unemployment as the result of injuring his ankle in 2001 or 2002. Applicant reported that he had no health insurance when he was injured, and he was responsible for all medical expenses relating to the ankle injury, which required two separate surgeries and many sessions of physical therapy. During this time, Applicant reported, his automobile was repossessed, and he used his credit cards to support himself. (Ex. 3.)

At his hearing, Applicant stated that his ankle injury occurred in the 1990s and not in 2001 and 2002. He stated that he no longer owed any debts related to his ankle injury and subsequent unemployment.¹ He further stated that all of the debts alleged on the SOR had occurred since 2003. (Tr. 41-45.)

The amended SOR alleged, and Applicant admitted, that he was responsible for 18 financial delinquencies totaling approximately \$19,955. The SOR alleged the following delinquencies: an unsatisfied deficiency balance of about \$12,513 on an automobile that was repossessed and sold in July 2004 (SOR ¶ 1.e.); a debt of \$1,361 to a medical provider, referred for collection in about September 2001 (SOR ¶ 1.a.); a debt of \$268 to a medical provider, referred for collection in about November 2001 (SOR ¶ 1.b.); a debt of \$234, referred for collection in about September 2003 (SOR ¶ 1.d.); a debt of \$45, referred for collection in about November 2004 (SOR ¶ 1.f); a debt of \$50, referred for collection in about May 2005 (SOR ¶ 1.g.); a medical debt of \$350, referred for collection in about May 2005 (SOR ¶ 1.h.); a medical debt of \$100, referred for collection in about May 2005 (SOR ¶ 1.i.); a cable debt of about \$1,127, referred for collection in about October 2005 (SOR ¶ 1.j.); and a debt of \$408 to a communications utility, referred for collection in about June 2006. (SOR ¶ 1.k.).

The amended SOR alleged the following additional debts: a debt of \$445, referred for collection in about August 2006 (SOR ¶ 1.l.); a medical debt of \$114, referred for collection in October 2006 (SOR ¶ 1.m.); a cable debt of \$231, referred for collection in about October 2006 (SOR ¶ 1.n.); a medical debt of \$777, referred for collection in about January 2007 (SOR ¶ 1.o.); a medical debt of \$100, referred for collection in about August 2007 (SOR ¶ 1.p.); a medical debt of \$75, referred for collection in about

¹ Applicant later acknowledged that the debt alleged at SOR ¶ 1.a. arose at the time of his ankle injury. (Tr. 52.)

August 2007 (SOR ¶ 1.q.); and a medical debt of \$149, referred for collection in about August 2007 (SOR ¶ 1.r.).

In an interview with an authorized investigator in December 2006, Applicant stated he hired credit repair company A in July 2006 to help him resolve his financial delinquencies. He told the investigator he paid credit repair company A \$45 a month for this service. Applicant decided Company A was not helping him, and sometime in early 2007, he hired Company B to assist him with his financial delinquencies. He testified he paid Company B \$60 a month to represent him before his creditors and resolve his debts. He stated that Company B estimated it could resolve his debts in about one year. Neither Company A nor Company B has provided Applicant with credit counseling or assistance in developing a budget. Applicant stated he would submit as post-hearing documents a copy of his contract with Company B and e-mail reports from Company B on the status of the payment of debts it was attempting to resolve for him. However, Applicant failed to provide this information. (Ex. 3; Tr. 91, 118-121.)

Applicant had an automobile repossessed in February 2001. He listed this repossession on the SF-86 he signed and certified on April 13, 2006, and he acknowledged this repossession in his interview with an authorized investigator in December 2006. In June 2002, Applicant purchased a new vehicle. The vehicle was repossessed in July 2004 when he failed to make the required monthly payments. Applicant owed a deficiency balance of \$12,513 on the vehicle. He did not list this delinquency on his SF-86 and he did not address this debt in his interview with an authorized investigator in December 2006. (Ex. 3; Ex. 7; Tr. 63-70.)

Applicant purchased a new automobile in April 2005. His monthly payments on the vehicle are \$427. He purchased another vehicle, a truck, in September 2007. His monthly payments on the truck are \$294. (Ex. 4; Tr. 106-114.)

