



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



In the matter of:)	
)	
)	ISCR Case No. 07-13802
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: Pro Se

September 25, 2008

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted a security clearance application, Standard Form 86, on February 21, 2007. On May 13, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations, 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.

On July 9, 2008, Applicant answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on July 28, 2008. On July 31, 2008, a Notice of Hearing was issued, scheduling the hearing for August 26, 2008. The case was heard on that date. The Government offered three exhibits which were admitted as Government Exhibits (Gov) 1 – 3. Applicant testified and offered seven exhibits which were admitted as Applicant Exhibits (AE) A - G. The record was held open for two weeks to allow Applicant to submit additional documents. He timely

submitted a 24-page document that was admitted as AE H without objection. Department Counsel's response to Applicant's post-hearing submission is marked as Hearing Exhibit 1. The transcript was received on September 12, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, Applicant admits to the allegations in SOR ¶¶ 1.g, 1.i, and 1.k. He denies the allegation in SOR ¶¶ 1.a – 1.f, 1.h, 1.j, 1.l, and 1.m.

Applicant is a 55-year-old administrator employed with a Department of Defense contractor seeking a security clearance. He has worked for his company since 1999. He has two more semesters until he earns a bachelor's degree. He is a retired Air Force Master Sergeant. He retired in February 1999 after 24 years of active duty service. He has held a SECRET clearance for 35 years. He has a part-time job at an Air Force lodging facility. He is married and has one daughter, age 37. (Tr at 4-7, 19; Gov 1; Gov 2 at 10; AE B at 2-3; AE D.)

On February 21, 2007, Applicant completed an electronic questionnaire for investigations processing (e-QIP), in order to apply for a security clearance. (Gov 1.) A subsequent background investigation revealed that Applicant had 13 delinquent accounts, an approximate total balance of \$37,516. The delinquent accounts included: a \$1,500 credit card account (SOR ¶ 1.a: Gov 1 at 26; AE G); a \$7,519 credit card account that was charged off in January 2001 (SOR ¶ 1.b: Gov 2 at 11; Gov 3 at 4); a \$757 account charged off in April 2002 (SOR ¶ 1.c: Gov 2 at 11; Gov 3 at 4, 15; AE H at 8, 10); a \$19,521 credit card account placed for collection in December 2002 (SOR ¶ 1.d: Gov 2 at 11; Gov 3 at 6, 14; AE F); a \$356 car repair account placed for collection in July 2005 (SOR ¶ 1.e: Gov 2 at 11; Gov 3 at 11, 15; AE A at 9); a \$72 debt placed for collection in December 2006 (SOR ¶ 1.f: Gov 2 at 12, 24, 25; Gov 3 at 15; AE H at 15); a \$94 insurance debt placed for collection in April 2006 (SOR ¶ 1.g: Gov 2 at 12, 26; Gov 3 at 15); a \$6,367 credit card account placed for collection in January 2005 (SOR ¶ 1.h: Gov 3 at 16); a \$416 bank debt placed for collection in April 2004 (SOR ¶ 1.i: Gov 2 at 23; Gov 3 at 16); a \$165 satellite television account placed for collection in December 2007 (SOR ¶ 1.j: Gov 2 at 24; AE A at 8, 33); a \$250 cable television debt placed for collection in March 2007 (SOR ¶ 1.k: Gov 2 at 25; AE A at 8, 34); a \$404 telephone account placed for collection in January 2008 (SOR ¶ 1.l: Gov 2 at 24; AE A at 9, 34); and a \$95 insurance account placed for collection in March 2007 (SOR ¶ 1.m: Gov 2 at 25; AE A at 10, 35).

Applicant's financial troubles began after he retired from the Air Force. His post-retirement job only paid him \$7 an hour. His wife is unable to work due to rheumatoid arthritis. He attends college and hopes to increase his earning potential after receiving a degree. (Tr at 64; AE 2 at 10; AE E.)

On April 25, 2005, Applicant entered into an agreement with a debt consolidation company. He paid them funds and they were to satisfy his debts. In August 2005, he cancelled his agreement with the company because he did not think they were making progress towards resolving his debts. (Tr at 27-28; AE H at 17-20; Gov 2 at 12.)

