



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



In the matter of:)
)
) ISCR Case No. 07-10157
)
)
Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: *Pro Se*

August 29, 2008

Decision

RIVERA, Juan J., Administrative Judge:

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

Statement of the Case

On August 8, 2006, Applicant submitted a Questionnaire for National Security Positions or Standard Form (SF 86). On September 26, 2006, he submitted an Electronic Questionnaires for Investigations Processing (e-QIP) (SF 86).¹ On March 24, 2008, 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

¹ Form Items 4 and 5 are his two SF 86s.

² Form Item 1 (SOR), is the source for the facts in the remainder of this paragraph unless stated otherwise.

Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, modified and revised.³ The SOR alleges security concerns under Guideline F (Financial Considerations). 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 May 13, 2008, 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 June 5, 2008, was provided to him, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation.⁴ Applicant did not provide a written response to the FORM. The case was assigned to me on August 15, 2008.

Findings of Fact

In his SOR response, Applicant admitted the debts alleged in SOR ¶¶ 1.a – 1.k and 1.n. He denied SOR ¶¶ 1.l – 1.p because the debts were paid or he is making payments on the debts. He denied owing the debt alleged in SOR ¶ 1.p. I find SOR ¶¶ 1.n and 1.o are duplicates of the same debt. 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 49-year-old truck driver working for a defense contractor.⁵ He married in 1981 and divorced in 1988. He married the second time in 1990. His children or stepchildren were born in 1979, 1980, 1983 and 1984. He did not serve in the military. He has no police record. He has not used illegal drugs in the last seven years, and has never used illegal drugs while in a sensitive position. He has never been fired from a job or quit under adverse circumstances. He has never had any alcohol-related counseling or treatment.

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 The DOHA transmittal letter is dated June 10, 2008. Applicant signed the receipt for the DOHA transmittal letter on June 23, 2008. The DOHA transmittal letter informed Applicant that he had 30 days after receipt of the FORM to submit information.

⁵ Items 4 and 5 (2006 SF 86s) are the source for the facts in this paragraph, unless stated otherwise.

On November 28, 2006, an Investigator from the Office of Personnel Management interviewed Applicant (Item 8). Applicant promised to contact all of his creditors listed on a credit report dated October 17, 2006, and make arrangements to settle all of his outstanding debts as soon as possible. However, some of the SOR debts were listed on the October 17, 2006, credit report and remain unresolved.

He admitted responsibility for the 12 delinquent debts he admitted in the following SOR paragraphs: 1.a (\$124), 1.b (\$310), 1.c (\$241), 1.d (\$85), 1.e (\$105), 1.f (\$150), 1.g (\$9,244), 1.h (\$537), 1.i (\$89), 1.j (\$100), 1.k (\$234), and 1.n (\$91,134).⁶ The federal tax lien in SOR ¶ 1.n was entered on January 23, 2007, and released on December 9, 2002 (Item 13 at 8). He did not explain why the federal tax lien in SOR ¶ 1.n was released, but it was included as an item in his September 2002 bankruptcy. Applicant said he paid the debts in SOR ¶¶ 1.l (\$738), and 1.p (\$201). The debts in SOR ¶¶ 1.k and 1.l were listed in his bankruptcy filing (Item 10). He denied the debt in SOR ¶ 1.q (\$737) because he did not owe it. He is making payments on the debt in SOR ¶ 1.m (\$15,387). He did not provide any proof of payments on the debt in SOR ¶ 1.m. The debt in SOR ¶ 1.o (\$74,081) is a duplication of 1.n (\$91,134).

The record (Item 13) contains the following judgment and lien information: (1) IRS Lien for \$1,967 entered in 1992 and released in 1997; (2) IRS Lien for \$91,134 entered in 1997 and released in 2002; (3) IRS Lien for \$1,434 entered in 1997; (4) IRS Lien for \$74,086 entered in 1998; (5) IRS Lien for \$73,969 entered in 1998; (6) State Tax Lien for \$8,483 renewed in 2002; (7) State Tax Lien for \$737 renewed in 2001 (SOR ¶ 1.q); (8) Small Claims Judgment for \$201 entered in 2006 (SOR ¶ 1.p); and (9) State Tax Lien for \$15,387 entered in 2007 (SOR ¶ 1.m).

Applicant filed for Chapter 7 bankruptcy in June 2002, and his debts were discharged on September 24, 2002 (SOR ¶¶ 1.r and 1.s). His liabilities in the bankruptcy were \$125,135 (Item 10 at 1, 5). Applicant probably received financial counseling in connection with his bankruptcy.

On February 5, 2008, Applicant responded (Item 8) to numerous interrogatories about the status of specific debts with a brief statement:

I have not yet made arrangements on the medical bills that I owe.⁷ I have been working on getting my tax bills settled. As soon as I speak to the local tax representative and set up payments, I will then know how to best set up payments on my medical bills. . . . I will begin making payments on my federal taxes on January 24, 2008.

⁶ Unless stated otherwise, the source for the information in this and the next paragraph is Applicant's SOR response (Item 3).

⁷ SOR ¶¶ 1.a to 1.l are for medical debts. He paid the debt in SOR ¶ 1.l.

He concluded his general statement about his debts, commenting that he has hired a tax consultant and begun arrangements to pay his tax debt. Attached to this response was a statement from the IRS about an established payment plan of \$200 monthly for tax years 1991 and 1992 until the specifics of the repayment plan could be completed (Item 8). As indicated previously, the IRS released his tax debts for 1991 and 1992 in 2002.

