



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



In the matter of:)
)
) ISCR Case No. 07-13821
)
)
Applicant for Security Clearance)

Appearances

For Government: D. Michael Lyles, Department Counsel
For Applicant: *Pro Se*

Decision

HEINY, Claude R., Administrative Judge:

Applicant has 15 past-due or charged-off accounts totaling approximately \$11,000 and filed for bankruptcy protection in 1998. None of the debts have been paid. Applicant has not successfully mitigated financial considerations security concerns. Clearance is denied.

Statement of the Case

Applicant contests the Defense Department's intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a

¹ 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.

Statement of Reasons (SOR) on May 22, 2008, detailing security concerns under financial considerations.

In Applicant's undated answer to the SOR he elected to have the matter decided without a hearing. Department Counsel submitted the government's case in a File of Relevant Material (FORM), dated July 30, 2008. The FORM contained eight attachments. On August 5, 2008, Applicant received a copy of the FORM, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. Applicant's response to the FORM was due 30 days after receipt of a copy of the FORM. Applicant's response was due on September 4, 2008. As of September 25, 2008, no response had been received. On September 25, 2008, I was assigned the case.

Findings of Fact

In his Answer to the SOR, Applicant denied the \$422 state tax lien (SOR ¶ 1.b) and an \$818 bank debt (SOR ¶ 1.c). He admitted the \$656 school debt (SOR ¶ 1.h) was his ex-wife's debt. In his answer, he stated he had gone to court and he and his ex-wife each have to pay half of the medical bills.

Applicant is a 34-year-old electrician who has worked for a defense contractor since August 2000, and is seeking to maintain a security clearance.

In November 1998, Applicant sought bankruptcy protection under Chapter 13, the wage earner's plan, of the bankruptcy code. In his Questionnaire for Sensitive Position dated September 2006 (Item 1), in response to question 27 on his financial record, Applicant reported his November 1998 bankruptcy. The record is silent as to the reason for seeking bankruptcy protection, the creditors listed in the Chapter 13, the amount of his monthly payments to the bankruptcy trustee, how long the plan lasted, if the plan was dismissed, or discharged.

Applicant's tax return for 2002 was due April 2003. In September 2003, the state tax commission issued a tax lien for tax year 2002. In January 2004, a cancellation of judgment for the tax lien was issued. (Item 5) The SOR states the tax lien was released in January 2004. In his answer to the SOR, Applicant alleges the state tax commission issued the lien in error and he has a letter from the state tax commission verifying his claim. (Answer to SOR) No letter was submitted. The FORM and Applicant's SOR answer fail to provide any additional information about this tax lien.

The SOR lists 15 debts of concern which total approximately \$11,000. The largest debt is a car debt (\$7,506) listed in SOR ¶ 1.d. In his answer to the SOR, Applicant asserts he was divorced, the car was granted to his wife, and she "let it go back." No court orders were provided showing any property division.

As of January 2008, Applicant's gross monthly salary was \$3,400. His monthly disposable income (gross income less expenses) or remainder was \$159. (Item 5) The

financial interrogatory (Item 5) directed Applicant to provide documentation verifying payment and current status of the delinquent or outstanding debts listed in his Mary 2007 credit bureau report (CBR). (Item 7)

Applicant was specifically instructed that acceptable documentation included recent statement or vouchers from the creditors, documentation from a credit consolidation institution indicating creditors and payment history, loan applications made in an effort to satisfy debts, documentation from creditors reflecting payment arrangements or payment plans, and/or bankruptcy records reflecting the delinquent accounts are included in bankruptcy.

No documentation of any kind was received. Nor was there any documentation showing Applicant was disputing the debts. He admitted the debts and stated a court had directed he and his wife were to each pay half of the medical bills. A copy of the divorce decree or other court order was not provided.

