



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



In the matter of:)	
)	
)	ISCR Case No. 08-04044
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: Pro Se

November 28, 2008

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant's eligibility for access to classified information is denied.

Applicant submitted his Security Clearance Application (SF 86), on August 4, 2007.¹ On July 11, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. 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 for SORs issued after September 1, 2006.

¹Applicant also filed security clearance applications on August 5, 1999 (GE 3) and January 10, 2007 (GE 2).

Applicant acknowledged receipt of the SOR on July 17, 2008. He answered the SOR in writing through counsel on August 5, 2008, and requested a hearing before an administrative judge.² DOHA received the request on August 7, 2008. Department Counsel was prepared to proceed on August 21, 2008, and I received the case assignment on September 4, 2008. DOHA issued a notice of hearing on September 29, 2008, and I convened the hearing as scheduled on October 15, 2008. The government offered 11 exhibits (GE) 1 through 11, which were received and admitted into evidence without objection. Applicant and one witness testified on his behalf. He submitted 19 exhibits (AE) A through S, which were received and admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on October 23, 2008. I held the record open until November 5, 2008, for Applicant to submit additional matters. On November 5, 2008, he submitted AE T through DD, without objection. Applicant also requested an additional seven days to submit one additional document. I granted Applicant's request by Order dated November 6, 2008. On November 11, 2008, Applicant submitted this document, AE EE, without objection. Applicant's additional documentation has been marked and admitted into evidence. The record closed on November 11, 2008.

Procedural and Evidentiary Rulings

Notice

Applicant received the hearing notice on October 2, 2008, less than 15 days prior to the hearing. At the hearing, I advised Applicant of his right under ¶ E3.1.8 of the Directive to receive the hearing notice 15 days prior to the hearing date. Applicant affirmatively waived his right to 15 days notice. (Tr. 9.)

Findings of Fact

In his Answer to the SOR, dated June 25, 2007, Applicant admitted the factual allegations in ¶¶ 1.a, 1.c -1.e, 1.g -1.q, 1.s, and 1.t of the SOR, with explanations. He denied the factual allegations in ¶¶ 1.b, 1.f, and 1.r of the SOR. He also provided additional information to support his request for eligibility for a security clearance.³

Applicant, who is 44 years old, works as a system administrator for a Department of Defense contractor. Applicant began working for this company in 1997. His company recently promoted him to a position which requires a security clearance. His immediate supervisor describes him as a very good team player who works well with others. Following assignments to other areas of the company, his supervisor receives very positive feedback on his relationships with co-workers and his working skills. Applicant's performance is described as consistent and the work done correctly. The Director of his

²Applicant and his counsel terminated their working relationship on September 29, 2008, several weeks before the hearing. AE S (Letter dated September 29, 2008).

³Applicant's response to the SOR.

work area also describes him as a dedicated worker who does his work very well and is a good team player. He graduated from high school, attended college and received a certificate in computer operations. Applicant also worked part-time for his church until August 2008.⁴

Applicant married in 1985. He and wife separated in January 2008, but have not moved forward with a divorce. They have four children, a 22-year-old daughter and three sons, ages 12 to 19. Applicant's three sons live with him in the family home and his daughter lives independently. His 19-year-old son works part-time at a fast food restaurant. Although she works, his wife does not provide any child support.⁵

Applicant's bi-weekly gross pay is \$2,500 and his bi-weekly net pay is \$1,611. His current monthly income totals \$3,222. His monthly expenses average \$3,305, leaving a monthly deficit of approximately \$80. Applicant's household income has declined by at least \$2,000 a month with the loss of his part-time job and his wife's income.⁶

A review of Applicant's credit reports dated January 12, 2007, August 4, 2007, June 25, 2008, and the SOR, shows a longstanding history of debt problems and the following outstanding debts, totaling \$42,055, and their current status, which are the reasons for security concerns under the financial considerations guideline:⁷

SOR ¶	CREDITOR/DEBT TYPE	AMOUNT	STATUS	EVIDENCE
1.a	Judgment - bank credit card	\$ 2,491	Unpaid	GE 5, GE 6, GE 7; AE BB; Tr. 39-42, 46
1.b	Judgment	\$ 3,370	Paid	AE A; Tr. 128
1.c	Medical bill	\$ 1,126	Paid	AE V; Tr. 47-48
1.d.	Phone bill	\$ 179	Paid	AE B; AE X
1.e	Medical bill	\$ 65	Paid	AE C; AE Y

⁴AE M (2008 Performance Appraisal); AE N (Letter, dated October 14, 2008); AE O (letter, dated October 14, 2008); Tr. 35-36, 121-125.