Applicant and his spouse's 2006 budget showed a gross monthly salary of \$5,933, deductions of \$1,075, expenses of \$1,352, debt payments of \$1,339 and a net remainder of about \$2,167 (Item 8 at 3-4). Monthly debt payments were for two vehicles, two student loans, and a home loan. *Id.* His budget did not detail any payments for creditors listed in the SOR.

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

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).

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.

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 answers to

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).

DOHA interrogatories, and his SOR response. His 2002 Chapter 7 Bankruptcy listed \$125,135 in delinquent debts which were discharged. He admitted responsibility for 12 unpaid delinquent debts which he acquired after his bankruptcy discharge (SOR ¶¶ 1.a to 1.k and 1.n). The debt in SOR ¶ 1.k was in his bankruptcy filing, and the IRS released the debt in SOR ¶ 1.n. The debts in SOR ¶¶ 1.l and 1.p were paid. He said he was making payments on his state tax lien of \$15,387; however, he did not provide any proof of payments or other indications of his progress resolving this debt. 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 conduct does not warrant full application of AG ¶¶ 20(a) and 20(b) because he did not act more aggressively and responsibly to resolve his delinquent debts.¹¹ Applicant presented little evidence of good-faith efforts taken to contact creditors, or to resolve his debts since he acquired them.

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 for AG ¶ 20(a), 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.

I specifically considered Financial Considerations Mitigating Condition AG ¶ 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”, and conclude it applies, but only to a limited extent.

Applicant’s evidence established factors that may be considered as circumstances beyond his control contributing to his inability to pay his debts, i.e., his 1988 divorce, his failed business, raising four children, and his wife’s and his medical condition and the financial expenses associated with it. Notwithstanding, he failed to present evidence to show how these past circumstances beyond his control impaired his present ability to pay his debts.

Applicant’s evidence is not sufficient to show he has dealt responsibly with his financial obligations before, or especially after receipt of the SOR. Based on his security clearance applications, Applicant has been consistently employed since at least 2000. He has continuously worked for his current employer since August 2006. He presented little evidence to show paid debts, settlements, documented negotiations, payment plans, budgets, or financial assistance/counseling. He is responsible for 11 medical debts (SOR ¶¶ 1.a to 1.j) and a state tax lien of amount \$15,000 (SOR ¶ 1.m). It is unclear when his last payments were made on any of these 12 delinquent debts. 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 recent, not isolated, and are likely to be a concern in the future.

AG ¶¶ 20(c) and 20(d) do not fully apply. Although there is evidence that he has participated in some financial counseling (consulting with a bankruptcy attorney and a tax consultant), there are no indications that Applicant’s financial problems are being resolved or are under control. New delinquent debt surfaced after his 2002 bankruptcy. There is insufficient information to establish that Applicant applied the knowledge obtained from financial counseling. I gave him credit for acting in good faith in his 2002 bankruptcy; however, there is insufficient evidence to show good faith¹² in the resolution

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)).

¹² The Appeal Board has previously explained what constitutes a “good faith” effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the “good faith” mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant’s debts. The Directive does not define the term ‘good-faith.’ However, the Board has indicated that the concept of good-faith ‘requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.’ Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as

of his debts. AG ¶ 20(e) is not applicable to the debts in SOR ¶¶ 1.a to 1.j and 1.m because Applicant did not provide “documented proof to substantiate the basis of the dispute or [provide] evidence of actions to resolve the issue” with respect to these debts.

Applicant did not provide proof of any recent efforts to resolve his debts with the creditors in SOR ¶¶ 1.a to 1.j and 1.m. Considering the record as a whole, I conclude these 11 debts, totaling about \$25,000 are still valid, delinquent debts, and that Applicant is responsible for them. Applicant failed to provide copies of payment plans, even though he has available income, according to his 2006 budget, to take this reasonable and prudent action. He has elected not to pay or resolve his 11 delinquent debts. His overall conduct with his creditors casts doubt on his current reliability, trustworthiness, and good judgment. His financial problems are continuing and likely to recur. He should have been more diligent and made greater efforts to resolve his delinquent debts, especially after receipt of the SOR on March 24, 2008. He has not carried his burden of proving his financial responsibility. Based on my evaluation of the record evidence as a whole, I conclude no mitigating conditions fully 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 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) 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.

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

bankruptcy [or statute of limitations]) in order to claim the benefit of [the “good faith” mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

issue), he is a law-abiding citizen. These factors show some responsibility, rehabilitation, and mitigation. The overall amount of her delinquent debt at about \$25,000 is relatively low.

The evidence against mitigating Applicant's conduct is more substantial. He has a significant history of delinquent debt as shown by his 2002 Chapter 7 bankruptcy, which listed over \$125,000 in debt. He also had a federal tax lien of \$91,134 as recently as 2002. Applicant was well aware of his financial responsibilities, and had sufficient resources to develop a payment plan and begin payment of the creditors in SOR ¶¶ 1.a to 1.j and 1.m. He learned, or should have learned, of the security significance of these delinquent debts in 2006 when he submitted his security clearance applications, and as a result of his interview with a government investigator. His efforts to resolve his delinquent debts were insufficient when compared to available income that he could have used to address his delinquent debts. 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.

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.j:	Against Applicant
Subparagraphs 1.k to 1.l:	For Applicant
Subparagraph 1.m:	Against Applicant
Subparagraphs 1.n to 1.s:	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