The accounts alleged in SOR ¶ 1.g for \$94 (AE H at 21); SOR ¶ 1.i for \$416 (Gov 2 at 23; AE H at 12-14); SOR ¶ 1.k for \$250 are paid (AE H at 22). He claims the accounts alleged in SOR ¶¶ 1.a (\$1,500), and 1.d (\$19,521, original balance \$7,881) were credit card balances that were charged by his ex-wife without his authorization. They divorced in 1992. He accepts responsibility for the accounts. (Tr at 22-27, 40-44; Gov 2 at 31; AE F; AE G.)

In his post-hearing submission, he indicates the accounts alleged in SOR ¶¶ 1.a, 1.b, 1.c, 1.d, and 1.h were removed from the credit report. (AE H at 1-2.) These accounts are not listed on credit reports submitted by applicant dated July 7, 2008, and July 8, 2008. (AE A) No information was provided as to why the accounts were removed from his credit report. He states the debts alleged in SOR ¶¶ 1.e, 1.f, 1.j, 1.l, and 1.m are pending payment. (AE H at 1-2.)

Applicant's net monthly income is approximately \$4,506. His monthly expenses include: \$1,034 mortgage; \$130 cell phone; \$190 car insurance; \$244 car payment; \$50 cable; \$40 telephone; \$60 gas; \$190 electric; \$75 water; \$12 haircuts; \$430 groceries and dinner out; \$50 clothing; \$200 gas. He also makes a \$70 monthly credit card payment. His total monthly expenses are \$2,775. (AE H at 4-5.) After expenses, he has \$1,731 left over. He sends his mother approximately \$100 a month. He has no savings. He is current on federal income taxes and is not aware of any other delinquent accounts. (Tr at 69-70.)

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.

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 disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition (FC DC) ¶19(a) (an inability or unwillingness to satisfy debts); and FC DC ¶19(c), (a history of not meeting

financial obligations) apply to Applicant's case. Between 2001 to 2008, Applicant accumulated approximately \$37,516 in delinquent debt.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Financial Considerations Mitigating Condition (FC MC) ¶ 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) is not applicable. Applicant continues to have financial problems. His recent debts became delinquent in 2007 and 2008. The majority of his delinquent accounts remain unresolved.

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) does not apply. Applicant's 1992 divorce is not a factor in his recent financial problems. Although Applicant struggled financially due to low paying jobs when he retired from the military in February 1999, his budget reflects that he has \$1,731 left over each month after expenses to apply towards his delinquent accounts. He did not begin to resolve the delinquent debts in the SOR until prior to the hearing. The majority of the debts remain unresolved. He continued to allow accounts to become delinquent in 2007 and 2008. His financial problems appear to arise from neglect as opposed to an inability to pay. I cannot conclude Applicant acted responsibly under the circumstances.

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) does not apply. While Applicant consulted a debt consolidation company in 2005, there is no evidence that he received financial counseling. Financial counseling would assist Applicant in controlling his finances. Although he paid some accounts, it is unlikely that his financial problems will be resolved in the near future due to the extent of the delinquent debt.

FC MC ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies with respect to debts alleged in SOR ¶¶ 1.g, 1.i, and 1.k. Although Applicant promises to pay the debts alleged in SOR ¶¶ 1.f, 1.i, 1.j, 1.l, and 1.m, a promise to pay in the future does not mitigate the concerns under financial considerations. Applicant claims the debts alleged in SOR ¶¶ 1.a, 1.b, 1.c, 1.d, 1.h have been removed from his credit report. However, no information is provided stating the basis for the removal. There can be a number of reasons for removing an item from a credit report, including removing a debt after seven years of nonpayment. The government established a prima facie case under the financial considerations concern, the burden shifts to Applicant to provide evidence to mitigate the concerns. Applicant has not provided sufficient information to mitigate the concerns raised under financial considerations.

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 common sense 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. I considered Applicant's 24 years of honorable service in the United States Air Force. However, a security risk remains because of Applicant's history of financial irresponsibility and the lack of action taken towards resolving his delinquent accounts. He has not met his burden to mitigate the concerns raised under 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:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	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.

ERIN C. HOGAN
Administrative Judge