



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



In the matter of:)	
)	
)	ISCR Case No. 07-09966
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Gina L. Marine, Esquire, Department Counsel
For Applicant: Pro Se

March 12, 2008

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted a security clearance application, Standard Form 86, on February 15, 2007. On October 24, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations for Applicant. 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 November 28, 2007, Applicant answered the SOR and requested his case be decided on the written record. Department Counsel prepared a File of Relevant Material (FORM) on December 28, 2007. The FORM was forwarded to Applicant on that same day. There is nothing in the record indicating when Applicant received the FORM. He had 30 days from receipt of the FORM to submit any additional material. He responded on February 21, 2008. His response consisted of eight items which were admitted as Items 8-15 with no objection. The FORM was forwarded to the hearing office on

February 27, 2008 and assigned to me on March 5, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, dated November 28, 2007, Applicant admitted all of the SOR allegations. However, in subsequent responses, he claims the debt alleged in SOR ¶ 1.g is his brother's or father's debt. (Item 3.)

Applicant is a 50-year-old employee with a Department of Defense contractor seeking to maintain his security clearance. He has been employed with the defense contractor since April 1984. He also served as an officer in the Army Reserves from May 1980 to October 2001. He has held a security clearance since 1980. (Item 4; Item 9.)

Applicant's background investigation revealed the following delinquent accounts: a \$5,866 charged off credit card account (SOR ¶ 1.a; Item 7 at 2); a \$7,139 credit card account charged off in March 2002 (SOR ¶ 1.b; Item 6 at 10; Item 7 at 2); a \$3,500 charged off credit card account (SOR ¶ 1.c; Item 7 at 3); a \$60,045 credit card account that was charged off and turned over for collection, original balance was \$27,024 (SOR ¶ 1.d; Item 6 at 10, 13); a \$9,551 charged off credit card account that was turned over for collection (SOR ¶ 1.e; Item 6 at 13); a \$2,242 charged off credit card account (SOR ¶ 1.f; Item 6 at 8); a \$918 charged off account (SOR ¶ 1.g; Item 6 at 10); and a \$3,471 charged off credit card account (SOR ¶ 1.h; item 6 at 4.).

Applicant and his wife first encountered financial problems when they bought a house in 1987 that they could not afford. Their two children later developed serious medical problems. Their son had a heart defect and passed away in 1997. In 1995, their daughter was diagnosed with a brain tumor. She is doing fine now but has disabilities related to her illness. During the period the children were sick, Applicant wanted to "spare no expense for [his] kids." (Item 5 at 21; Item 11.)

In 2001, the financial debts caught up with Applicant. In July or August 2001, he consulted a law office specializing in consumer credit counseling for assistance and to learn how to deal with debt collectors and negotiate better settlements. Applicant states the program did not work. Creditors harassed him and others refused to go along with the settlement agreements. In February 2002, he contemplated filing for bankruptcy and consulted a bankruptcy attorney but decided against it. In 2005, he consulted the bankruptcy lawyer again but did not file for bankruptcy. (Item 5 at 24-25; Item 8; Item 11).

After 2001, Applicant made no payments directly to creditors that existed as of that date except for payments on secured debts, such as car loans and mortgage payments. He would attempt to settle debts only when the creditor contacted him. He claims he has remained current on all secured debt payments and on all unsecured

debts that he incurred after August 2001. Between 2005 to 2007, he settled several of his delinquent debts. He paid approximately \$9,000 in total settlement payments. He resolved approximately five accounts that were not alleged in the SOR. (Item 5 at 37, 38, 40-41, 44, 47; Item 11)

Applicant believes the debt alleged in SOR ¶ 1.g is his brother's debt. He claims that his father co-signed on a lease for restaurant equipment. Applicant has the same name as his father. (Item 11.) The debt was removed from his most recent credit report. (Item 15.) No documentation was provided verifying that this was his brother's debt.

In 2002, Applicant and his wife took steps to improve their financial situation. He started a part-time job and his wife obtained full-time employment. They have worked to improve their credit score and their savings. His wife currently has approximately \$20,000 in savings. (Item 5 at 21; Item 11) He has approximately \$8,618 in an investment account. (Item 5 at 33) They have a lot of equity in their home which Applicant claims that they can refinance in order to pay delinquent debts. (Item 5 at 35-36) A financial worksheet completed on October 3, 2007, indicated that Applicant and his wife have total assets of \$128,643. After monthly expenses, they have approximately \$1,508 left over each month in discretionary income. (Item 5 at 22.)

As of October 3, 2007, his credit score was rated by TransUnion as 618 which is viewed as between fair and poor. Experian listed his credit score as 579 which is viewed as poor. Equifax listed his credit score as 617 which is viewed as fair and poor. (Item 5 at 55.)

In his response to the FORM, Applicant submitted a letter from the attorney he consulted in 2002 and 2005 regarding filing for bankruptcy. The attorney states that Applicant consulted him in February 2001, when he was initially considering filing for bankruptcy and in 2005. On February 11, 2008, he retained the attorney to assess the debts alleged in the SOR. The attorney indicates that all of the debts alleged in SOR ¶¶ 1.a – 1.h have passed the Arizona statute of limitations. Arizona law (4 Arizona Revised Statutes § 12-548) states that creditors holding a claim based upon a written contract for payment of money must initiate their collection efforts against the responsible party within six years from the date that there was any conduct by the debtor/obligor regarding such debt. The attorney concludes that Applicant no longer owes any of the debts due to the statute of limitations. (Item 10.)

