



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



In the matter of:)
)
) ISCR Case No. 07-17965
)
 SSN:)
)
)
 Applicant for Security Clearance)

Appearances

For Government: Tom Coale, Esquire, Department Counsel
For Applicant: *Pro Se*

August 4, 2008

Decision

RIVERA, Juan J., Administrative Judge:

Applicant failed to mitigate security concerns regarding Guideline F (Financial Considerations). Clearance is denied.

Statement of the Case

On March 2, 2007, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) or Standard Form (SF) 86.¹ On March 25, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him,² pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review*

¹ Item 4.

² Item 1. Also, the source for the facts in the remainder of this paragraph unless stated otherwise.

Program (Directive), dated January 2, 1992, as amended, modified and revised.³ The SOR alleges security concerns under Guideline F (Financial Considerations).⁴ The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On April 23, 2008, Applicant responded to the SOR allegations, and elected to have his case decided on the written record in lieu of a hearing (Item 3). A complete copy of the file of relevant material (FORM), dated May 2, 2008, was provided to him, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation.⁵ Applicant did not provide additional documents within the 30 days granted. On July 7, 2008, the case was assigned to me.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a through 1.e with an explanation for SOR ¶¶ 1.a - c (Item 3). His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is 42 years old.⁶ He has been an accountant for most of the past five years working for several employers. He has never married. He does not have any children. He did not serve in the military. He attended several colleges during the last five years. He has no police record. He has not used or trafficked in illegal drugs in the last seven years, and has never used illegal drugs while in a sensitive position. In the last seven years he has not been fired, quit or left employment under unfavorable circumstances.

³ On Aug. 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guideline to all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated Jan. 1987, as amended, in which the SOR was issued on or after Sep. 1, 2006. The revised Adjudicative Guidelines are applicable to Applicant's case.

⁴ When he completed his SF 86, Applicant admitted he had filed for bankruptcy, and his car was repossessed in 2004. See Item 4, Sections 27a and 27b. He denied he had any unpaid judgments in the last seven years. See Item 4, Section 27d. He also denied having debts delinquent over 180 days in the last seven years; and having debts currently delinquent over 90 days. See Item 4, Sections 28a and 28b.

⁵ The DOHA transmittal letter, is dated May 2, 2008; and Applicant's receipt is signed and dated May 7, 2008. The DOHA transmittal letter informed Applicant that he had 30 days after Applicant's receipt to submit information.

⁶ Item 4 (2007 security clearance application) is the source for the facts in this paragraph, unless stated otherwise.

Financial Considerations

Around November 2001, Applicant had financial difficulties, and had to file for bankruptcy protection under Chapter 7 of the Bankruptcy code (SOR ¶¶ 1.d and 1.e) (Item 3). Shortly thereafter, Applicant acquired three debts that became delinquent, totaling \$18,000: (1) \$6,640 placed for collection in August 2002 (SOR ¶ 1.a); (2) \$10,975 (SOR ¶ 1.b); and (3) \$420 (SOR ¶ 1.c). See also credit report dated February 6, 2008, Item 8. He said the debt for \$420 would be paid off by June 8, 2008 (Item 3). He concluded his SOR response stating, "I'm able to live within my means and finances. I recently received a substantial pay increase that will help alleviate my debt ratio and pay off remaining bills [in] a timely manner" (Item 3).

In his response to interrogatories, Applicant provided two \$50 money orders dated February 26, 2008, one for each of the creditors in SOR ¶¶ 1.a and 1.b (Item 8 at 3). In his SOR response he said he agreed with the creditor in SOR ¶ 1.a to make payments, and he made arrangements with the creditor in SOR ¶ 1.b to pay the balance off on a monthly basis (Item 3). Department counsel highlighted Applicant's failure to provide proof of these payment arrangements in the FORM (FORM at 5 n. 17). Applicant did not respond to the FORM. He failed to present proof of an agreement with the creditors in SOR ¶¶ 1.a and 1.b; and more importantly, there is no proof that Applicant is complying with the terms of any such agreements.

Applicant completed a personal financial statement (PFS), which showed a gross monthly salary of \$4,540, total monthly deductions of \$1,300, and a net monthly salary of \$3,240 (Item 8). His monthly expenses total \$1,790, which includes \$700 monthly for automobile expenses (Item 8). After subtracting monthly deductions, expenses and debts, his PFS reflects a monthly negative cash flow of \$17. His monthly debts are listed as follows:

CREDITOR	TOTAL AMT OWED	SCHED MO PMT	ACTUAL MO PMT
Mortgage	\$128,000	\$1,217	\$1,217
Credit Card Account	\$300	\$50	\$50
Not Listed	\$600	\$100	\$100
SOR ¶ 1.b	\$14,000	\$50	\$50
SOR ¶ 1.a	\$6,600	\$50	\$50
	\$149,500	\$1,467	\$1,467

A credit report dated February 6, 2008, lists an automobile loan for \$14,927 with a monthly payment of \$440 for 73 months (Item 8). The 2008 credit report indicates this car loan and his mortgage are current. It also lists a \$17,500 student loan that is in deferment (Item 8).

