



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



In the matter of:)	
)	
)	ISCR Case No. 07-18479
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline H. Jeffreys, Esquire, Department Counsel
For Applicant: Pro Se

March 31, 2009

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted an electronic questionnaire for investigations processing (e-QIP), on October 16, 2006. On July 2, 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 August 3, 2008, Applicant answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on November 17, 2008. The case was delayed because Applicant was working in Iraq and did not return to the United States until late January 2009. On February 6, 2009, a Notice of Hearing was issued, scheduling the hearing for March 4, 2009. The case was heard on that date. The Government offered seven exhibits which were admitted as Government Exhibits (Gov) 1 – 4. Applicant testified and offered seven exhibits which were admitted as

Applicant Exhibits (AE) A - G. His wife served as his personal representative. The record was held open until March 18, 2009, to allow Applicant to submit additional documents. An additional 17-page document was timely submitted and admitted as AE H. The transcript was received on March 23, 2009. 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 denies the allegations in SOR ¶¶ 1.a, 1.b, 1.d, 1.f, 1.g, 1.h, and admits the allegations in SOR ¶¶ 1.c and 1.e.

Applicant is a 44-year-old logistics management specialist employed with a Department of Defense contractor seeking a security clearance. He has worked for his company since September 2004. His highest level of education is a high school diploma. Applicant enlisted in the United States Army in September 1988. He injured his back and separated from active duty in 1991. He was on the temporary disability retired list. In 1994, he was declared fit for duty and returned to active duty. He served until 1997. He separated on March 10, 1997 as a specialist (E-4) with an Honorable discharge. He is married and has no children. His wife has two adult children. (Tr at 6-11, 38-39, 61-63; Gov 1; AE H at 9, 11)

On October 16, 2006, 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 several delinquent accounts, an approximate total balance of \$66,454. The delinquent accounts include: a \$5,914 credit card account charged off in July 2006 (SOR ¶ 1.a: Gov 3 at 3; Gov 5 at 2; Gov 6 at 1; Gov 7 at 3); a \$7,000 credit card that was charged off in July 2003 (SOR ¶ 1.b: Gov 6 at 2; Gov 7 at 8); a \$1,434 credit card account that was charged off in July 2002 (SOR ¶ 1.c: Gov 6 at 2; Gov 7 at 6); a \$3,970 account placed for collection in January 2008 (SOR ¶ 1.d: Gov 5 at 2; Gov 6 at 2); a \$6,249 credit card placed for collection in January 2002 (SOR ¶ 1.e: Gov 5 at 3; Gov 6 at 2; Gov 7 at 9, 10); a \$15,818 credit card account that was placed for collection in October 2006 (SOR ¶ 1.f: Gov 5 at 3; Gov 6 at 2; Gov 7 at 3, 10); a \$15,045 balance owed after a voluntary car repossession that was charged off in March 2003 (SOR ¶ 1.g: Gov 3 at 3; Gov 4 at 2; Gov 5 at 3; Gov 6 at 3; AE B at 2; AE C at 3); and an \$11,024 credit card account that was placed for collection in June 2006 (SOR ¶ 1.h: Gov 7 at 6).

On May 23, 2007, Applicant was interviewed by an investigator conducting his background investigation. He indicated that he purchased a home in 1998 but was not prepared for the additional financial burdens that came with owning a home. He did not have money to furnish the house and pay his monthly bills. He and his wife charged many bills and household expenses to their credit card accounts. The credit card bills piled up until he was unable to pay the credit card bills and meet his household expenses. Applicant wants to pay his debts but has no income at the end of the month

to pay his expenses. When his financial situation improves he intends to pay these bills. (Gov 3 at 3.)

