



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



In the matter of:)	
)	
)	ISCR Case No. 07-12536
)	
Applicant for Security Clearance)	

Appearances

For Government: Franciso Mendez, Esquire, Department Counsel
For Applicant: *Pro Se.*

September 19, 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 April 9, 2008, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline F. 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 7, 2008. DOHA issued a notice of hearing on August 11, 2008, and I convened the hearing as scheduled on September 4, 2008. The government offered Exhibits (GE) 1 through

5, and they were admitted without objections. Applicant testified and did not submit any exhibits. DOHA received the transcript of the hearing (Tr.) on September 11, 2008

Findings of Fact

Applicant's 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 27-year-old man who works for a federal contractor. He graduated from high school in 1998. He is the father of two young daughters. He denies the judgment listed in SOR 1.a. This debt is for unpaid parking tickets that Applicant claims were issued to a car that he sold. He stated the car was still in his name, but he did not own it any longer. Applicant failed to provide any documentary evidence to support his denial.¹

Applicant stated that he paid the debt listed in SOR 1.b on August 28, 2008.² The debt was for unpaid rent from October 2005. He stated the reason he did not pay it when it was due was because he did not have the money. He did not have documentary evidence to substantiate his position.³

Applicant incurred the debt in SOR 1.c in April 2002. It is a bill for cable services that had not been paid. He stated he could not pay it at the time because he did not make enough money.⁴

Applicant has owed the debt in SOR 1.d since 2002 for electric services. He attempted to make a payment arrangement with the creditor when he contacted them approximately one to two years ago. The creditor would not set up a payment schedule and wanted the payment in full. This debt remains delinquent.⁵

The debt listed in SOR 1.e is for cable services that has been due since August 2003.⁶ It remains delinquent.⁷

¹ Tr. 22-26; GE 4.

² Tr. 20; GE 1, page 9.

³ Tr. 26-29.

⁴ Tr. 29-30; GE 1 page 11.

⁵ Tr. 31-33.

⁶ GE 2, page 10.

⁷ Tr. 33-34; GE 1 page 10

The debt listed in SOR 1.f is for child support. Applicant stated he resolved the delinquency with the mother of his daughters. He is obligated to pay \$700 a month. He stated that the mother apparently stated she did not want child support and then changed her mind and went to court to receive it. He stated the case was mediated and it was decided he did not have to pay through the state system. Applicant claims he is not in arrears and does not owe child support, but failed to provide any documentary evidence to support his position. His credit report lists the debt and he also listed it on his security clearance application as a delinquent debt.⁸

Applicant has not paid the debt listed in SOR 1.g. This debt is with a collection agency. Applicant did not recognize the debt, but did not research the original creditor.⁹

Applicant stated he did not recognize the debt listed in SOR 1.h. He listed this debt on his SCA, but denied it on his answer to the SOR. At his hearing he stated he did not know what the debt was for. He has not paid the debt or disputed it with supporting documents.¹⁰

Applicant has not paid the debts in SOR 1.i, 1.j, 1.k, 1.l, 1.m, 1.n. Some of them he denies he knows who the creditors are, but has not disputed the debts or attempted to resolve. Others he admits he owes, but has not paid. Others he admits he owes the debt, but disputes the amount, but has not contacted the creditors to dispute the debt.¹¹

Applicant stated he has a net monthly salary of \$3,200. After he pays his expenses and child support, he estimated he has approximately \$1,000. He stated that in addition to his child support of \$700 for his daughters, he spends approximately another \$350 on them each month, buying clothes and other items.¹²

Applicant has been working for the past ten years and was unemployed about a year and a half ago for a period of three to four months. During that time he could not afford to pay his bills. He is trying to pay his bills, but does not have a budget and admitted he spends money on "stupid stuff." He admitted he never learned how to save money, but he is doing the best he can. He has not had financial counseling. Applicant is trying to pay his debts "step by step" and needs time to pay off his bills.¹³

⁸ Tr. 20-22, 34-59; GE 1 and 5.

⁹ Tr. 61-65; GE 3.

¹⁰ Tr. 65-70; GE 1, page 10.

¹¹ Tr. 71-72.

¹² Tr. 72-83.

¹³ Tr. 84-88.

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

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 period and they remain unpaid. Applicant has been unable and unwilling to pay his delinquent debts.

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”); and (d) (“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts”).

Applicant’s behavior is recent because he has many delinquent debts that remain unpaid. He does not have a budget or a realistic plan for resolving his debts. Applicant had a period of unemployment, but also admitted that he does not really budget his excess income and spends it on “stupid stuff.” In find (a) does not apply. In order for (b) to apply Applicant must have acted responsibly under the circumstances. I cannot find Applicant acted responsibly under the circumstances. He does not have a plan to resolve his debts and he spends his excess income frivolously. Therefore, I find (b) does not apply. Applicant offered no evidence that he received financial counseling or that there are clear indications the problem is being resolved or under control. He failed to provide evidence he has initiated a good-faith effort to repay his overdue creditors or otherwise resolve his debts. I find (c) and (d) 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 appears to be a hard worker and sincere in wanting to better his predicament and pay his delinquent debts, but he has not taken a proactive approach to doing so. He needs to set up a budget and seek financial counseling so he can better understand how to manage his money. Until then his cycle of frustration will likely continue. 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-1.n:	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