In August 2006, Appellant returned to live at his parents' home for about six months in order to save money and satisfy some of his delinquent bills. He paid his parents \$100 in rent each month. He had a net remainder at the end of each month of about \$1,600. He told an authorized investigator that he planned to use that money to satisfy the debt alleged at SOR ¶1.c. and other delinquent debts. However, he gave the money to a friend so she could pay her bills. He estimated that he gave his friend about \$1,200 each month for about seven months. She has not repaid the money lent to her by Applicant. He did not use his monthly net remainders to pay any of his delinquent debts. (Ex. 3; Tr. 102-104.)

From December 2006 to about April 2008, Appellant reported a gross monthly salary of \$3,600 from his full-time employment. In addition, he had a part-time job until January or February 2008 that paid him \$160 a week. Applicant's net monthly income between December 2006 and about January 2008 was approximately \$2,900. (Tr. 95-99.)

Applicant reported the following monthly fixed expenses: rent: \$750; groceries: \$200; health insurance: \$226; credit repair contract with Company B: \$60; utilities: \$200; cell phone: \$65; automobile insurance: \$172; car payment: \$427; truck payment: \$294; miscellaneous: \$100. His total fixed monthly expenses were \$2,494. (Ex 3; Tr. 100-102, 115-116.)

Applicant's security clearance eligibility was suspended in April 2008, and he has not worked for his employer since that time. He claims \$300 in monthly income and \$380 a week in unemployment compensation, for a total monthly income of about \$1,800. He has no savings. He does not have a retirement account. In his answer to the SOR, Applicant asserted he would pay all of his delinquent debts that were less than \$300 by September 2008. Applicant provided evidence to corroborate his statement that he had paid a debt of \$81 on April 28, 2008. The debt was alleged at SOR ¶1.s. All other debts alleged on the SOR remain unsatisfied. (Answer to SOR, dated May 1, 2008, May 5, 2008, and May 7, 2008; Tr. 85, 114-116.)

Policies

When evaluating an Applicant's suitability for a security clearance, an 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, the administrative judge applies these guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching 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.

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).

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline 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(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant accumulated substantial delinquent debt and was unable or unwilling to pay his creditors. This evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant's financial delinquencies. Unresolved financial delinquency might be mitigated if it “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.” (AG ¶ 20(a)) Additionally, unresolved financial delinquency might be mitigated if “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.” (AG ¶ 20(b)) Still other mitigating circumstances that might be applicable include evidence that “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” (AG ¶ 20(c) or “the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” (AG ¶ 20(d)) Finally, if “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 options to resolve the issue,” then AG ¶ 20(e) might apply.

Applicant admitted a history of financial difficulties that spanned the period from September 2001 to the present time. While he suffered a heart attack in 2003 and was consequently unemployed for four months, he was continuously employed from October 2005 to April 2008 in a full-time job, and he also had a part-time job until January 2008. His net income from his full-time and part-time jobs was approximately \$2,900 a month. Applicant admitted that 18 of the 19 delinquencies alleged on the SOR remained unresolved, resulting in substantial debt which continues to the present day, a situation which raises concerns about Applicant’s good judgment.

Applicant had not received financial counseling. While he did not dispute his debts and admitted that he was responsible for them, it was not clear that he understood his financial problems or how to resolve them. He failed to demonstrate how the credit repair companies he had hired were working to resolve his financial delinquencies. He failed to produce documents to corroborate his statement that credit repair company B was remedying his financial problems by paying his creditors on his behalf. He had no plan in place to systematically resolve his substantial delinquent debt and prepare for future contingencies. I conclude that AG ¶ 20(b) applies in part in mitigation, but that AG ¶ 20(a), AG ¶ 20(c), AG ¶ 20(d) and AG 20(e) do not apply in mitigation to the facts of Applicant’s case.

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 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 ¶ 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. Applicant's financial problems began several years ago and continue to the present. He has not taken affirmative action to pay or resolve the majority of his delinquent debts, and his many delinquencies and his lack of attention to them continue to raise security concerns. He held his most recent job since October 2005, and he used his income to purchase an automobile and a truck. However, he paid only one of the 19 debts alleged on the SOR. Despite a steady income for several years, he failed to budget his income to satisfy his many other debts. Instead, he continued on a pattern of financial over-extension, which, in the past, led to bad debts and vehicle repossessions.

Overall, the record evidence leaves me with questions and doubts at the present time as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising from his financial delinquencies.

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. through 1.r.: Against Applicant

Subparagraph 1.s.: For 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.

Joan Caton Anthony
Administrative Judge