



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



In the matter of)	
)	
)	ISCR Case No. 08-09562
)	
Applicant for Security Clearance)	

Appearances

For Government: Candace L. Le'i, Esquire, Department Counsel

For Applicant: *Pro se*

September 10, 2009

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant has not mitigated the security concerns raised under the guideline for financial considerations. Accordingly, his request for a security clearance is denied.

On December 17, 2007, Applicant submitted a security clearance application (Standard Form [SF] 86) to request a security clearance required as part of his employment with a defense contractor. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative

finding¹ that it is clearly consistent with the national interest to grant Applicant's request for a security clearance.

On March 12, 2009, DOHA issued to Applicant a Statement of Reasons (SOR) that specified the basis for its decision: security concerns addressed in the Directive under Guideline F (Financial Considerations) of the Revised Adjudicative Guidelines (AG).² In his Answer to the SOR, signed and notarized on April 7, 2009, Applicant admitted all the allegations under Guideline F except 1.h., 1.i., 1.j., and 1.m.³ He also requested a hearing before an administrative judge.

Department Counsel was prepared to proceed on April 29, 2009 and the case was assigned to me on the following day. DOHA issued a Notice of Hearing on May 5, 2009 and I convened the hearing as scheduled on May 21, 2009. During the hearing, the government offered three exhibits, marked as Government Exhibits (GE) 1 through 3, which were admitted without objection. Applicant testified, and offered nine exhibits, which were marked as Applicant's Exhibits (AE) A through I and admitted without objection. He did not present witnesses. I held the record open to allow Applicant to submit additional documentation. Applicant timely submitted four documents, which Department Counsel forwarded without objection. I admitted the documents as AE J through M. DOHA received the transcript on June 22, 2009.

Findings of Fact

Applicant's admissions in response to the SOR are admitted as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the evidence presented by both parties, I make the following additional findings of fact.

Applicant, 38 years old, completed some college courses in 1992 but did not earn a degree. He is currently employed as a network engineer for a defense contractor. He married in 1993 and divorced in 2005. His three daughters, ages 9, 11 and 15 years, and his son, age 13, live with their mother in another state (GE 1; Tr. 27-28, 100).

¹ Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

² Adjudication of this case is controlled by the Revised Adjudicative Guidelines, approved by the President on December 29, 2005, which were implemented by the Department of Defense on September 1, 2006. The Revised Adjudicative Guidelines supersede the guidelines listed in Enclosure 2 to the Directive, and they apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

³ Applicant's Answer included three documents that will be identified as follows: Answer Document (AD) 1: May 2008 letter from a creditor regarding deficiency balance on repossessed automobile (allegation 1.j.); AD 2: 1099-A form regarding mortgage (allegation 1.i.); AD 3: August 2008 worksheet regarding Applicant's child support (allegation 1.m.).

Applicant and his ex-wife separated in approximately August 2004. He lived apart from them but paid the house payments and costs, and his family's living expenses. Following their divorce in 2005, Applicant and his ex-wife were involved in lengthy legal proceedings until approximately August 2008. He paid alimony of \$800 per month from 2005 to 2007, as well as child support and his wife's attorney's fees. Applicant's child support obligation has varied. In 2005, his obligation was \$1,715 per month; in July 2007, it was \$2,420 per month. He sought relief from the court as to the amount. In the Final Order of August 2008, the court ordered child support of \$619 biweekly,⁴ or approximately \$1,238 per month. Applicant testified that the divorce "financially ruined me." He used credit cards and charge accounts to pay his expenses, legal fees and attorneys' costs. The delinquencies on these accounts, alleged in the SOR, amount to more than \$70,000. Applicant testified that he had sound credit before his divorce, and his credit bureau reports show that all the debts alleged in the SOR started becoming delinquent in 2007, during the legal battle (GE 1, 2, 3; AE B, D, F, G; Tr. 31, 74, 84-88).

