



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



In the matter of:)	
)	
XXXXXX, XXXX)	ISCR Case No. 07-11884
SSN: XXX-XX-XXXX)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Candace Le'l, Esq., Department Counsel
For Applicant: *Pro se*

June 27, 2008

Decision

TUIDER, Robert J., Administrative Judge:

Applicant failed to mitigate security concerns pertaining to Financial Considerations. Clearance is denied.

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-Qip), on December 5, 2006. On February 25, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline F 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.

Applicant acknowledged receipt of the SOR on March 4, 2008, which was received at DOHA on March 21, 2008. He answered the SOR in writing on April 2, 2008, and requested a hearing before an Administrative Judge. DOHA received the response/request on April 4, 2008. Department Counsel was prepared to proceed on

April 17, 2008, and I received the case assignment on April 23, 2008. DOHA issued a notice of hearing on May 2, 2008, scheduling the hearing for May 29, 2008. The hearing was held as scheduled.

The government offered Government Exhibits (GE) 1 through 9, which were received without objection. The government also submitted a Government's Exhibit List, which was marked as Exhibit (Ex.) I. Applicant offered Applicant Exhibits (AE) A through I, which were received without objection, and he testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on June 5, 2008.

Findings of Fact

Applicant admitted all of the SOR allegations. His admissions are incorporated herein as findings of fact. After a thorough review of the evidence, I make the following additional findings of fact:

Applicant is a 64-year-old graphic designer, who has worked for his defense contractor employer since September 1989. He seeks to renew his security clearance, which he has held for "over 20 years." AE G.

Beyond high school, he estimates he has completed two years of college course work. Tr. 49-50. Applicant has been married to his first and only wife since August 1985. They have three children, ages 21, 16 and 14. GE 1, Tr. 25-26.

Applicant's background investigation addressed his financial situation and included among other things the review of his September 2007 credit bureau report, November 2007 Signed Response to Interrogatories and Attachments, and July 2002 Defense Security Service (DSS) Sworn Statement. GE 5, GE2, GE 3.

The background investigation revealed that Applicant had filed for Chapter 7 bankruptcy in January 1993, and was awarded a discharge in November 1993. (SOR ¶ 1.a.) GE 6. In February 1999, he filed for Chapter 13 bankruptcy, which was dismissed in April 2002. The Summary of Schedules for that bankruptcy listed total assets of \$279,038, and total liabilities of \$307,633. (SOR ¶ 1.b.) GE 7, GE 8.

During his July 2002 DSS interview, and referring to his 1993 Chapter 7 bankruptcy, he stated his financial problems began because he was taking care of his mother, who was uninsured and on dialysis. He added that his wife was in between jobs and had given birth to their youngest child. He consulted a bankruptcy attorney who advised him to file for Chapter 7. GE 3.

During the same July 2002 DSS interview, he stated he filed for Chapter 13 bankruptcy because his wife "was let go from her job." He stopped making payments to the Trustee in February 2002 because his bankruptcy attorney advised him that he "would never be caught up on [his] bills." He added, "[m]y intentions are to clean up all my credit, even if I have to lose my house and rent a smaller home." At that time, he

planned to meet with his attorney in August 2002 and re-file under Chapter 13 or Chapter 7, depending on what he could afford. GE 3.

In November 2002, he filed for Chapter 7 bankruptcy, and was awarded a discharge in February 2003. (SOR ¶ 1.c.) GE 9.

Since his February 2003 Chapter 7 discharge, he has accumulated six debts totaling approximately \$27,337. These debts are identified in the SOR and substantiated by his September 2007 credit report and admissions to the SOR. (SOR ¶¶ 1.d. – 1.i.) GE 5, Response to SOR. These debts include one medical bill, one utility bill, two credit cards debts, and two automobile loans in arrears.

In his November 2007 Response to Interrogatories, he explained he was “in the process of making payments” to the medical bill, that the utility bill “will be paid off in two weeks,” that he “will set up a payment plan” for the two credit card debts, that he “[has] agreed [to] give back car” for one of the automobiles, and “will talk to dealer about giving back car” for the other automobile. He further explained “my credit is not good but I am trying to clear it up and bring my credit scores up. I am delinquent on some debts however financial[y] we are getting better.” The Personal Financial Statement attached to the Response to Interrogatories showed a negative cash flow of over \$1,000. (SOR ¶ 1.j.) GE 2.

At the time of his hearing, Applicant did not provide any evidence demonstrating that he had followed through on any of his stated intentions contained in his November 2007 Response to Interrogatories. As of the hearing date, the government also submitted an April 2008 credit report reflecting that Applicant’s financial situation had not improved. GE 4. At his hearing, Applicant restated his previous intentions to pay off or pay down his bills. Tr. 22-29. None of the six debts that were incurred after Applicant’s Chapter 7 discharge in 2002 have been resolved. Tr. 29-33.

