



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



In the matter of:)	
)	
)	ISCR Case No. 07-14543
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: John Bayard Glendon, Esquire, Department Counsel
For Applicant: *Pro Se*

March 13, 2008

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the case file, pleadings, and exhibits, I conclude that Applicant has failed to rebut or mitigate the government’s security concerns under Guideline F, Financial Considerations. His eligibility for a security clearance is denied.

Applicant submitted his Security Clearance Application (SF 86) on July 28, 2006. On November 28, 2007, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F, Financial Considerations. DOHA’s action was taken pursuant to 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 December 18, 2007, Applicant answered the SOR in writing and requested that his case be determined on the record in lieu of a hearing. The government compiled its File of Relevant Material (FORM) on January 25, 2008. The FORM

contained documents identified as Items 1 through 8. By letter dated January 29, 2008, a copy of the FORM was forwarded to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. On December 19, 2007, Applicant timely filed a response and three exhibits, which I have identified as Applicant's Exhibit (Ex.) A, Ex. B, and Ex. C. Department Counsel did not object to Applicant's exhibits or to his response to the FORM, and I have admitted them to the record of this case. On March 10, 2008, the case was assigned to me for a decision.

Findings of Fact

The SOR contains 20 allegations of disqualifying conduct under AG F, Financial Considerations. (SOR ¶¶ 1.a. through 1.t.) (Item 1.) In his Answer to the SOR, dated December 18, 2007, Applicant admitted the factual allegations in ¶¶ 1.a. through 1.d., 1.f. through 1.j., and 1.l. through 1.t. He denied allegations in ¶¶ 1.e. and 1.k., with explanations. He also questioned whether ¶ 1.r. duplicated ¶ 1.s. and whether ¶ 1.f. was a duplicate of ¶ 1.t. In his response to the FORM, Applicant asserted that allegations in ¶¶ 1.f. and 1.t. of the SOR were not duplicates but debts owed to separate entities. He provided no credible evidence to corroborate his assertion that SOR allegation 1.r. was a duplicate of SOR allegation 1.s. (Response to FORM at 1.)

Applicant, who was first granted a security clearance in 1982, is employed as a systems analyst by a government contractor. From approximately 1980 to 1994, he served in the U.S. military. (Item 4.)

Applicant is 48 years old and has never married. He shares his household with a woman and her adult son. From approximately September 2003 to June 2006, Applicant attended a university. (Item 4.)

In October 1996, Applicant filed a petition for protection from his creditors, pursuant to Chapter 7, U.S. Bankruptcy Code. He listed \$6,625 in assets and \$28,654 in liabilities. In January 1997, his debts were discharged. (Item 8.)

Applicant filed a petition for Chapter 13 bankruptcy protection on November 4, 2004. The terms of the bankruptcy obligated Applicant to pay his trustee \$615 per month for 57 months in order to satisfy his creditors. Applicant failed to make his obligatory payments, and his petition was dismissed in December 2005. (Item 6.)

In February 2006, Applicant's automobile was repossessed. At the time of the repossession, Applicant owed the creditor \$18,900. While the debt was apparently reduced by the proceeds of the repossession sale, the actual amount Applicant still owed was unclear. Applicant's credit bureau report of October 25, 2007, indicated a past-due debt of \$9,958. In his Answer to the SOR, Applicant indicated the balance due was \$9,958. However, in a communication dated April 4, 2007, acknowledging a post-dated check for \$300 submitted by Applicant, the successor creditor responsible for

collecting the debt identified the amount owed by Applicant as \$13,751.82.¹ Applicant provided a statement from the creditor showing the repossession loss fee and the recovery of principal received as of July 19, 2007, which totaled \$10,237. This statement included seven \$300 payments made by Applicant between January and July of 2007. In supplying these figures, the creditor noted they did not constitute full payoff. (SOR, ¶¶ 1.h., 1.i.; Item 3 at 3, 11; Item 4 at 32-33 of 41; Item 5 at 2; Ex. B.)

In addition to the debt owed for the repossessed automobile, Applicant admitted responsibility for nine debts in collection status. These debts totaled approximately \$12,750. Two of the debts had not been paid as of September 6, 2006. Seven of the debts were unpaid as of October 25, 2007. (SOR ¶¶ 1.c., 1.d, 1.f., 1.g., 1.j., 1.l., 1.m., 1.s., 1.t.) Applicant denied responsibility for debts of \$128 and \$194, which were listed at ¶¶ 1.e. and 1.k. of the SOR. He stated he was not living in the state where the debt alleged at ¶ 1.e. accrued. He stated he did not have an account with the creditor at the time the debt alleged in ¶ 1.k. accrued. (Item 3.) He provided no credible information, however, in support of his denials.

Applicant also admitted responsibility for one charged-off account, not paid as of October 25, 2007, and four past-due debts, unpaid as of September 6, 2006. These five debts totaled approximately \$3,918. (SOR ¶¶ 1.n., 1.o., 1.p., 1.q., and 1.r.; Item 3.)

