



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-01293
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

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

November 28, 2008

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on June 11, 2007. On April 30, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline F that provided the basis for its decision to deny him a security clearance and refer the matter to an administrative judge. 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 as of September 1, 2006.

Applicant acknowledged receipt of the SOR on May 12, 2008. He answered the SOR on May 14, 2008, and requested a decision without a hearing. On August 5, 2008, the government submitted a File of Relevant Material (FORM) consisting of seven exhibits (Items 1-7). DOHA forwarded a copy of the FORM to Applicant and instructed

him to respond within 30 days of receipt. No response was received by the September 12, 2008, due date. On October 23, 2008, the case was assigned to me to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Based upon a review of the government's FORM, including Applicant's Answer to the SOR allegations (Item 4), eligibility for access to classified information is denied.

Findings of Fact

DOHA alleged under Guideline F, financial considerations, that Applicant owes five delinquent debts totaling \$24,139 (SOR ¶¶ 1.a through 1.e). Applicant admitted the indebtedness alleged in SOR ¶¶ 1.a and 1.e. He denied the other debts because they did not appear on his credit report as of May 12, 2008. After considering the evidence of record, I make the following findings of fact.

Applicant is a 30-year-old remedy administrator, who has worked for his present employer, a defense contractor, since about May 2007. He does not hold a security clearance (Item 5).

From about June 1997 to June 2000, Applicant pursued his bachelor's degree in business administration. He financed his education in part through student loans. In 1998, he took out four separate loans totaling \$14,667. The loans were in deferral when they were transferred in May 2000 with a balance of \$14,742 (Items 4, 7). Applicant also worked while he was in college, as a help desk technician for a local firm from July 1998 to June 2000 (Item 5). His annual taxed earnings were \$6,179 for 1998, \$26,384 for 1999, and \$17,531 for the first half of 2000 (Item 4).

On earning his B.A. degree in June 2000, Applicant relocated to start his own business in the field of oil and gas exploration. He earned no taxable income for tax years 2001 or 2002 as he struggled to establish the business. He was supported by his parents (Item 4), but struggled financially and fell seriously behind in some obligations incurred before he became self-employed. Those debts are as follows:

- A gasoline credit card account opened in April 1997 was placed for collection in or about March 2001. The purchaser of the account (SOR ¶ 1.c) reported a delinquent balance of \$5,454 as of May 2007 with no activity since March 2001 (Item 7).
- A charge account with a clothing retailer, opened in August 1998, was charged off with a balance due of \$543 (SOR ¶ 1.b) (Items 6, 7).
- A credit card account opened in November 1999 was charged off in or before April 2001. The account (SOR ¶ 1.e) had a reported high balance of \$7,276 (Items 6, 7). Available credit records report a zero balance on transfer, but Applicant was held liable for a delinquent balance in collection as of May 2008 (Item 4).

- In January 2000, Applicant leased an automobile to be repaid at \$438 monthly (SOR ¶ 1.a). He defaulted and the car was repossessed. A \$10,115 delinquent balance was charged off to profit and loss in or about September 2001 (Items 4, 6, 7).
- Applicant's credit report of July 7, 2007 (Item 7), also showed that he owed an American Express debt of \$751 on an account that had no activity since March 2001 (SOR ¶ 1.d).

In August 2002, Applicant and his spouse married (Items 4, 5). He stopped accepting financial support from his parents, and was supported by his spouse. While looking for a full-time job, he continued to work on his business when he had time. In late 2003, he started a job paying \$9.00 an hour.¹ His income for 2003 was only \$5,104, and insufficient to pay any of his delinquent debts (Item 4). Applicant and his spouse incurred additional credit card debt to cover necessary expenses that arose. He was listed as an authorized user on credit card accounts opened in March 2003 and September 2004. High credit on the first account reached \$4,500. As of June 2007, that account had a balance of \$4,179. High credit on the second account reached \$3,568, \$68 over the credit limit, but the debt had been paid down to \$49 as of May 2007. In February 2006, Applicant opened a couple of credit card accounts that had respective credit limits of \$1,250 and \$400. Payments were made according to terms on these accounts, but he made no payments on his old debts (Items 6, 7).