⁵Tr. 34, 37.

⁶AE P (Letter, dated October 8, 2008); Tr. 38. At the hearing, Applicant provided a verbal listing of his monthly expenses. *Id.* Since the hearing, his mortgage payment has been reduced \$600. I also take Administrative notice of the fact that the price of gasoline for cars has declined at least 50% in the last two months. Thus, Applicant gasoline costs are reduced by \$200. Overall his monthly expenses have been reduced \$800.

⁷GE 5 (Credit report, dated June 25, 2008); GE 6 (Credit report, dated August 4, 2007); GE 7 (Credit report, dated January 12, 2007).

1.f	Bank credit card	\$ 2,389	Same as ¶ 1.a	GE 5, GE 6, GE 7; AE BB; Tr. 39-46.
1.g	Bank card	\$ 269	Unpaid	AE D; Tr. 51 ⁸
1.h	Bank credit card	\$ 954	Unpaid	Tr. 52
1.i	Store credit card	\$ 617	Unpaid, negotiating payment plan	Tr. 53
1.j	Cell phone bill	\$ 3,247	Unpaid, negotiating payment plan	Tr. 53-54
1.k	Car repossession	\$16,939	Unpaid, (Joint account, wife's acknowledges her debt)	AE E; Tr. 54-55, 86-87 ⁹
1.l	Mortgage debt	\$40,330 as of 11/2007	Forbearance plan	GE 4 at 12; AE AA
1.m	Automobile loan	\$ 4,174	Unpaid	AE T; Tr. 55
1.n	Automobile loan	\$ 282	Paid	AE I; Tr. 128
1.o	Medical bill	\$ 737	Paid	AE W
1.p	Store account	\$ 2,843	Unpaid	Tr. 59
1.q	Medical bill (creditor not identified)	\$ 133	Challenged as not his	AE J; Tr. 59-60
1. r	Cable bill	\$ 152	Paid	GE 4 at 6; AE K ¹⁰
1. s	Medical bill (creditor not identified)	\$ 250	Challenged as unable to locate	AE J; Tr. 59-60
1.t	Medical bill (creditor not identified)	\$ 132	Challenged as nonexistent	AE J: Tr. 59-60

⁸His wife acknowledged this is her debt. His credit report lists the debt as his individual account.

⁹At the hearing, he acknowledged that his name was also on the car loan note and that the creditor perceived him as the debtor. Tr. 86-87.

¹⁰While he did not pay his cable bill in September 2008, the cable bills in the record do not show he has an unpaid balance of \$152.

In addition to the above debts, Applicant acknowledged at the hearing that the two time shares he and his wife owned are going to foreclosure. He paid the monthly mortgage on the time shares until his wife left. Without her income, he cannot pay these two mortgages. He paid his monthly mortgage on his home when his payment was \$600 to \$800 a month. His mortgagor raised his monthly mortgage payment from \$600 a month to almost \$1,500 a month after the mortgagor paid a \$9,000 tax lien filed against Applicant for unpaid water bills. In February 2008, Applicant entered into a forbearance plan, but because of the high monthly payment, he missed payments beginning in May 2008. Applicant recently renegotiated his forbearance plan. He and his estranged wife signed the agreement on October 25, 2008. Under the terms of the agreement, he must pay \$852 a month on time for the next four months. If he complies with these terms, the final balloon payment will be added back into a modified loan, if approved. He submitted his first payment on October 27, 2008.¹¹

