



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



In the matter of:)	
)	
)	ISCR Case No. 07-14704
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Gina Marine, Esquire, Department Counsel
For Applicant: Pro Se

July 25, 2008

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on March 27, 2006. On March 5, 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 March 28, 2008, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to be proceed on April 22, 2008. The case was assigned to another administrative judge on April 25, 2008, and transferred to me on April 28, 2008. On May 5, 2008, a Notice of Hearing was issued, scheduling the hearing for May 29, 2008. The case was heard on that date. The Government offered five exhibits which were admitted as Government Exhibits (Gov) 1 – 5 without objection. The Applicant offered three exhibits which were admitted as

Applicant Exhibits (AE) A – C without objection. Applicant testified. The record was held open until June 19, 2008, to allow Applicant to submit additional evidence. Applicant timely submitted a four page document that was admitted as AE D without objection. The transcript was received on June 5, 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 admitted to all of the factual allegations in the SOR.

Applicant is a 32-year-old employee with a Department of Defense contractor seeking a security clearance. He has held his current position since September 2007. Applicant's first marriage ended in divorce in 2000. He remarried in December 2007 and has a one-year-old daughter, and a four-year-old stepson. (Tr at 6-7, 30; Gov 1.)

On March 27, 2006, Applicant filed an Electronic Questionnaire for Investigations Processing (e-QIP). (Gov 1.) A subsequent background investigation revealed that Applicant had 18 delinquent accounts, with a total approximate balance of \$61,721. (Gov 2; Gov 3, Gov 4, Gov 5.)

Applicant's delinquent accounts include: an \$89 delinquent telephone account placed for collection in October 2000 (SOR ¶ 1.a; Gov 5 at 11); a \$4,677 consolidation loan of debts from his first marriage, placed for collection in May 2002 (SOR ¶ 1.b; Gov 5 at 3); a \$5,968 delinquent student loan account placed for collection in April 2003 (SOR ¶ 1.c; Gov 3 at 3; Gov 4 at 3; Gov 5 at 7); a \$1,377 delinquent student loan account placed for collection in April 2003 (SOR ¶ 1.d; Gov 3 at 3; Gov 4 at 3; Gov 5 at 7); a \$5,508 delinquent student loan account placed for collection in April 2003 (SOR ¶ 1.e; Gov 3 at 3; Gov 4 at 3; Gov 5 at 7); a \$5,417 delinquent student loan account placed for collection in April 2003 (SOR ¶ 1.f; Gov 3 at 4; Gov 4 at 4; Gov 5 at 8); a \$701 delinquent account placed for collection in June 2003 (SOR ¶ 1.g; Gov 3 at 2; Gov 4 at 2); a \$606 delinquent account placed for collection in August 2003 (SOR ¶ 1.h; Gov 3 at 2; Gov 4 at 2; Gov 5 at 4); a \$10,538 balance on a repossessed automobile, placed for collection in August 2003 (SOR ¶ 1.i; Gov 3 at 2; Gov 4 at 2); a \$1,833 delinquent account for a credit card machine, delinquent since August 2003 (SOR ¶ 1.j; Gov 5 at 7); a \$421 cell phone account placed for collection in January 2004 (SOR ¶ 1.k; Gov 3 at 2; Gov 4 at 2); a \$241 delinquent account placed for collection in January 2004 (SOR ¶ 1.l; Gov 2 at 3; Gov 5 at 4); a \$15,941 debt charged off in January 2004 (SOR ¶ 1.m; Gov 4 at 4; Gov 5 at 11); a \$415 delinquent cell phone account placed for collection in December 2004 (SOR ¶ 1.n; Gov 5 at 11); a \$198 satellite television account placed for collection in June 2005 (SOR ¶ 1.o; Gov 5 at 11); a \$1,220 delinquent student loan account delinquent since August 2006 (SOR ¶ 1.p; Gov 3 at 3; Gov 5 at 9); a \$6,655 delinquent student loan account, placed for collection in November 2006; (SOR ¶ 1.q; Gov 3 at 2; Gov 4 at 2); and a \$186 delinquent debt, delinquent since June 2007 (SOR ¶ 1.r; Gov 2 at 6, 35.)