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 controlling 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.

In the decision-making process, the Government has the initial burden of establishing controverted facts alleged in the SOR by "substantial evidence,"⁷ demonstrating, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to produce evidence "to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).⁸

⁷ See Directive ¶ E3.1.14. "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

⁸ "The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant's past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15." ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

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* Executive Order 12968 (Aug. 2, 1995), Section 3.

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the relevant security concern is under Guideline F (Financial Considerations). AG ¶ 18 articulates the security concern 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.

AG ¶ 19 provides two Financial Considerations Disqualifying Conditions that could raise a security concern and may be disqualifying in this case, “(a) inability or unwillingness to satisfy debts,” and “(c) a history of not meeting financial obligations.” Applicant’s history of delinquent debt is documented in his credit reports, his SOR response, and his response to interrogatories. After his delinquent debts were discharged in 2001, he accrued three additional debts, totaling approximately \$18,000, that became delinquent around 2002-2003. The three debts were delinquent as of the date of the SOR. The government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c).

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.

Applicant made one \$50 payment towards his \$6,640 debt in SOR ¶ 1.a, and one \$50 to the creditor in SOR ¶ 1.b slightly reducing his \$10,975 debt. These two payments are insufficient to mitigate financial concerns pertaining to these two debts. He said he paid the \$420 in SOR ¶ 1.c. I will find "For Applicant" for SOR ¶ 1.c in the decretal paragraph of this decision. AG ¶ 20(e) is not applicable to mitigate the SOR debts because they are not disputed. He did not provide "documented proof to substantiate the basis of the dispute or [provide] evidence of actions to resolve the issue" with respect to the debts in SOR ¶¶ 1.a and 1.b.

Applicant's conduct does not warrant full application of AG ¶¶ 20(a) and 20(b) because available information fails to establish he acted diligently and responsibly to resolve his delinquent debts.⁹ He failed to explain how he acquired the debts; why they became delinquent; what efforts he took to resolve his debts; or, any conditions beyond his control that resulted in his financial problems (such as loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation).

It appears he began his attempts to resolve his delinquent debts in February 2008. It is unclear whether he made any payments on any of these delinquent debts prior to February 2008, or whether he has made any payments since. These factors cast doubt on Applicant's current reliability, trustworthiness, or good judgment.

AG ¶¶ 20(c) and 20(d) do not fully apply. Applicant received some financial counseling in connection with his 2001 bankruptcy. However, there are not "clear

⁹ "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)).

indications that the problem is being resolved or is under control.” There is insufficient information to establish that Applicant applied the knowledge obtained from financial counseling or that he showed good faith¹⁰ in the resolution of his debts.

In sum, Applicant did not provide sufficient evidence to establish he acted responsibly and in good faith in the handling of his financial affairs. Based on his budget, he does not have sufficient income remaining to make much progress on these two debts. His overall conduct with his creditors casts doubt on his current reliability, trustworthiness, and good judgment. His financial problems are continuing and likely to recur. He should have been more diligent and made greater efforts to resolve his delinquent debts, especially after receipt of the SOR. He has not carried his burden of proving his financial responsibility. Based on my evaluation of the record evidence as a whole, I conclude no mitigating conditions fully 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) 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.

¹⁰ The Appeal Board has previously explained what constitutes a “good faith” effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the “good faith” mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant’s debts. The Directive does not define the term ‘good-faith.’ However, the Board has indicated that the concept of good-faith ‘requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.’ Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the “good faith” mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

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. AG ¶ 2(c).

Applicant's record of good employment weighs in his favor. There is no evidence of any security violation. Aside from his delinquent debts (which are a civil, non-criminal issue), he is a law-abiding citizen. His car loan and mortgage are current. The overall amount of his delinquent debt at about \$17,500 is relatively low. These factors show some responsibility, rehabilitation, and mitigation.

The evidence against mitigating Applicant's conduct is more substantial. His Chapter 7 bankruptcy in 2001 provided him with the knowledge and opportunity for a fresh financial start. He was well aware of his financial responsibilities as his work experience is primarily in the area of accounting. He learned of the security significance of these delinquent debts when he responded to interrogatories, and this knowledge was reinforced when he received the SOR. His efforts to resolve his delinquent debts were insufficient to fully resolve security concerns. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude Applicant has not mitigated the security concerns pertaining to financial considerations. For the reasons stated, I conclude he is not eligible for access to classified information.

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 and 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d and 1.d:	Against Applicant

Conclusion

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

Juan J. Rivera
Administrative Judge