Employed full-time from October 2004 to August 2006 as a business analyst for a local firm while continuing to operate his own business, Applicant had earned income of \$26,599 for 2004 and \$29,061 for 2005. He earned \$26,117 in 2006. His only employment after August of that year was his business (Items 4, 5). The evidentiary record contains no information about his spouse's earnings during those years.

In May 2007, Applicant began working as a "remedy administrator" for a defense contractor. On June 1, 2007, Applicant took out a 30-year conventional real estate loan of \$147,090 to be repaid at \$1,189 monthly (Item 6). He took out a credit card with the same bank as well. The account had a \$1,000 credit limit (Item 6). On June 11, 2007, he completed an e-QIP on which he disclosed the five debts listed in the SOR and explained that the accounts went delinquent when he became self-employed (Item 5). In October 2007, he opened a revolving credit card account with a credit limit of \$750. In January 2008, he opened yet another credit card account with high credit of \$300 (Item 6). His annual earnings for 2007 were \$31,264 (Item 4).

On March 17, 2008, Applicant responded to inquiries from DOHA about the delinquent accounts. He attributed his debt to no income for about 18 months, and insufficient income when he was gainfully employed. Concerning his financial status,

¹This employment is not listed on his e-QIP (Item 5), but his social security earnings statement shows he earned \$5,104 in 2003.

Applicant provided a credit report showing a record of timely payment of the credit card obligations incurred in the past four years. The aggregate balance on the six open credit card accounts was \$4,448. He also furnished a personal financial statement² on which he estimated a net monthly deficit of \$419.76 after payment of monthly expenses, his open credit cards, and his mortgage. His spouse's net salary was only \$100, so he was the sole provider for the household. His old debts were not a priority since they were being written off and he did not have the income to make any payments on them (Item 6).

Following receipt of the SOR, Applicant obtained a credit report "to validate the claims made in the Statement of Reasons." Applicant contacted two creditors (SOR ¶¶ 1.a and 1.e) because they were still reporting the delinquencies on his credit record as of May 12, 2008. The car lessor (SOR ¶ 1.a) required a down payment of \$2,023.10 before he could make monthly payments, which Applicant told him he could not afford but that he would "begin to work toward saving up this amount in order to begin a repayment schedule." The collection assignee for the debt in SOR ¶ 1.e offered to settle for an amount that Applicant could pay. Applicant maintains he paid it off but he provided only a contact number to call for verification (Item 4). As for the debts in SOR ¶¶ 1.b, 1.c, and 1.d, Applicant indicated he would work with the creditors to settle them if DOHA could "find any current evidence of these debts." (Item 6).

As of April 2008, Applicant had a student loan balance of \$26,456. His student loan was still in deferred status. His six open credit card accounts remained current and had an aggregate balance of about \$4,754, \$1,666 of which was owed on the revolving charge opened in September 2004 with Applicant as an authorized user (Item 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 overarching 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.

²The personal financial statement is dated June 17, 2008. However, it is included in Applicant's response to interrogatories dated March 17, 2008. All of the other documents included in Item 6 bear dates on or before March 17.

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.

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 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 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.

After he graduated from college in June 2000, Applicant struggled financially as he attempted to establish his own oil and gas exploration business. He stopped paying on the accounts in the SOR, and they became seriously delinquent in 2001. Supported by his parents, and after August 2002 by his spouse, Applicant made no payments on bad debt that totaled about \$24,139. He began working full-time in October 2004, and in

February 2006 opened two new credit card accounts. In early June 2007, he and his spouse took out a mortgage loan and he opened a credit card account with the bank. As he acknowledged on his e-QIP, the debts in the SOR went unpaid. Three of the debts (SOR ¶¶ 1.b, 1.c, and 1.d) no longer appear on his credit record, but that does not relieve him of his legal and/or ethical responsibility to resolve them. Significant security concerns are raised by “inability or unwillingness to satisfy debts” (AG ¶ 19(a)) and by “a history of not meeting financial obligations” (AG ¶ 19(c)).

