



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



In the matter of:)
)
) ISCR Case No. 08-00344
 SSN:)
)
 Applicant for Security Clearance)

Appearances

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

December 30, 2008

Decision

MASON, Paul J., Administrative Judge:

Applicant submitted his Security Clearance Application (SCA) on June 8, 2007. On July 25, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F). The 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 made effective within the Department of Defense for SORs issued on or after September 1, 2006.

Applicant submitted his answer to the SOR on August 29, 2008. DOHA issued a notice of hearing on October 3, 2008 for a hearing on October 28, 2008. The hearing was held as scheduled. At the hearing, five exhibits (GE 1 through 5) were admitted in evidence without objection to support the government's case. Applicant testified and submitted four exhibits. (AE A through AE D) DOHA received a copy of the transcript of

the proceedings on November 6, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

The SOR has five allegations under the financial considerations. Though Applicant admitted all allegations, I find that he still owes SOR 1.b., whether the delinquent account is or is not related to SOR 1.c. As shall be noted below, SOR 1.c. is found in Applicant's favor because the allegation is too vague to give Applicant adequate notice of the specific financial concerns relating to delinquent debts, his mortgage company, and the ultimate foreclosure and sale of his home. See, SOR 1.c.

Applicant is 42 years old, divorced, with five children. He is employed by a defense contractor as an emergency responder. In this job, Applicant and other individuals maintain a ready status to respond to manmade or natural disasters (Tr. 37). If a disaster occurs, he would proceed to the location and establish temporary hospitals to handle the injured. Applicant served in the United States Army (USA) from 1987 to January 2007. He seeks a secret clearance.

Between 2001 and early 2003, Applicant was about to be mobilized to a military installation with an expectation for deployment that did not occur. He transferred ownership through a "quick deed" and a "power of attorney" to a brokerage firm to sell his apartment building containing three units (GE 2). According to Applicant, the brokerage firm did not put the building's water utility (SOR 1.e.) in their name. When the apartment building was foreclosed on, Applicant's name still appeared on the water utility bill. The mortgage company identified in SOR 1.c. owned Applicant's mortgage for his apartment building (Tr. 47). When the building was foreclosed on around May 2007, the subsequent sale of the home provided a profit sufficient to extinguish the mortgage delinquency.

- SOR 1.a., \$29,861.00.¹ This account was reported delinquent in May 2007 (GE 5). Applicant believes this account was for a credit card his former wife used to pay for household items; he estimated the card became delinquent in 2006 or 2007 (Tr. 35). Applicant claims he made two or three months of payments (Tr. 21), or about nine payments because he was paying the creditor every week (Tr. 73), and the balance should be lower than \$18,000.00, rather than the posted amount in AE A. Applicant recalled paying them \$2,800.00 out of his checking account which temporarily reduced the account to zero (Tr. 54-55). At a later point in his testimony, Applicant claimed he set up a payment allotment of \$750.00 a month that is automatically taken out of his checking account (Tr. 38).

AE A contains four invoices dated: September 3, 2008, September 16, 2008, September 30, 2008, and October 14, 2008. The balance listed on the most recent

¹ The amount has increased substantially because of penalties and interest added to the principal debt.

invoice is \$29,861.62. There is no documentation, i.e., bank statements, that would show the frequency of payments to this collection agency, except for the four invoices that show Applicant paid \$1,400.00 to the collection agency.

- SOR 1.b., \$7,239.00. This account was first reported delinquent in January 2007. Applicant initially claimed he had contacted the company who told him the debt had been or would be removed from his credit report (Tr. 24-25). Based on discussion he had with an adjudicator from DOHA, who suggested the debt may relate to the debt in SOR 1.c., Applicant testified the two debts could be related, but he really does not know. He stated that he intended to find out whether he owes the account (Tr. 74).

- SOR 1.c., \$82,758.00. This amount appears in GE 3 as past due as of June 2008. The allegation refers to other delinquent debts owed to the cited mortgage company, but does not identify what those debts are. After reviewing other record evidence exhibits (GE 3 and GE 4) and Applicant's testimony (Tr. 40-48), I am unable to determine what other debts the allegation is referring to, and how those other debts relate to the mortgage company, leading to the foreclosure and ultimate sale of his house. Accordingly, I find the allegation is unclear because it does not provide reasonable notice of what is being alleged. This allegation is resolved in Applicant's favor.

- SOR 1.d., \$263.00. This account was first reported delinquent in June 2007. Applicant paid this creditor on October 23, 2008 (AE B). He also provided documentation he had paid the creditor in 2005 (GE 2).

- SOR 1.e., \$320.00. This account was first reported delinquent in October 2006. On October 23, 2008, Applicant paid this creditor in full (AE C). As noted at the outset of this section, this account originally belonged to Applicant but should have been transferred and/or taken out of Applicant's name after the property had been foreclosed (GE 2).

