



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



In the matter of:)
)
) ISCR Case No. 07-12203
)
)
Applicant for Security Clearance)

Appearances

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

September 25, 2008

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the government’s security concerns under Guideline F, Financial Considerations. Applicant’s eligibility for a security clearance is denied.

On March 25, 2008, the Defense Office of Hearings and Appeals (DOHA) issued to 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.

Applicant answered the SOR in writing on April 30, 2008, and requested a hearing before an Administrative Judge. The case was assigned to me on August 8, 2008. DOHA issued a notice of hearing on August 19, 2008, and I convened the hearing as scheduled on September 10, 2008. The government offered Exhibits (GE) 1 through

7, which were admitted without objection. Applicant testified and did not submit any exhibits. DOHA received the transcript of the hearing (Tr.) on September 17, 2008.

Findings of Fact

Applicant admitted SOR allegations 1.a, 1.b, 1.d, 1.g, and 1.i. The denied the remaining allegations with explanations. His admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 39-year-old engineering analyst technician who is employed by a defense contractor. He earned an associate's degree in August 2007 and participated in a co-operative program offered by his present employer where he worked and went to school in exchange for tuition and a commitment of employment for a period of time. He intends to go back to school in January 2009 while continuing his employment. He served in the Army from 1994 to 1999 and was honorably discharged.¹

Applicant was married in 1993, separated from his wife in approximately 1995, and finally divorced in 2002. He has a daughter from the marriage born in 1994. He is required to pay \$372 monthly in child support. He admitted he fell behind for different periods of time when he was attending school, was unemployed or was not earning enough money. He admitted that sometimes he would pay a lesser amount than what was ordered. He is paying his child support and an additional amount each month to pay his back child support. He does not know how much he is in arrears, but estimated it is approximately \$3,000 to \$4,000. He testified that there are two states listed in the SOR that allege he is in arrears. This is because he pays the support through one state's child support enforcement agency and it was not credited in the state where the child lives. His tax returns for the past three years have been seized to pay some of his arrearages. The support payments are garnished directly from his wages. Applicant admitted that he had not contacted the different states' child support offices' in the past year to see what the current status of his child support arrearages are.²

Applicant remarried in 2004 and has two small children. His wife was employed, but recently had their second child and is not working.

Applicant also pays through garnishment the judgment listed in SOR 1. h. This is a credit card debt. He believes he opened the account sometime in 1994. He does not know how much he still owes but believes it may be \$87. The original amount owed was \$841. Applicant pays the judgment listed in SOR 1.e through garnishment of his pay. He testified that his employer is only permitted to garnish up to 25% of his pay at one time, so he does not know exactly how much is being paid for this debt. The judgment was originally for \$1,770. This debt was for a car that was repossessed in either 2001 or 2002, Applicant could not remember.

¹ Tr. 52-54.

² Tr. 20-38, 55-60, 91-94; GE 5; Answer to SOR.

The debt listed in SOR 1.a for \$91 is for cable services from 1999. It is not paid.³

The debt listed in SOR 1.b for \$127 is for a dental bill from approximately five or six years ago. He could not remember and it is not paid.⁴

The debt listed in SOR 1.c for \$79 is for a veterinary bill from 2002 for Applicant's cat. Applicant stated that prior to bringing the cat to the veterinarian he inquired as to the cost of the services. When the services were completed he was provided with a larger bill than he was originally told. Applicant disagreed and only paid a portion of the bill. Although he disputes the debt, he has not contacted the creditor, he did not provide proof that he paid anything on the bill, and he has not disputed it with the credit bureau.⁵

The debt listed in SOR 1.d for \$1,245 is a credit card debt. Applicant went over the spending limit and attempted to discontinue the card, but because he was over the limit the card was not canceled. Applicant has taken no steps to make payments on this debt that has been owed since 2002.⁶

The debt listed in SOR 1.e for \$1,770 is a judgment for car repossession. He bought the car in 2000 or 2001 and it was repossessed a few months after the transaction. He stated that an amount is being garnished from his pay, but he does not know how much he is paying or how much he owes.⁷

The debt in SOR 1.f for \$374 is a judgment from an apartment complex where Applicant and his second wife lived. He did not provide the apartment complex with a forwarding address when they moved. He denied the debt because he stated he had not been contacted by the creditor. He has not taken any action to pay or resolve this debt.⁸

The debt listed in SOR 1.g was for a debit card transaction at a convenience store. He owes \$33 and has not paid the debt. He estimated the debt is about five years old.⁹

The debt listed in SOR 1.h for \$841 is a judgment for a delinquent credit card. Applicant opened the card in approximately 1994. He stated an amount is being

³ Tr. 60-61.