In his response to the FORM, Applicant provided documentation to show he had qualified his delinquent student loan accounts identified on the SOR at ¶¶ 1.i. and 1.m. for rehabilitation by paying \$285 per month for nine consecutive months. He provided additional information that his loans had subsequently qualified for servicing by the Student Loan Marketing Association. His new payment schedule required 110 monthly payments of \$83.57 on an unpaid principal balance of \$6,635.67. (Ex. A; Item 3 at 4, 6, 7-8.)

Applicant provided evidence he had sent a post-dated check for \$100 to the creditor holding the student loan account identified at SOR ¶ 1.j. However, he provided no proof that the post-dated check had cleared his bank and had been credited to his account. (Item 3 at 10.)

Applicant provided no evidence that he had received financial credit counseling.

Policies

When evaluating an Applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines. 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.

¹Applicant provided no proof that the post-dated check cleared his bank and was credited to his account.

These guidelines are not inflexible rules of law. Instead, the guidelines take cognizance of the complexities of human behavior and are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's adjudicative goal is a fair, impartial and common sense decision. The adjudicative 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. See A G ¶ 2(c).

The protection of the national security is the paramount consideration. A G ¶ 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 in 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 that 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 Adjudicative Guideline F, ¶ 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. Under ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly under ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. Applicant accumulated multiple debts and was unable to pay his financial obligations for a period of time. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several conditions could mitigate the security concerns raised by Applicant's financial delinquencies. Unresolved financial delinquency might be resolved if it 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. (Guideline F, ¶ 20(a)) Additionally, unresolved financial delinquency might be mitigated if the conditions that resulted in the financial problem were largely beyond the person's control, such as loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation, and the individual acted responsibly under the circumstances. (Guideline F, ¶ 20(b)) Still other mitigating circumstances that might be applicable include evidence 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 (Guideline F, ¶ 20(c) or the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. (Guideline F, ¶ 20(d).)

Applicant's acknowledged financial delinquencies are numerous, long-standing, and continue to the present day. Applicant admitted 15 unpaid delinquencies and failed to provide credible evidence to corroborate his denials of two additional debts. The majority of his financial delinquencies remain unresolved and suggest that the circumstances that caused these delinquencies are likely to continue in the future, thereby casting doubt on Applicant's current reliability, trustworthiness, and good judgment. Accordingly, ¶ 20(a) does not apply as a mitigating condition. Applicant provided no credible evidence to support a conclusion that his financial delinquencies were largely beyond his control or that he acted reasonably under the circumstances. Accordingly, I conclude ¶ 20(b) does not apply to the facts of Applicant's case.

Nothing in the record suggests Applicant has sought or participated in financial counseling or has in place a plan to avoid financial delinquencies in the future. Accordingly, I conclude that ¶ 20(c) is inapplicable.

While most of Applicant's financial delinquencies remain unaddressed, he deserves credit for rehabilitating two of his delinquent student loans and negotiating a payment plan with the creditor. Applicant's positive actions on his two student loans reflect a good faith effort to mitigate long-standing financial delinquencies and resolve debt. I conclude that ¶ 20(d) is applicable in part to the facts of Applicant's case.

Whole Person Concept

The revised adjudicative guidelines and the Directive require that the adjudicative process in a security clearance case not only assess conduct under the adjudicative guidelines, but it must also reflect a careful weighing of a number of variables known as the whole person concept. The factors to be considered in a whole person analysis include the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the extent to which participation is voluntary; the presence or absence of rehabilitation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; and, the likelihood for continuation or recurrence.

Applicant is a mature adult who has a history of financial over-extension. His history of not meeting his financial obligations and his inability to pay his debts over a period of at least ten years raises a security concern because it suggests a lack of effort or resolve. While he has made payments on the debt which arose from the repossession of his automobile, he has not done so consistently. He has not sought consumer credit counseling or assistance in learning how to manage his finances. Despite a laudable attempt to establish a payment plan for two of his delinquent student loans, Applicant has failed to demonstrate that the majority of his delinquencies will not continue to be security concerns in the future.

In all adjudications, the protection of our national security is the paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the security clearance process is the fair-minded, common sense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of his or her acts and omissions, including all disqualifying and mitigating conduct. Having done so, I conclude Applicant should not be entrusted with a security clearance. In reaching my decision, I have considered the evidence as a whole, including the appropriate factors and guidelines in Department of Defense Directive, 5220.6., as amended. I conclude that Applicant failed to mitigate security concerns under Guideline F (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
Subparagraphs 1.a. through 1.k.:	Against Applicant
Subparagraphs 1.l. and 1.m.:	For Applicant
Subparagraphs 1.n. through 1.t.:	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.

JOAN CATON ANTHONY
Administrative Judge