



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-01613
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard A. Stevens, Esq., Department Counsel

For Applicant: *Pro Se*

November 24, 2008

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant completed a Standard Form 86 (SF-86) security clearance application on April 23, 2007. On March 22, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) stating security concerns under Guideline F (Financial Considerations). 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 for SORs issued after September 1, 2006.

In a response dated May 31, 2008, Applicant admitted four of the eleven allegations raised. The case was forwarded to DOHA for referral to an Administrative Judge. I was assigned the case on July 10, 2008. The parties agreed to a hearing date of August 13, 2008, and a Notice of Hearing was issued on July 17, 2008, to that effect.

The hearing took place as scheduled. Department Counsel submitted five exhibits (Ex.), admitted into the record as Exs. 1-5 without objection. Applicant submitted 24 exhibits, accepted as Exs. A-X without objection. Applicant gave testimony. No witnesses were called. The transcript (Tr.) was received on August 19, 2008. Applicant was given through September 2, 2008, to submit any additional materials. On August 21, 2008, two additional documents were received from Applicant by facsimile transmission. They were admitted into the record without objection as Exs. Y and Z. The record was closed on September 2, 2008. Based upon a review of the case file, exhibits, and testimony, security clearance is denied.

Findings of Fact

Applicant is a 41-year-old security guard who has worked for the same defense contractor since February 2007. He is divorced and has no children. Applicant received a bachelor's degree in 2000.

Married in 1996, Applicant's marriage began to fail. As he went through the process of a divorce, he returned to college to finish his undergraduate degree. Wanting to expedite his academic program, he became a full-time student and part-time wage-earner. As a consequence, his earnings were insufficient to cover the minimum payments to his creditors.¹ Meanwhile, the divorce dragged on. During the proceedings, he "gave up everything, including the house and the car just to get out of the relationship."² As a consequence of these circumstances, he became overextended on credit. This continued even after 2000, when the couple's divorce was granted and Applicant was awarded a bachelor's degree.³

Applicant moved to another region and began a new relationship. The relationship did not work out and his debts continued to go unpaid. He filed for Chapter 7 bankruptcy in September 2003 and his debts discharged in December 2003.

In May 2006, Applicant totaled a sports car. At the time, his car insurance was not paid to date and he lacked coverage. The wrecked car was returned to the lender. The account on this automobile was transferred to a credit collection agency in 2004. His credit report shows an account balance of approximately \$12,400 and a past due sum of about \$9,820.⁴ Applicant concedes that the value of the car after the accident

¹ Tr. 51.

² *Id.*

³ See Ex. 1 (SF-86 Form, dated Apr. 23, 2007) at 2, 6.

⁴ Ex. 5 (Credit report, dated Apr. 29, 2008); the debt is noted in the SOR at ¶ 1.f.

was “not even close” to the balance owed.⁵ Applicant acknowledges he owes a debt on the car and is required to pay, but states that he does not “have the money to do so.”⁶

Although he has no children of his own, he has five young nieces. Over the past few years, Applicant has “sent a good portion of money to them to help out.”⁷ He has recently considered “spending a little more time taking care of [his] own affairs.”⁸

Since the bankruptcy, other delinquent debts have been acquired. As noted in Applicant’s credit reports from 2007 and 2008:

STUDENT LOAN – \$366 delinquency noted at SOR ¶ 1.b. — Applicant was under the assumption that, pursuant to his bankruptcy, his student loans were to be paid off by application of his tax refunds. Applicant failed to show any portions of his bankruptcy paperwork that would corroborate this, but he did show that he has paid \$25 on the account.⁹

GROCERY STORE – \$71 returned check, noted at SOR ¶ 1.c. – Applicant states that he repaid this merchant in 2003, but offered no evidence of that payment. He did show a payment of \$25 from August 2008.¹⁰ This account is under dispute.

COLLECTION ACCOUNT – \$563, noted at SOR ¶ 1.d. – Applicant does not recognize this entry, but is willing to make inquiries with regard to the account entry.¹¹ He did, however, pay \$25 on the account in April 2008.¹²

COMMERCIAL BANK CREDIT CARD – \$157, noted at SOR ¶ 1.e. – Applicant wrote this creditor in March 2008 to inquire as to whether this account is his, but never heard back from it.¹³ There is no evidence of Applicant reinitiating contact.

⁵ Tr. 42.

⁶ Tr. 42-43, 60.

⁷ Tr. 47.

⁸ *Id.*

⁹ Ex. L (Money Order); Tr. 34.

¹⁰ Ex. I (Money Order).

¹¹ Tr. 39-40.

¹² Ex. L, *supra* note 9.

¹³ Tr. 41; Ex. S (Dispute letter, dated March 30, 2008).

TELECOMMUNICATIONS ACCOUNT – \$468, noted at SOR ¶ 1.g. – Applicant paid \$25 on this account in April 2008.¹⁴ No other action has been taken.