From March 1997 to February 2001, Applicant served on active duty in the United States Air Force. He separated with an honorable discharge at the grade of E-4. (Tr at 74; Gov 1, sections 11, 16.) After his separation from active duty, Applicant joined the National Guard. He and a friend from the Air Force opened a landscaping business in March 2001. The business closed down in late 2002. At around the same time, Applicant was recalled to active duty full-time by the Guard. He served on active duty from January 2003 to May 2005. His business partner disappeared, leaving Applicant responsible for much of the business expenses since the accounts were in his name. (Tr at 21-22, 73-76.) Applicant states the debts alleged in SOR ¶¶ 1.g, 1.h, 1.i, 1.j, 1.k, 1.l, and 1.n were related to his failed landscaping business. (Tr at 24-25, 40-42, 46-47; Gov 2.)

Applicant entered into a loan rehabilitation plan for the student loan accounts alleged in SOR ¶¶ 1.c, 1.d, 1.e, and 1.f. He agreed to pay \$146 per month beginning in June 2008. After he makes seven payments, they will discuss consolidation with him. (Tr at 23-24, 48.)

Applicant disputes the debt owed in SOR ¶ 1.q. The debt was for on-line college courses that Applicant took in 2006. He claims the university is charging him for two semesters as opposed to one semester. Applicant only attended one semester and claims he notified the university. He has not paid the university the money owed for the semester that he attended. (Tr at 26-27, 55.)

Applicant states the debts alleged in SOR ¶¶ 1.a, 1.b, 1.j, 1.l, 1.n and 1.r are no longer on his credit report. (Tr at 17, 22, 23, 25 -27, 58-59; Gov 2; AE A.) He may have paid some of them but thinks they were charged off. He paid taxes related to the charged off accounts. (Tr at 33; 58-59.) He is not sure what the account alleged in SOR ¶ 1.g is but will pay if it is his debt. (Tr at 24; 60.) He states the debt alleged in SOR ¶ 1.h is the next debt to be settled. (Tr at 24, 60.) He claims the debts alleged in SOR ¶¶ 1.i, 1.k and 1.m are the same. (Tr at 25, 28.)

In February 2008, Applicant attended some financial counseling through the Veteran's Administration. He also learned about credit on the Equifax web-site. He and his wife are in the process of working out a payment plan. She has good credit. (Tr at 68.) He admits his financial problems are also the result of having a lack of funds to cover all of his debts. (Tr at 70-71.)

After the hearing, Applicant submitted a current budget. His monthly income is \$5,854. After expenses, approximately \$373 is left over each month. Of the amount, \$200 is put in savings. (AE D at 4.) Aside from the student loans alleged in SOR ¶¶ 1.c, 1.d, 1.e, and 1.f, none of the delinquent accounts alleged in the SOR are included in the budget.

The numerous reference letters submitted by Applicant's current and former co-workers and family friends indicate that he is held in high esteem. (AE C; AE D at 2-3.) The letters describe Applicant as "extremely honest", "forthright", "reliable",

“conscientious,” “professional”, and “trustworthy.” His supervisor indicates that Applicant demonstrates a strong work ethic and has met or exceeded all implementation deadlines imposed upon him by his superiors. He gained the respect and trust of his peers as well his supervisor and senior leadership. (AE C at 4.)

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. Since 2002, Applicant has incurred approximately \$61,721 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’s financial problems continue. Most of the delinquent debts remain unresolved. Aside from the delinquent accounts, Applicant’s current financial situation is tight. After monthly expenses, he has only \$373 left over each month.

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) applies, in part, due to the failure of Applicant’s landscaping business in 2002. The next question to be asked is whether the Applicant acted responsibly since that time. The record evidence indicates Applicant took little action towards resolving the delinquent accounts which resulted from the landscaping business. He notes that many of the accounts no longer appear on his credit report but cannot confirm that he resolved any of the accounts. It cannot be concluded that he acted responsibly under the circumstances with regards to resolving his delinquent accounts.

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. Applicant attended financial counseling through the Veteran's Administration in 2008. He is starting to take steps to assess his financial situation. However, his financial problems are not likely to be resolved in the near future.

FC MC ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies, in part, with respect to the student loan rehabilitation payment plan Applicant recently entered into pertaining to SOR ¶¶ 1.c, 1.d, 1.e, and 1.f. However, the first payment was not due until June 2008. He has not developed a track record of timely payments towards this debt. In addition, he has not met his burden of proof pertaining to the resolution of the other debts in the SOR. Although some of the debts are no longer listed on his credit report, Applicant did not provide proof that he paid off these 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) 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 favorable references, his military service, and his efforts to resolve some of the accounts. However, a person's outstanding work history does not mitigate financial irresponsibility. While Applicant's business failed in 2002, he took no action to resolve his delinquent accounts until recently. It is too soon to conclude Applicant has mitigated the concerns raised under financial considerations. Overall, the record evidence leaves me with 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 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:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	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