Applicant denied owing the credit card debt of \$2,389 listed in SOR ¶ 1.f, indicating that it was the same as the judgment listed in SOR ¶ 1.a. The government disagreed and argued that the judgment and the credit card debt are different because of the \$102 difference. Applicant stated that he had three credit cards with this particular bank and acknowledged he owed the balance on one debt and the judgment. He denied that he owed the balance on a fourth credit card, stating that the judgment and largest credit card with this bank were the same. The three credit reports indicated that Applicant had three credit cards with this bank. Credit card number 1 (allegation 1.f) showed a balance of \$2,062 in January 12, 2007, \$2,172 in August 2007 and a balance of \$2,389 in June 2008. Credit card number 2 had a balance of \$832 in January 2007, a balance of \$954 in August 2007 and June 2008. Credit card number 3 has a zero balance on all credit reports. The August 2000 credit report shows credit card number 1 as an account in good standing and no other credit cards with this bank. Subsequent to the hearing, Applicant obtained the court records. Based on these records, the government has agreed the two debts are the same. In light of this evidence, I find that the judgment in 1.a and the credit card debt in 1.f are the same.¹²

Applicant believes his financial problems started in 2006 when he experienced problems with depression and bipolar disease. He was taken to the hospital emergency room after which, he started outpatient treatment for his mental health. He is not currently on medication. During the time he had these medical problems, he did not pay attention to his finances.¹³

¹¹AE AA (New forbearance plan).

¹²GE 5, *supra* note 7; GE 6, *supra* note 7; GE 7, *supra* note 7; GE 8 (Credit report, dated March 7, 2000); AE BB; Tr. 39-46. Because Applicant denied allegation 1.f in the SOR on the grounds it was the same as the judgment in allegation 1.a, the government had the burden of proving the debts were two different debts. A listing of the two debts separately on a credit report would not establish the debts are separate debts because a court case number will not be the same as a credit card account number. Applicant obtained the court records, which was the government's duty, and established the two debts are the same.

¹³GE 4, *supra* note 10, at 11; AE U (Letter, dated October 21, 2008); Tr. 47-48, 95-96.

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. 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.

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 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 relating to the guideline 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.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. Applicant accumulated significant delinquent debt over many years and has been unable to pay his obligations for a period of time. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where "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." Applicant's financial worries have been ongoing and continuous since at least 1997 and are the result of financial mismanagement. This potentially mitigating condition does not apply.

Under AG ¶ 20(b), it may be mitigating where "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." Applicant had medical problems in 2006. He and his wife separated in January 2008 and he lost his part-time job in August 2008. As a result of the 2008 events, he lost approximately \$2,000 in household income. His financial problems arose long before either of these events. However, the loss of this income does impact his ability to pay his current debts and his past debts. I find this potentially mitigating condition is not fully applicable in this case because he has not shown he acted responsibly under the circumstances. His financial problems are not improving and may be getting worse because of the foreclosures.

Evidence that "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" is potentially mitigating under AG ¶ 20(c). Applicant has not sought financial counseling

and his financial problems are not under control or being resolved. This mitigating condition is not applicable.

Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant has resolved nine debts. He also renegotiated a reasonable forbearance plan with his mortgagor which he believes he can manage based on his ability in the past to pay a lower mortgage. He, however, has not resolved the majority of his unpaid debts listed in the SOR. This mitigating condition is partially applicable.

AG ¶ 20(e) “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” applies to the medical bills listed in SOR allegations 1.q, 1.s and 1.t. Applicant learned that one bill was not his, one bill did not exist and one creditor could not be located. He had a legitimate reason to challenge each debt. This mitigating condition applies to these three SOR debts only.

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) 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.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is to be commended for his efforts to resolve several debts. His debt issues are not recent, but longstanding. He not only has problems with unpaid old debts, but he also has two properties going to foreclosure. His monthly expenses exceed his income by \$80, making it difficult for him to meet his monthly living expenses. His current finances do not allow him to repay his older debts. His health issues two years ago and his separation from his wife contributed to his financial problems, but do not excuse his

failure to act more responsibly by taking control of his finances years ago to reduce his expenses. His financial problems are the result of many years of poor money management. He has not demonstrated a track record for managing his monthly income and expenses or a change in his attitude towards spending money. He has lived beyond his financial means for many years.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial considerations.

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:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For 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
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	For Applicant
Subparagraph 1.o:	For Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	For Applicant
Subparagraph 1.r:	For Applicant
Subparagraph 1.s:	For Applicant
Subparagraph 1.t:	For Applicant

Conclusion

In light of all of the circumstances presented by 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.

MARY E. HENRY
Administrative Judge