Applicant states that with the exception of the creditors listed in SOR ¶¶ 1.a and 1.d, no collection efforts have been taken against him. He claims these delinquent debts will not put any pressure on him because Arizona state law prohibits any collection efforts now, and any future collection efforts violate the Fair Debt Collection Practices Act. (Item 11.) On February 20, 2008, Applicant retained a law firm for the purpose of working with the credit bureaus to audit and verify the status of Applicant's credit reports. The law firm is looking into the status of the debts alleged in SOR ¶¶ 1.b – 1.f and 1.h. There is a notation that the debt alleged in SOR ¶ 1.a is settled. (Item 12.) A settlement agreement, dated February 22, 2008, was included. In the agreement,

Applicant agrees to make monthly payments to the creditor for SOR ¶ 1.a until May 28, 2008. The first payment was due on February 28, 2008. No proof of Applicant's first payment was provided. (Item 13.) On May 28, 2008, the debt in SOR ¶ 1.a will be settled provided Applicant meets the terms of the settlement agreement.

A credit report, dated February 15, 2008, lists the debts alleged in SOR ¶¶ 1.a – 1.d, and 1.f as delinquent. (Item 15.) Applicant provided no information about his work performance.

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 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.

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 disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition (FC DC) ¶19(a) (an inability or unwillingness to satisfy debts); FC DC ¶19(c), (a history of not meeting financial obligations); and FC DC ¶ 19(e) (consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis) apply to Applicant’s case. Since 2001, Applicant has a history of not meeting financial obligations. He incurred numerous delinquent accounts, primarily consisting of delinquent credit card accounts. The SOR alleged eight delinquent accounts that were either charged off or turned over for collection with a total approximate balance of \$92,732.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Financial Considerations Mitigating Condition (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) is not applicable. Applicant’s history of financial irresponsibility goes back to at least 1987 when he bought a house that he could not afford. He incurred numerous delinquent accounts. Although Applicant maintains that his debts are uncollectable due to the statute of limitations, his history of financial irresponsibility casts doubt on his reliability, trustworthiness, and good judgment. Applicant had the income to resolve the debts. He admits that he only resolved the accounts where he was contacted by the creditor. With the exception of the debt alleged in SOR ¶¶ 1.g, he is not disputing any of the accounts

alleged in the SOR. They are his financial obligations. He passively waited until the statute of limitations to expire (an issue that is debatable) rather than honor his financial obligations.

FC MC ¶ 20(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) should be considered due to his children's serious health issues. However, it appears that most of the delinquent debt is consumer debt as opposed to medical debt. Applicant did not provide information as to the extent of the medical expenses that were not covered by insurance or some other source. His more serious financial problems occurred in 2001, several years after both children were diagnosed with serious health issues. He settled some accounts but most of the accounts are apparently uncollectable due to the statute of limitations. Applicant only resolved those accounts where the creditor contacted him directly. He did not actively seek out to resolve his delinquent accounts. Based on these reasons, I cannot conclude he acted responsibly under the circumstances.

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) does not apply. There is no evidence that Applicant attended financial counseling. He sought out firms that would assist him in disputing and/or settle his delinquent accounts. There is no evidence of financial counseling that would assist Applicant in developing a plan to avoid financial over-extension in the future. I cannot conclude that Applicant's financial situation is resolved given his past history of financial irresponsibility.

FC MC ¶20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. Applicant admits that he did not attempt to settle any delinquent accounts with creditors unless the creditor directly contacted him. Passively waiting for the statute of limitations to occur does not negate Applicant's history of financial irresponsibility. (See ISCR 03-20327 (App. Bd. October 26, 2006) citing ISCR Case 98-0349 (App. Bd. February 3, 1999). He inquired about filing for bankruptcy in 2002 and 2005 but did not follow through with the bankruptcy. He entered into a repayment plan with the debt alleged in SOR ¶ 1.a in February 2008. That same month he consulted an attorney about the status of his debts and retained a law firm to help him dispute the remaining delinquent debts on his credit report. These actions occurred three months after the SOR was issued. I cannot conclude that Applicant initiated a good-faith effort to resolve his overdue accounts.

FC MC ¶20(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) While Applicant claims the debt alleged in SOR ¶ 1.g is his brother's debt, he provided no documentary evidence corroborating his assertion. FC MC ¶ 20(e) does not apply.

Under the revised AG, the overall concern under financial considerations is not only whether a person who is financially over-extended is at risk of having to engage in illegal acts to generate funds but also the 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. Applicant's failure to honor his financial obligation to his creditors remains a security concern. He has not mitigated the security concerns raised under financial considerations.

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 common sense 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 has provided no information about his work performance. While his financial problems are mitigated, in part, due to his children's serious health issues, his inaction in resolving most of his delinquent accounts when he had the means to do so leaves me with doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under financial considerations.

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
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

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.

ERIN C. HOGAN
Administrative Judge