As of about March 2008, Applicant reported a net monthly deficit of \$419 after paying his mortgage, expenses, and a bit more than the monthly minimum on the credit card debts incurred since 2004. A significant negative cash flow can be an indicator of spending beyond one’s means (see AG ¶ 19(e) (“consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis”)). Although there is no indication of lavish expenditure, and Applicant is presently paying his current obligations as required by his creditors, he appears to be seriously overextended. In the absence of any evidence of additional income from employment or other sources, it must be considered that Applicant is borrowing from one creditor to pay another. As of May 2008, his outstanding credit card balances totaled \$4,754. Mitigating condition AG ¶ 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”) does not apply to ongoing financial problems.

AG ¶ 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 to some extent. In retrospect, Applicant perhaps should not have attempted to start his own business lacking the capital and experience to ensure a profitable enterprise. Yet, he likely did not anticipate that it would bring him no income, or that he would have difficulty finding a good paying job once he was married and no longer relied on his parents for financial support. His record of social security and medicare earnings shows he earned nothing in 2001 and 2002, and only \$5,104 in 2003. AG ¶ 20(b) does not fully mitigate his inaction on his old debts after he started working full-time in 2004, however. Applicant understandably needed some time to get his finances in order. He earned income of \$29,061 in 2005 and \$26,117 in 2006. While not enough to pay off his old debts in full, he certainly could have contacted his creditors earlier and attempted to settle with them. Knowing that he had done nothing to resolve them, he and his spouse put their personal interests ahead of his obligation to his creditors. They bought a home in early June 2007, taking out a mortgage loan of \$147,090. It is unclear where they obtained the funds for a down payment, if any, or whether his spouse was contributing appreciably to the household income. Only ten days later, he filled out his SF 86 disclosing the debts listed in the SOR. A personal financial statement dated June 17, 2008, suggested significant difficulty making ends meet.

Applicant was candid with the government about his debts, even admitting in response to interrogatories in March 2008 that he had to incur additional debt over the years, and that his old debts were not a priority for him. He is not regarded as vulnerable to blackmail or coercion because of those debts known to the government. But the government must be assured that his financial situation is sufficiently stable to pose little security risk. In May 2008, he contacted two of the creditors listed in the SOR. He lacks the funds needed to commence repayment of the car debt. While his overall candor about his finances leads me to accept his claim that he settled the debt in SOR ¶ 1.e for less than the full amount, it is not enough to satisfy AG ¶ 20(d) (“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts”) or AG ¶ 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”). Applicant was put on notice in the FORM that the government was concerned about his reported negative cash flow situation and he presented nothing in rebuttal.

Applicant has made no efforts to contact the other three creditors (SOR ¶¶ 1.b, 1.c, and 1.d) to whom he owes an aggregate balance of \$6,748. While he now claims he would be happy to work with the creditors should DOHA find any current evidence of them, he had previously listed them as delinquent obligations on his SF 86. Under the circumstances, AG ¶ 20 (“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”) does not 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 his 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.

Applicant made no effort to address his delinquent debt until May 2008, after the SOR was issued. He contacted only two of his five creditors in the SOR, based on the

other three having been dropped from his credit report. Although he apparently settled the debt in SOR ¶ 1.e, his financial situation remains tenuous. He owes a substantial amount of current credit card debt on which he is running a balance every month. In addition, at some point he will have to begin repaying about \$26,456 in student loan debt. Based on the financial information of record, it is not at all evident that he will be able to make his payments. Ongoing concerns persist about Applicant's handling of his financial affairs, despite his timely payments of his mortgage and the open credit card debt.

Formal Findings

Formal findings 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:	For Applicant

Conclusion

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

ELIZABETH M. MATCHINSKI
Administrative Judge