- SOR 1.f., child support. According to Applicant, execution of garnishment is an automatic practice that State X imposes when it is determined that child support is owed (Tr. 51). Applicant maintains he never was delinquent in paying his child support (Tr. 29-31). Also, the two payment sources were paying the child support by mistake, and the administrative error has been corrected (Tr. 52). GE 5 reveals that Applicant was current on his child support. There is no entry identifying delinquent child support in GE 3 or GE 4. The allegation is resolved in Applicant's favor.

When asked about whether he has a budget, Applicant responded in the affirmative and explained:

Yes, sir. Meaning that when the money come in, I know what has to be paid. It's like now it's pretty much set in stone, because [the bank] get their money, the child support get their money. I know to pay the - - where I'm

at now, and the rest is just to take care of the regular things around the house (Tr. 58).

Character Evidence

Applicant provided no evidence of military background,² or his job performance. Applicant has only one mortgage on the house he is living in (Tr. 45), and his mortgage is current (GE 3).

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 flexible rules of law. Recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's ultimate adjudicative goal is a fair, impartial and common sense decision. According to the AG, the entire process is a careful, thorough evaluation 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. Reasonable 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 sensible, 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 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 is not restricted to normal duty hours. Rather, the relationship is an-around-the-clock responsibility between an applicant and the federal government. The government

² The only information appearing in Applicant's SCA (GE 1) is his length of military service and his rank.

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.

Analysis

Financial Considerations (FC)

18. *The Concern.* “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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.”

FC disqualifying condition (DC) 19.a. (*inability or unwillingness to satisfy debts*) and FC DC 19.c. (*a history not meeting financial obligations*) apply to SOR 1.a., 1.b., 1.d., and 1.e. the debts have been delinquent for about two years.

Evidence of financial problems may be mitigated by FC mitigating condition (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 reliability, trustworthiness, and good judgment*); FC MC 20.b. (*the conditions that resulted in the financial problem were largely beyond the person’s control and individual 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*); and, FC MC 20.d. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). Though there were five delinquent debts at the time the SOR was issued in July 2008, Applicant paid two of the smaller debts. Two other debts have been resolved in his favor. However, he still owes the SOR 1.a. and 1.b. accounts. Applicant has documented four payments totaling \$1,400.00 to the SOR 1.a. creditor. There are no records showing that he made a \$2,800.00 payment or that the balance of the debt is now \$18,000.00.

After initially claiming the SOR 1.b. creditor was going to remove the account from Applicant’s credit report, then claiming the account was related to the SOR 1.c. creditor, Applicant finally admitted he had taken no action regarding the 1.b. creditor. Applicant’s equivocal testimony regarding the 1.a. and 1.b. creditors continues to cast doubt on his reliability, trustworthiness and judgment. FC MC 20.a. does not apply.

FC MC 20.b., which mitigates when unforeseen events impede an applicant's efforts to honor his current or delinquent financial obligations, is unavailable to Applicant.

Applicant receives no mitigation under FC MC 20.c. because he has had no counseling and there are no clear indications he has his financial difficulties under control. While he has paid two small past due debts, he still owes about \$36,000.00.

The mitigation Applicant receives under FC MC 20.d. for paying off the creditors identified in SOR 1.a., 1.d., and 1.e. is reduced by the fact that he took no action on any of the debts until after he received the SOR in July 2008. In addition, he has undercut the credibility of his efforts to repay the SOR 1.a. account with his unsupported claims that he had been paying the account every week and that the balance should be less than \$18,000.00. Finally, the specious claims Applicant made about the SOR 1.b. account before finally admitting he had taken no action on the debt, undermine his credibility even more. On balance, without any evidence of Applicant's financial practices or character evidence regarding his job performance or lifestyle away from work, Applicant's payoff of the creditors in 1.d. and 1.e. and his partial payment of the SOR 1.a. creditor does not sufficiently meet his burden of persuasion under the FC guideline.

Whole Person Concept (WPC)

I have examined the evidence with the disqualifying and mitigating conditions in my ultimate finding for Applicant under the FI guideline. I have also weighed the circumstances within the context of nine variables known as the whole person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors:

- (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 the participation was 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. AG ¶ 2(a)

One of the most important factors of the whole person concept is the sixth factor, or the presence or absence of rehabilitation and other behavioral changes. Because this case presents financial issues, the action an applicant takes to repair his financial habits is just as important as actually paying past due bills. Applicant has provided no evidence of measures he has taken so his current financial trouble will not recur or persist in the future. Accordingly, under the ninth factor of the whole concept, I cannot confidently

conclude that Applicant will not have financial problems in the future. Considering this case in light of the evidence as a whole, the FC guideline is resolved against Applicant.

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 (Financial Considerations, Guideline F): AGAINST APPLICANT

Subparagraph 1.a.	Against Applicant
Subparagraph 1.b.	Against Applicant
Subparagraph 1.c.	For Applicant.
Subparagraph 1.d.	For Applicant
Subparagraph 1.e.	For Applicant
Subparagraph 1.f.	For Applicant

Conclusion

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

Paul J. Mason
Administrative Judge