COLLECTION ACCOUNT – \$2,839, noted at SOR ¶ 1.h. – Applicant is willing to make inquiries as to what this account is, but he does not recognize it.¹⁵

LOAN ACCOUNT – \$875, noted at SOR ¶ 1.i. – Applicant made a \$25 payment on this account in August 2008 to show that he is “making an effort to pay [it] off.”¹⁶

COLLECTION ACCOUNT – \$287, noted at SOR ¶ 1.j. – As above, a \$25 payment was made in August 2008 as a token of good faith.¹⁷

BANK ACCOUNT – \$878, noted at SOR ¶ 1.k. – Applicant closed this account years ago. He does not know why there is a balance. He wrote to the bank, but has not heard back from anyone.¹⁸ There is no evidence he has tried to contact it in any other way.

Applicant presented little evidence of his present financial condition. He is a valued employee. Applicant is noted as a superior professional and has received raises in salary for his work.¹⁹

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. Under AG ¶ 2(c), this 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.

¹⁴ Ex. L, *supra* note 9.

¹⁵ Tr. 43.

¹⁶ Ex. K (Money Order), Tr. 45.

¹⁷ Ex. J (Money Order); Tr. 45.

¹⁸ Tr. 46.

¹⁹ Exs. B-F (Recommendations and award).

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.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .”²⁰ The burden of proof is something less than a preponderance of evidence.²¹ The ultimate burden of persuasion is on the applicant.²²

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). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”²³ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²⁴ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.²⁵ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

²⁰ See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

²¹ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

²² ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

²³ *Id.*

²⁴ *Id.*

²⁵ Executive Order 10865 § 7.

Analysis

Under GUIDELINE F, failure or an 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.²⁶ The Regulation sets out several potentially disqualifying conditions under this guideline.

Applicant's debts were discharged in bankruptcy in December 2003 and he has acquired approximately \$19,000 in new delinquent debt over the past five years. He has made little progress in addressing this debt. He acknowledged he did not have the money to address his obligations when discussing his wrecked automobile. Such facts are sufficient to give rise to Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(c) (*a history of not meeting financial obligations*) and FC DC AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) apply. With such conditions raised, the burden shifts to Appellant to overcome the case against him and mitigate security concerns.

Applicant first acquired significant delinquent debt around 2000, when he commenced divorce proceedings, returned to school full-time, and chose to live on credit. With the exception of a minor (\$366) student loan balance, he relieved himself of his debt through Chapter 7 bankruptcy. Applicant failed, however, to cite to any particularly significant events subsequent to his bankruptcy that might have helped create his current debt and invoke Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (*the conditions that resulted in the behavior 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*).

The vast majority of the individual debts at issue were acquired within the past five years, following Applicant's December 2003 bankruptcy discharge. This new wave of debt remains substantially unexplored and unpaid. Although Applicant states that he takes responsibility for these debts, he provided no explanation or strategy as to how he can or will honor them. Nor has he demonstrated any budget or plan to cease accruing delinquent debt in the future. Consequently, FC MC 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.

Applicant paid three accounts a nominal \$25 each in April 2008, prior to his receipt of the SOR. Another three accounts received a similar amount in August 2008, after Applicant received the SOR and shortly before the hearing. Moreover

²⁶ Revised Adjudicative Guideline (AG) ¶ 18.

correspondence with his creditors shows some initiative, but fails to demonstrate genuine persistence or commitment. Other than those sporadic payments and a wave of dispute letters, little effort to address these obligations in an organized fashion has been demonstrated. While one can appreciate Applicant's limited financial resources, that does not excuse his failure to follow through on his correspondence, make nominal payments with regularity, or address his debts in an alternative manner, such as either seeking consolidations or settlements, or soliciting the help of a financial counselor. Under these facts, however, FC MC AG ¶ 20(d), (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) does not apply.

Finally, Applicant failed to provide any evidence that he has received any form of much needed financial counseling. FC MC 3, 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*) 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 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, as well as the "whole person" factors. Applicant is an exceptionally affable and engaging man. He is mature and has considerable life experience. His testimony was direct and he was quick to take responsibility for his debts.

The purpose of these hearings is to allow an Applicant the opportunity to come and present evidence of things that he or she has done to address his or her delinquent accounts and thereby show that he or she is financially responsible. While Applicant was able to show that he is highly engaging, devoted to his nieces, and a valued employee, he was unable to show much effort in addressing his delinquent debts, regaining his financial stability, or successfully living within a budget. Without significant evidence in those areas, it is impossible to verify Applicant's level of financial responsibility or commitment. With security concerns left unmitigated, I conclude it is not clearly consistent with national security to grant Applicant a security clearance. Clearance is denied.

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

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. Clearance is granted.

ARTHUR E. MARSHALL, JR.
Administrative Judge