⁴ Tr. 61-62.

⁵ Tr. 62-64.

⁶ Tr. 64-65.

⁷ Tr. 43-50.

⁸ Tr. 65-69; GE2 at page 32.

⁹ Tr. 69-70.

garnished from his wages to pay this judgment, but he did not know how much is being garnished and how much is left to pay. He has not checked the status with his payroll department.¹⁰

The debt listed in SOR 1.i is for a cell phone debt that he did not pay. He owes approximately \$389 and the debt was incurred in 1994.¹¹

Applicant stated he recently filed for Chapter 7 Bankruptcy and was required to attend credit counseling. He has not sought or attended any other financial counseling. He hired a lawyer three weeks ago and paid \$1,087 for the services. His mother loaned him the money and agreed to accept \$100 a month in repayment once Applicant's debts are discharged. Applicant has approximately \$13,000 in student loans that are in a deferred status. He intends to start paying them in the spring. He stated that since completing school and working full time, he has been making progress toward improving his financial situation. He believes his negative financial situation was due to the transition after he was discharged from the military in 1999 and then later he divorced.¹²

Applicant believes he grosses approximately \$34,000 a year. He stated his wife recently purchased a house. At the time of the purchase she was employed. She is currently looking for employment to resume working. Applicant listed his expenses and based on his monthly income, it appears his expenses exceed his income. He stated "we're a little worried at this point." They have been using a refund from his wife's tax returns to help pay the bills while she has been unemployed after having their baby.¹³

Applicant's second level supervisor testified on his behalf. He testified Applicant is reliable, on time and "serves his purposes well." He works well in a team environment.¹⁴

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.

¹⁰ Tr. 40-43, 70-71.

¹¹ Tr. 71-74.

¹² Tr. 86-89, 94-95.

¹³ Tr. 51-52, 74-86.

¹⁴ Tr. 99-106.

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, and 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. I have considered all of them and especially considered AG ¶ 19(a) (“inability or unwillingness to satisfy debts”) and (c) (“a history of not meeting financial obligations”). Applicant has many debts that have been delinquent for a long time that remain unpaid. Applicant has been unable and unwilling to pay his delinquent debts. He has not taken action to pay even the smallest debts. The only debts that are being paid are because a judgment was obtained and his wages are being garnished.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions and especially considered AG ¶ 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”); (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 individual 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”).

Applicant’s behavior is recent because he has many delinquent debts that remain unpaid. Some of his delinquent debts are many years old and Applicant has not made any effort to resolve them. The delinquent debts that are being paid are being done so through garnishment and after judgments were obtained. Some of the debts are for small amounts, yet he has not made an effort to pay them. Applicant was going to school and experienced periods of unemployment, but there is no evidence he acted responsibly under the circumstances. To the contrary, he has virtually ignored his debts, demonstrating his lack of good judgment. I find (a) and (b) do not apply.

Applicant’s plan for resolving his delinquent debts is to file for bankruptcy. He stated he recently hired a lawyer to assist him. He does not have a budget or a realistic plan for resolving his debts. At this juncture, he did not provide any documentation to support his actions and his debts remain a concern. The only financial counseling Applicant claimed he has had is what was mandated for his bankruptcy. Applicant has not made a good-faith effort to resolve his delinquent debts. He has actually shown little effort or initiative to resolve them. There are not clear indications the problem is being resolved. He has not contacted creditors with whom he disputes certain debts. He disputes a debt with a former landlord and claims he did not know about it and was not contacted; however he admits he never provided a forwarding address. Regarding other

disputed debts, he has not contacted the creditors or made any efforts to resolve the debts. He did not provide any documentation to support his assertions that he is disputing them. Applicant did provide some information that he is paying his child support, but admitted he is in arrears. Some of Applicant's debts are being paid through garnishment, but he does not know the current balances remaining. Applicant has ignored his financial responsibilities. I find (c), (d), and (e) do not 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) 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 has numerous delinquent debts that have been unpaid for years. He experienced some periods of unemployment and went through a divorce, but years have passed and he continues to ignore his responsibilities to his creditors. Even after becoming aware in March 2008 that these issues were security concerns, he did not take action to pay even the smallest debt. Although he stated he is filing bankruptcy to discharge his debts, it appears these actions were only taken in the past few weeks. Applicant has been irresponsible in his finances and has not provided any indication that he has changed his behavior. Overall, the record evidence leaves me with questions and 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 from 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
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	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.

Carol G. Ricciardello
Administrative Judge