In response to interrogatories, dated March 10, 2008, Applicant indicated that he was deployed to Iraq and his financial situation was improving rapidly. He indicated that he was saving all that he can in order to pay back all of his debt. He hoped to pay off all of his debt in 2009 when he returns from Iraq. He indicated that some of the debts should drop off his credit report due to the age of the debt but indicated that he was aware that it was his obligation to pay the debts back. He would not compromise his character or perform his job unethically because of his debts. He has served in the military or worked for a defense contractor since 1988. He would hate to think that he could lose all that he has accomplished. That is why he wants to do the right thing and pay off his debts. (Gov 2 at 4-5)

At hearing, Applicant indicated that some of the accounts are double or triple the original balances due to late fees. He referred to the debts as "junk debt." He testified that his initial financial problems began in November 2003. His wife lost her job in 2001 because of health issues and has not worked since. They had three roommates who paid rent which helped with the mortgage payments. They all left at once. He states that the fact that these are old debts should mitigate some of the concerns raised. Some of his delinquent accounts will be deleted from his credit report in less than a year. He believes that settling these old debts may not be in his best interest because they may reappear as entries on his credit report which could adversely affect his credit rating. He is aware that the government needs to trust him but doesn't want to be put in a position where he has bad debts listed on his credit report for additional years. He has no motivation to do anything stupid or violate the law. (Tr at 26-29)

Applicant provided proof that he has resolved two accounts. They were not alleged in the SOR but were considered during his background investigation. (Tr at 23-24; AE D; AE E) The status of the delinquent accounts alleged in the SOR are:

SOR ¶¶ 1.a, 1.d and 1.h: \$5,914 charged off credit card account. This account was settled on April 8, 2008, for \$1,506. Applicant states that the SOR allegations are the same debt. The record evidence indicates that SOR ¶¶ 1.a and 1.d are the same debt. (Tr at 43-44, 50-51; AE A; AE F) There is substantial record evidence to conclude that SOR ¶ 1.h is also the same account. I come to this conclusion because the same account number is listed on the credit report entries for the creditors in SOR ¶¶ 1.a and 1.h. (Tr at 50- 53; Gov 7 at 3, 6; AE G) SOR ¶¶ 1.a, 1.d and 1.h are found for Applicant.

SOR ¶ 1.b: \$7,000 credit card account. Applicant claims this account is the same as the debt alleged in SOR ¶ 1.f. The record evidence supports this premise. It appears the creditor alleged in SOR ¶ 1.f purchased the debt from the original creditor who is alleged in SOR ¶ 1.b. I find for Applicant with respect to SOR ¶ 1.b because it is a duplicate of SOR ¶ 1.f. (Tr at 48-50, 56-57; Gov 7 at 3, 8, 10)

SOR ¶ 1.c: \$1,484 credit card account. No payments have been made on this account. (Tr at 55-56)

SOR ¶ 1.e: \$6,249 credit card account placed for collection. The debt remains unresolved. (Tr at 56)

SOR ¶ 1.f: \$15,818 collection account. This is the same account as SOR ¶ 1.b. This creditor is the collection agency collecting on the original debt. The balance increased substantially due to late fees and penalties. This debt has not been resolved. (Tr at 50, 56-57)

SOR ¶ 1.g: \$15,045 amount owed after a voluntary car repossession. In 2002, Applicant purchased a car with no money down and no payments for 12 months. At the end of the 12-month period, he was unable to make the car payments and initiated a voluntary car repossession. He has not contacted the creditor to make payment arrangements. The debt remains unresolved. (Tr at 57-58; Gov 3 at 3)

Applicant worked two tours in Iraq as a contractor. His first tour was from January 2005 to late December 2005. His second tour was from January 11, 2008, to late January 2009. Applicant's salary in Iraq was double his stateside salary. (Tr at 60-61) He used the extra income to put as much as he could into his 401(k) account; he made extra mortgage payments; and made payments towards the bills that were in good standing. (Tr at 65)

Stateside, Applicant earns approximately \$60,000 annually. His gross monthly income is \$5,000. His net monthly income is \$2,400. He also receives a VA disability check each month for \$263. Applicant took out two loans against his 401(k) account. The monthly payments are automatically deducted from his pay. This explains why his paycheck is significantly lower than his gross monthly income. In 2004, he took a loan of \$17,000. This will be paid in 2010. He took out a second loan against his 401(k) in late 2006. He borrowed \$22,000 in order to purchase a new car. He bought a new car for \$32,000 in 2007. The value of his 401(k) is currently \$69,000. The balance used to be \$160,000 before the problems with the stock market began. (Tr at 32-35, 43)

