



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-02916
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, Jr., Esq., Department Counsel

For Applicant: *Pro se*

December 4, 2008

Decision

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

Applicant completed Electronic Questionnaires for Investigation Processing (e-QIP), Standard Form (86 (SF-86), with signed releases, dated August 2007. On May 12, 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 received on June 9, 2008, Applicant admitted four of the nine allegations raised concerning nine allegedly delinquent debts. Upon request for a hearing, the matter was returned to DOHA. I was assigned the case on August 18,

2008. Department Counsel and Applicant agreed to a September 16, 2008, hearing date, and a Notice of Hearing to that effect was issued on August 27, 2008.

The hearing took place as scheduled. Department Counsel submitted four exhibits (Ex.), accepted into the record as Exs. 1-4 without objection. Applicant testified on his own behalf. No witnesses were called and no exhibits were offered into evidence. Applicant was given until September 26, 2008, to submit any additional materials. On October 1, 2008, Department Counsel forwarded one document, previously submitted by Applicant. Without objection, it was accepted into evidence as exhibit (Ex.) A. The transcript (Tr.) was received on October 2, 2008, and the record was closed. Based upon a review of the case file, exhibits, and testimony, security clearance is denied.

Findings of Fact

Applicant is a 28-year-old logistics specialist working for a government contractor. He has a high school diploma and an associate's degree in electronics and computer science. He has a daughter and is co-parenting his girlfriend's son.

In approximately 1999, Applicant's mother bought a computer for her younger son. She purchased it by phone and placed the order in Applicant's name. Applicant is now considered liable for approximately \$2,700. He has not begun payment on the account and he provided no evidence of disputing the credit report entry noting the debt as his.¹ In the same year, Applicant bought a car with his mother. It was to have been kept in her name. He is unclear as to whether he signed as a co-signer on the car. The mother did not keep up with the payments, and it was repossessed. It resulted in a liability of about \$15,000 after sale.² Applicant has not paid the account or successfully disputed its inclusion on his credit report as his debt.

When Applicant went to college from 2001 to 2003, he attended classes full-time. For income, he worked about 20 hours a week for \$10 to \$11 per hour. Paying for his education and his apartment was difficult given his limited income. Paying bills was a struggle. He took out student loans in his name to help defray costs. At least one loan was apparently processed after he graduated in 2003. It currently shows a past due balance of \$371 on his credit report. Applicant, however, does not recognize the loan and has neither investigated it nor paid it.³ During college he also had a bank-issued credit card with a credit limit of approximately \$2,100.⁴

¹ SOR ¶ 1e; Tr. 35.

² SOR ¶ 1h.

³ SOR ¶ 1g; Tr. 25-26.

⁴The SOR notes at ¶ 1d a bank issued credit card. While the issuing bank is the same as on the card Applicant admits he had, the credit card brand differs. Applicant denies knowledge of the card noted in the SOR and feels it may be the result of identity theft, but he has not formally disputed its inclusion on his credit report.

After college, Applicant struggled to find permanent, full time employment. For about eight months, he lived in an apartment in which neither the heat nor air conditioning worked. The refrigerator broke and was not replaced or repaired for several weeks. His apartment was twice robbed and his car was thrice vandalized in the parking lot. Feeling he should not be liable for rent on the apartment because of these problems, he vacated the apartment before the end of his lease.⁵ A balance owed of \$1,172 was subsequently reflected on his credit report.⁶ He moved back home in 2004 and eventually went to truck driving school, which prepared him for a career in truck driving from 2005 until the end of 2006.

In 2006, Applicant was in a motorcycle accident. A medical bill for about \$400 was acquired which became delinquent. Applicant has paid that bill.⁷ Recovery lost him about two weeks of work. In the end of 2006, Applicant lost his job when his truck jackknifed. Unemployed for the next six months, he found a temporary job before assuming his current position in May 2007.

In his current position, Applicant earns about \$3,400 per month. After expenses, he has a sum just under \$400 remaining.⁸ He is thus living within his means with regard to his current expenses. He is earnest in wanting to repay those debts he feels are his. He has not, however, received financial counseling.

In producing evidence that his medical account was paid or substantially paid, Applicant provided the sole tangible document showing he has addressed any of the debts at issue in the SOR which he denied. Applicant testified he has tried to contact some of his creditors, but stated he has only heard back from his medical provider. No correspondence to or from his creditors, no logs of telephonic contact with creditors, no letters to any of the three major credit reporting bureaus, and no proposed repayment plans were introduced.⁹

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

⁵ Tr. 21. Applicant considers his abandonment of the property to have been a constructive eviction.

⁶ SOR ¶ 1c.

⁷ SOR ¶ 1i; see Ex. A; Tr.34.

⁸ Tr. 38.

⁹ See, e.g., Tr. 37-38.

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.

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. . . ." ¹⁰ The burden of proof is something less than a preponderance of evidence. ¹¹ The ultimate burden of persuasion is on the applicant. ¹²

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."¹³ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information. ¹⁴ The decision to deny an individual a security clearance is not necessarily

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

¹¹ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

¹² ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

¹³ *Id.*

¹⁴ *Id.*

a determination as to the loyalty of an applicant.¹⁵ 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.

Based upon consideration of the evidence, I find Guideline F (Financial Considerations) to be the most pertinent to the case. Conditions pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

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.¹⁶ The Regulation sets out several potentially disqualifying conditions under this guideline.

Between 1999 and 2003, Applicant acquired eight debts which ultimately became delinquent. They represent over \$25,000 in debt. All of those debts remain unsatisfied or unaddressed; no documentation was presented to show that any of the debts noted in the SOR, except the medical account, have been the subject of legitimate, formal dispute or inquiry as to a repayment plan. Consequently, 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 Applicant to overcome the case against him and mitigate security concerns.

Applicant attributed the computer and car obligations to his mother and denied that one credit card balance is his, but he failed to provide any evidence that he has tried to rectify the situation. While he has experienced periods of unemployment, he similarly failed to provide explanation as to what, if any, repayment or dispute efforts those periods interrupted or provide documentation showing efforts toward addressing his debts since starting his current job in 2007. Therefore, Financial Considerations Mitigating Condition (FC MC) 2, 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") cannot apply.

While Applicant has shown that he has substantially paid the ninth account noted in the SOR, the medical account, he failed to provide evidence of any other efforts toward the balance of the debts at issue. Consequently, FC MC 4, AG ¶ 20(d), ("the

¹⁵ Executive Order 10865 § 7.

¹⁶ Revised Adjudicative Guideline (AG) ¶ 18.

individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts”) cannot apply. As well, he has not received financial counseling or demonstrated that his past financial liabilities are poised for imminent satisfaction. Therefore, 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. Moreover, none of the other mitigating conditions 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 public trust position 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 a forthright and earnest young man who is obviously devoted to his family. He is also genuinely committed to addressing his debts. Lacking financial counseling or other budgeting guidance, however, he has reaped minimal success through his current methods for addressing his debt. While satisfaction of his medical account is a good start, Applicant failed to demonstrate how the approach he only orally described might prove more fruitful in the future. Therefore, with security concerns 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	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. Clearance is denied.

ARTHUR E. MARSHALL, JR.
Administrative Judge