A summary of the SOR debts of concern follows:

SOR ¶ 1	Creditor	Amount	Current Status
a	Chapter 13 bankruptcy filed November 1998.	Unknown	Unknown.
b	State tax lien released January 2004.	\$422	Released.
c	Bank charge off on credit card.(Item 7, p.6)	\$818	No documentation showing payment for items c - q.
d	Credit card charge off on an auto loan. (Item 6, p. 3; Item 7, p.6)	\$7,506	
e	Medical account placed for collection.(Item 7, p. 7)	\$177	
f	Medical account placed for collection. (Item 7, p.8)	\$82	
g	Collection agency debt placed for collection. (Item 7, p.9)	\$75	
h	School debt placed for collection. (Item 7, p.10)	\$656	
i	Medical account placed for collection. (Item 7, p.12)	\$67	

j	Medical account placed for collection. (Item 7, p.12)	\$172	
k	Medical account placed for collection. (Item 7, p.12)	\$139	
l	Medical account placed for collection. (Item 6, p. 2; Item 7, p.12)	\$81	
m	Medical account placed for collection. (Item 7, p.12)	\$197	
n	Medical account placed for collection. (Item 6, p. 2; Item 7, p.13)	\$210	
o	Medical account placed for collection. (Item 6, p. 2; Item 7, p.13)	\$40	
p	Collection agency for account placed for collection. (Item 7, p.14)	\$54	
q	Medical account placed for collection. (Item 7, p.14)	\$101	
	Total debt listed in SOR	\$10,797	

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

Revised Adjudicative (AG) ¶ 18 articulates the security concerns 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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed

upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances so as to meet his financial obligations.

In 1998 Applicant filed for bankruptcy protection. He has 15 delinquent or past debts due totaling approximately \$11,000, which have been placed for collection or charged off. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶19(c), "a history of not meeting financial obligations," apply.

Applicant was informed in the financial interrogatories that he needed to provide sufficient documentation to show he had resolved his debts. He was specifically told acceptable documentation included: recent statement from the creditors, a credit consolidation institution plan, a consolidation loan, documentation reflecting paying on repayment plans, and/or bankruptcy records reflecting the delinquent. No documentation was received. Applicant has not disputed the debts. He admitted the debts and stated a court had directed he pay half of the medical bills. A copy of the divorce decree or other court order was not provided.

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.

Under AG ¶ 20(a), Applicant's 15 debts remain unpaid and are not infrequent. There is no showing the debts were 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. AG ¶ 20(a) does not apply.

Under AG ¶ 20(b), ten of the debts totaling \$1,266 were for medical debts placed for collection. However, there is no showing the nature of the illness, hospitalization, insurance coverage, or if the debts were incurred due to an unexpected medical emergency. The fact the debts are medical debts does not prove the debts were caused by conditions largely beyond Applicant's control. AG ¶ 20(b) does not apply.

Under AG ¶ 20(c), there is no showing Applicant has attended financial classes, maintains a budget, or is paying his debts. AG ¶ 20(c) does not apply.

Under AG ¶ 20(d), the tax lien was cancelled showing Applicant no longer owes the debt, a debt he denied in his SOR answer. The reason for the lien, or if it was mistakenly issued, has not been established. Applicant admits owing the remaining debts in his answer to the SOR, although he infers a portion of the debts are now his ex-wife's debts as decreed in his divorce. Even though a copy of the divorce decree was not produced, such divorce decrees are normally binding on Applicant and his ex-wife, but have no binding effect on a creditor without the creditor's consent. Routinely, such decrees do not relieve either party of liability to the creditor. Should either party fail to fulfill the agreement, the creditor could still enforce the debt against the joint maker of the debt who could then look for relief from their noncompliant ex-spouse.

No other payments are shown. Evidence of a good-faith effort is lacking. Applicant failed to provide documentation supporting payment or repayment agreements. AG ¶ 20(d) does not apply. AG ¶ 20(e) does not apply because Applicant has not documented any dispute of the debts.

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.

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 filed for bankruptcy protection in November 1998. Applicant has recently been divorced and has \$159 per month of discretionary income. The debts remain unpaid. There is no showing of credit counseling, or the likelihood the debts will not continue. Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance.

The amount of debt is not large. The awarding of a security clearance is not a once in a life time occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under the Applicant's current circumstances a clearance is not warranted, but should the Applicant be afforded an opportunity to reapply for a security clearance in the future, having paid the delinquent obligations, established compliance with a repayment plan, or otherwise addressed the obligations, he may well demonstrate persuasive evidence of his security worthiness. However, a clearance at this time is not warranted.

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, Financial Consideration: **AGAINST APPLICANT**

 Subparagraph 1.a, 1.c -1.q: **Against Applicant**

 Subparagraph 1. b: **For Applicant**

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

CLAUDE R. HEINY II
Administrative Judge