Applicant's monthly expenses include mortgage \$1,200; car loan \$171; car insurance \$150; gas \$120; electric \$332; cell phone \$99; cable \$100; Internet \$45; water \$35; groceries \$250; clothes \$25. Applicant has one open credit card with a \$1,200 balance. He makes a \$100 monthly payment. In 2004, Applicant purchased a time share for \$15,000. He pays \$300 per month for the time share. His total monthly expenses are \$2,877. His net monthly income is currently \$2,663. He has approximately \$13,000 in his savings account. (Tr at 31-42)

In 2002, Applicant enrolled with a credit counseling company. He used their services for awhile but stopped because he was unable to afford the \$700 monthly payments. From 2002-2003, he enrolled with another credit counseling company but stopped for similar reasons. (Tr at 46-47)

Applicant received numerous awards, certificates of achievement, and letters of appreciation throughout his civilian and military careers. (AE H)

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 accumulated a significant amount of delinquent debt. At the close of the record, approximately \$38,546 in delinquent accounts remain unresolved. Late fees and penalties for lack of payment have contributed to the total balance of the 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. While several of the accounts were duplicates, Applicant continues to have significant unresolved debt. Applicant has paid several of his delinquent accounts. However, his plan for most of the delinquent accounts is to wait for them to drop off his credit report rather than attempting to resolve the accounts. He does not deny that they are his debts but believes that any attempts to resolve the older accounts would adversely affect his credit rating. During the same time that he incurred delinquent accounts, he purchased a timeshare, contributed the maximum amount to his 401(k) account, and purchased a new car for no money down and no payments for 12 months. After 12 months, Applicant turned the car in because he was unable to make payments. With some better judgment and planning, Applicant could have managed his finances and established a plan to

resolve his delinquent accounts. Questions about Applicant's judgment, trustworthiness, and reliability remain based on Applicant's failure to honor his financial obligations.

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) partially applies. Applicant's wife lost her job in 2001 and had surgery. She has not worked since that time even though she is capable of working. Applicant states that his financial obligations were aggravated when three individuals who were renting rooms from he and his wife unexpectedly moved out. This may have some impact but Applicant could have sought out additional boarders to help out with the mortgage payment. Applicant was paid double his salary in 2005 and 2008 while working in Iraq. Instead of developing a plan to resolve his delinquent accounts, Applicant allotted more money to his 401(k) account, made additional mortgage payments, and additional payments towards his current accounts. He did not act 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 credit counselors in the past, he has not done so recently. Although he resolved several of his delinquent accounts, several delinquent accounts remain with no plan in place to resolve the accounts.

FC MC ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies with respect to the debt alleged in SOR ¶ 1.a. However, the remaining debts remain unresolved. Applicant implied at hearing that he intends to wait until the older accounts are removed from his credit report rather than attempt to settle the accounts. When he worked in Iraq, he had significant extra money to apply towards his delinquent accounts. He chose to apply the extra income towards other things as opposed to resolving his delinquent accounts. He has not demonstrated a good-faith effort to resolve his delinquent accounts.

FC MC ¶ 20(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) applies with respect to the debts alleged in SOR ¶¶ 1.a, 1.d and 1.h; and SOR ¶¶ 1.b and 1.f. I find for Applicant with respect to SOR ¶¶ 1.a, 1.d, and 1.h because the record evidence established that they are duplicate accounts and Applicant submitted proof that the debt was resolved. I find for Applicant with respect to SOR ¶ 1.b because it is a duplicate account with SOR ¶ 1.f. I do not find for Applicant with respect to SOR ¶ 1.f because it is not resolved.

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 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 active duty military service and his years of employment with a Department of Defense contractors. I considered Applicant's explanations for his delinquent debt. I considered that Applicant has resolved several accounts and several accounts were duplicates. However, a significant amount of delinquent accounts remain with no established plan to settle these accounts. It is unlikely the delinquent accounts will be resolved in the near future because Applicant's current monthly expenses are more than his monthly income. 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:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	For 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