Applicant was awarded the house as part of the divorce settlement, after paying his ex-wife her share of the home's value. His credit bureau report of December 2007 shows that he had a first mortgage of \$307,092 and a second mortgage of \$182,300. Applicant decided to keep the house because the housing market was strong, and he hoped its value would increase. He could sell it at a significant profit, and use the proceeds to pay his debts. However, the real estate market deteriorated in 2006, and he was unable to sell. The mortgage company foreclosed, and the property was sold in December 2007. Applicant was issued a Form 1099-A, "Acquisition of Abandonment of Secured Property," showing Applicant had an outstanding balance of \$307,092, and the property had a fair market value of \$571,226. Applicant submitted two trustee's deeds showing the home sold on December 19, 2007 for \$319,000, and was sold again on December 28, 2007 for \$185,179. Applicant testified that these sales resulted in a total of about \$500,000, which was more than the \$487,000 he owed. Accordingly, he has no remaining deficiency on the mortgage loans. His December 2008 credit bureau report shows the foreclosure on the first mortgage, and charge-off of the second mortgage balance (AD 2; GE 2, 3; AE H; Tr. 34-38, 84-88).

Applicant's annual salary is \$92,800. After deductions, including \$1,238 per month child support, his net monthly take-home pay is approximately \$2,920. He has been living with his parents since October 2007 to save money. He pays no rent, but does pay \$300 per month to store his goods. In his personal financial statement (PFS) of December 2008, he listed monthly expenses, (excluding the child support that is included in his deductions) of \$2,280. He testified that he included expenses that occur annually but not necessarily every month. He also

⁴ Applicant received a credit of \$619 per month to cover eight trips to visit his children in the state in which they now live (AE L).

listed a \$950 travel expense to visit his children, which he testified is court-ordered at once per month. He currently has a corporate credit card and is a co-signer on a card with his parents. These accounts are current. Under his debts, he listed attorney's fees of \$700 per month, and his corporate credit card payment of \$1,000 per month. At the hearing, he estimated a monthly net remainder, after expenses, of approximately \$450 to \$500. On his PFS, he did not list payments on any of the debts listed in the SOR. (GE 2; AE J; Tr. 67, 83, 127)

Applicant has sought assistance from financial attorneys over the past two years. He was advised not to file a bankruptcy petition, but to seek relief in the form of lower child support payments. He is currently working with an attorney who advised him to attend a credit counseling course, which Applicant completed shortly before the hearing. Applicant admitted that he does not have a plan in place to deal with his debts (Tr. 90-101).

The status of Applicant's remaining debts follows.

- **Charge accounts - \$18,693** (allegations 1.a., 1.e., and 1.g.)
Credit cards - \$54,975 (allegations 1.b., 1.c., 1.d., and 1.f.);
Line of credit - \$2,277 (allegation 1.n.). Applicant used these accounts to pay his expenses during his separation, divorce and child custody proceedings. They became delinquent in 2007. Applicant has not contacted the creditors to establish payment plans and the accounts remain unresolved (GE 2, 3; Tr. 100).
- **Auto loan - \$33,585** (allegation 1.j.). After Applicant voluntarily surrendered the car, the creditor sold it. He provided a May 2008 letter from the creditor showing that he owes a deficiency balance of \$14,700. Applicant admits that he owes this delinquent debt, and denies the amount listed in the SOR. He has not been in touch with the creditor since he received the 2008 letter (AD 1; Tr. 38-40, 111-113).
- **Citation - \$200** (allegation 1.k.). Applicant was cited for failure to display current license tags, which he disputed. He provided evidence that he paid the fine on the day of the hearing (AE K; Tr. 134-137).
- **Attorney fees - \$7,000** (allegation 1.l.). Applicant owes his wife's divorce attorney the alleged amount, as well as an additional \$9,000, for a total of \$16,000. He has been paying \$500 per month, and provided evidence of payments made in 2008 and 2009 (AE F, G, I, M; Tr. 137-140).
- **Child support - \$2,485** (allegation 1.m.). When Applicant and his wife separated, he paid child support directly to his wife. Later,

as part of the divorce order, Applicant was required to pay the support through the state child support enforcement agency, and his pay was garnished. The date that the agency expected payment to be made did not fall on the dates that the child support was disbursed from Applicant's pay. Because of this discrepancy in dates, it appeared in most months that Applicant had not paid his child support and was in arrears. In fact, the correct child support payments were being automatically deducted from his pay every two weeks. I find that Applicant was not negligent in meeting his child support obligation (AE B, C, D, E, J; Tr. 42-59).

Policies

Each security clearance decision must be a fair, impartial, and common-sense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the Revised Adjudicative Guidelines (AG).⁵ Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the Guidelines, commonly referred to as the “whole person” concept.

The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guideline F (Financial Considerations) at AG ¶ 18.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁶ for an applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the government's case.

Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.⁷ A person who has access to classified information

⁵ Directive 6.3

⁶ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁷ See *Egan*, 484 U.S. at 528, 531.

enters into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the judgment, reliability and trustworthiness to protect the national interests as his or his own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an Applicant’s suitability for access in favor of the government.⁸

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern about financial considerations:

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 over-extended 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.

The evidence supports application of disqualifying conditions AG ¶19 (a) (*inability or unwillingness to satisfy debts*) and AG ¶19 (c) (*a history of not meeting financial obligations*). Applicant was unable to meet his financial obligations in 2007, and most of these debts remain unpaid, indicating a history of not meeting financial obligations.

Under AG ¶ 20, the following potentially mitigating factors are relevant:

(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;

(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;

⁸ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

(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

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's indebtedness is not infrequent—the SOR cites 14 debts—nor did they occur in the distant past, as most of them remain unpaid. Applicant's failure to set in place any kind of payment plan for the majority of his SOR debts casts doubt on his good judgment. AG ¶ 20(a) does not apply.

The circumstances that caused Applicant to become indebted were beyond his control. The record shows that Applicant's delinquent debts started in 2007, after his divorce, and stem largely from that unforeseen event. However, this mitigating condition also requires that an Applicant act responsibly when confronted with such situations. Here, Applicant has a substantial amount of debt that he has made little effort to resolve. Although he sought financial guidance, he did not use the attorneys' expertise to help him set up a plan to pay the \$70,000 in credit card debt or the almost \$15,000 deficient balance on his auto loan. Despite the significant debt that was accruing because of his separation and divorce, he waited to sell his house. Currently, he has a payment plan in place for only two debts (child support and attorney's fee), and he paid one small debt on the day of the hearing. Applicant's failure to establish a more comprehensive plan to deal with his substantial indebtedness is not responsible, and he receives only partial mitigation under AG ¶ 20(b).

Neither can AG ¶ 20(c) or AG ¶ 20(d) be applied. Applicant's financial situation is not under control. He owes approximately \$90,000. Most of the SOR debts are unpaid, with no substantiated payment plans in place. Without evidence of a comprehensive plan to resolve debts, a good-faith effort cannot be substantiated.

Although Applicant receives some mitigation based on AG ¶ 20(b), I conclude that it is insufficient to outweigh the disqualifying conditions. I find against Applicant under Guideline F.

Whole Person Concept

Under the whole person concept, an administrative judge must evaluate the applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. I have evaluated the facts presented and have applied the appropriate adjudicative factors under the cited guideline. I have also reviewed the record before me in the context of the whole-person factors listed in 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole person concept. Under the appropriate guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

When Applicant's debts started to become delinquent, he was a mature and experienced father and husband 36 years of age. Applicant maintained solid credit before his divorce. However, the significant legal fees from his protracted legal battles, and the court-ordered alimony and child support, were circumstances that Applicant did not foresee. In addition, his anticipated profit from his home sale disappeared following the housing market collapse.

Because of these circumstances, Applicant found it difficult to meet his obligations, and numerous debts became delinquent in 2007. However, Applicant did not demonstrate a responsible approach to dealing with his mounting debt. Despite a substantial income, he made no attempt to resolve his \$70,000 in credit card debt or his auto loan deficiency. He did not file bankruptcy, which can offer a legitimate path to resolving insurmountable debt. He postponed selling his house despite his high levels of child support, alimony and legal fees.

Among those who apply for security clearances, Applicant has accumulated an exceptionally high amount of delinquent debt. He does have a payment plan in place for two debts, and he did paid one small debt—on the day of the hearing. However, the two large debts that are paid or being paid—the mortgage loans and the child support—are paid through the action of the mortgage lender, or the state, rather than Applicant. He did not set up payment plans or provide evidence to show good-faith efforts to resolve his remaining debts. As a result, he still carries about \$90,000 in delinquencies, with no documented plan in place to resolve it. An applicant is not required to be debt-free, or establish that he paid every debt. But he must demonstrate that he established a plan to resolve his debts and has taken significant action to implement that plan. Considering that Applicant has not established such a plan, it would be premature at this point in time to grant him access to classified information. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from the cited adjudicative guideline.

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 as follows:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a. – 1.g.	Against Applicant
Subparagraph 1.h. – 1.i.	For Applicant
Subparagraph 1.j.	Against Applicant
Subparagraphs 1.k. – 1.m.	For Applicant
Subparagraph 1.n.	Against Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest to allow Applicant access to classified information. Applicant's request for a security clearance is denied.

RITA C. O'BRIEN
Administrative Judge