Applicant explained:

[T]he first bankruptcy was a matter of bad judgment. . . . The second (bankruptcy) was when my second child was born, my wife stayed home with the child and I took over all the bills. She was out of work for about a year and a half. . . . Moving up to the present time, we worked together as a team. She runs a catering business. What she does is school lunches and I’m an illustrator at [defense contractor site]. She became sick approximately a year and a half ago. She came down with something called Crohn’s disease. She lost several of her contracts because she was incapacitated. We went to [hospital] and she was operated on and that operation saved her life. She’s still in a kind of a sensitive state, but she’s recovered to the fact that she’s back working. And in order for both of us to make it, she has to work, too. And now we are beginning to see some light. I understand that there is a lot of sacrifices that I have to make to bring myself back into a financial stability and there’s a couple of things I

plan to do to do that. . . . Well, first of all, with the owner of the house that I live in, we're going to begin to downsize. We're renting with the option of buying. I took out the option to buy. Our lease runs out in July. I decided not to redo the lease. We're going to downsize to an apartment perhaps or something that's within our price range. Tr. 14-15.

Applicant also submitted a "Plan for [F]inancial [R]ecovery." The plan included setting aside \$400 from his tax return to pay down bills, downsizing their home, moving his family out of state for six months while Applicant's lives locally with his brother, and enrolling in a debt recovery program That program includes a plan to meet with a financial counselor in June 2008 (month after hearing date). AE G - I.

Applicant went through various degrees of financial counseling associated with his three bankruptcies. Tr. 52-55, 57-58. He also received financial counseling through his church (circa 2002 – 2004). Tr. 58-59, 60.

Applicant submitted three reference letters that provided favorable comments about his character and supported his being granted a clearance. AE A through C. He also provided three certificates reflecting favorable work-related performance. AE D – F.

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. 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

Under Guideline F (Financial Considerations),¹ the Government’s concern is that an Applicant’s “[f]ailure 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.”

Applicant has a history of failing to meet his financial obligations dating back to 1993. He filed for Chapter 7 bankruptcy in 1993 and was awarded a discharge. He filed for Chapter 13 bankruptcy protection in 1999, which was dismissed in 2002. He converted that Chapter 13 bankruptcy to a Chapter 7 bankruptcy in 2002, and was awarded a discharge in 2003. Since that discharge, he has accumulated at least six delinquent/charged off debts totaling approximately \$27,337.

In July 2002, Applicant was interviewed by DSS regarding his financial problems and stated his intentions to resolve his financial difficulties. In his November 2007 Response to Interrogatories, he restated those same intentions, and again at his hearing. He presented no evidence to show he has taken any action to resolve his debts or show that he is on the road to financial recovery. His financial recovery plan is

¹ Guideline ¶ 18.

prospective in nature. His financial difficulties date back to at least 1993. As of the hearing date, he still had the same six outstanding and unmitigated delinquent/charged off debts identified in his November 2007 Response to Interrogatories and February 2008 SOR. Financial Considerations Disqualifying Condition (FC DC) ¶ 19(a): *inability or unwillingness to satisfy debts*; and FC DC ¶ 19(c): *a history of not meeting financial obligations*; apply in this case.

Considering the record evidence as a whole,² I conclude that Applicant is able to receive partial credit under Financial Considerations Mitigating Condition (FC MC ¶ 20(b) discussed *infra* as a result of his wife's illness in 2006 and subsequent loss of income. I also gave Applicant credit for receiving credit counseling under FC 20(c), discussed *infra* . However, whatever credit is received by those MCs is overcome by years of financial mismanagement going back to at least 1993. Applicant presented no evidence documenting efforts taken to contact or resolve debts with the six creditors identified in the SOR. Nor is there any evidence that his past participation in financial counseling, especially that associated with his two Chapter 7 and Chapter 13 bankruptcies netted in any tangible results.

I specifically considered 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*; and 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*.

Applicant's uncorroborated testimony fails to establish mitigating factors that may be considered as circumstances beyond his control contributing to his inability to pay his debts. When confronted with the government's concerns that his financial past was a security concern, he failed to pursue any corrective action that would have included disputing or otherwise resolving past debts.

He presented no evidence to show he has dealt responsibly with his financial obligations before, or especially after receipt of the SOR (i.e., paid debts, settlements, documented negotiations, credible payment plans). 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 his past performance, his prospective assurances ring hollow. His financial problems are likely to be a concern in the future. Moreover, his financial problems are recent, not isolated, and ongoing.

To conclude, Applicant did not present sufficient evidence to explain, extenuate, or mitigate the financial considerations security concerns. Applicant did not meet his ultimate burden of persuasion to obtain a favorable clearance decision. In reaching this

² 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 FC MC 1, all debts are considered as a whole.

conclusion, the whole person concept was given due consideration and that analysis does not support a favorable decision.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his 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
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Subparagraph 1.a. – 1.j.:	Against Applicant
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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. Clearance is denied.

ROBERT J. TUIDER
Administrative Judge