



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



In the matter of:)
)
) ISCR Case No. 08-04378
)
)
Applicant for Security Clearance)

Appearances

For Government: John B. Glendon, Esq., Department Counsel
For Applicant: Paul Bennett, Esq.

May 27, 2009

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the government’s security concerns under Guideline F, Financial Considerations. Applicant’s eligibility for a security clearance is denied.

On November 28, 2008, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concerns under Guidelines F. 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.

Applicant answered the SOR in writing on January 12, 2009 and did not want a hearing. The Government requested a hearing before an administrative judge. The case was assigned to me on March 9, 2009. DOHA issued a Notice of Hearing on March 19, 2009, and after coordinating the date with both sides I convened the hearing as scheduled on April 28, 2009. The Government offered Exhibits (GE) 1 through 8.

Applicant did not object and they were admitted. Applicant testified and offered Exhibits (AE) A through H. Department Counsel did not object and they were admitted. I left the record open until May 11, 2009, to allow Applicant time to submit additional exhibits, which he did. Applicant provided by mail exhibits marked as AE I through M.¹ He provided by fax exhibits marked as N through T. It is noted there are some duplicates of the same exhibits, but to ensure all exhibits were considered I included them all. Department Counsel responded and had no objection to the additional exhibits and they were admitted. Department Counsel's response was marked as Hearing Exhibit I. DOHA received the transcript of the hearing (Tr.) on May 5, 2009.

Findings of Fact

Applicant's admitted the allegation in SOR 1.a and denied all of the remaining allegations. He also responded to the Letter of SOR allegations as follows:

To continue: I reported you to [employer] lawyers and internal security that I felt you were trying to blackmail me with my job over this credit report. I now have you on record with our lawyers and security to your action of digging into my credit report and trying to use it against me. As you can see I can not be blackmailed.

I have enclosed a bank statement and you can see I keep plenty of money in my checking account that could pay off the credit report claims if it was not for the fact I am contesting some of the claims like the Bank of American that tried to charge me for an account that was closed.

Applicant provided a copy of his bank statement that showed his checking account had an available balance of \$21,632 in December 2008.²

In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 59 years old. He attended college for two years and received an associate's degree in aeronautical engineering. He has worked for his present employer since June 2006, as a manufacturing process engineer. From March 2004 to June 2006, he was the President of a company. From October 2003 to March 2004 he worked as an engineer for another employer. Applicant's security clearance application (SCA) reflects that he has worked continuously from 1995 to the present except for a period from April 2001 to November 2001, when the company he worked for went out of business. Applicant has been married three times. He has been married to his current

¹ When marking the exhibits the letter "K" was inadvertently omitted. There is no exhibit "K."

² Answer to SOR.

wife since 2000. He has four grown children. He was in the Army from 1969 to 1971 and in the National Guard from 1971 to 1985. He was honorably discharged.³

Applicant testified that from 1999 to 2000 he worked for a company in State A that eventually went bankrupt. He then moved to State B and did consulting work and other jobs. Applicant testified that he had periods of unemployment while living in State B. He testified he was unable to find work while in State B. He stated that during a four-year-period he was unemployed or underemployed for two years and when he was working for some companies he would not receive compensation.⁴

Applicant stated that he lived in State B from 2001 to 2006 and while there he lived in hotels and later got an efficiency apartment and then stayed in a condominium.⁵ Applicant's SCA reflects that from February 2005 to June 2006 he lived in State B and from November 1999 to March 2005 he lived State A. The SCA question specifically states: "Provide a detailed entry for each place you have lived in the last 7 years. All periods must be accounted for in your list. Do not list a permanent address when you were actually living at a school address. etc." In addition, it stated: "Be sure to indicate the actual physical location of your residence.... Be sure to specify your location, as closely as possible."⁶ Regarding the discrepancy Applicant's stated the following: "Well, my residence is my house, and you know, I was not a resident of Florida at the time. I was a resident of Virginia. I was living down there, but it was only on a temporary basis. I didn't consider myself a resident in Florida."⁷ I did not find Applicant credible.

There are five delinquent debts, including one judgment alleged in the SOR, totaling \$11,857. Applicant admitted the unpaid judgment in SOR ¶ 1.a in his answer. He was interviewed by an investigator from the Office of Personnel Management (OPM) on February 14, 2008. At the time he stated he had no knowledge of the creditor, however he suspected the debt had something to do with a dispute he had with a dentist dating back to 1999 or 2000. He had dental work done and he testified that the estimated cost of the work was \$3,600. He testified: "I don't even think I received a copy of the bill for \$11,000 if I can remember."⁸ He later received a bill for about \$11,000. He admitted he refused to pay the bill. He stated he was not aware of any attempts made by the creditor to collect payments. In his statement he stated he paid the bill for several months and did not recall how many payments he made or the amounts, or the total he

³ Tr. 21 26, 41-46.

⁴ Tr.71-74.

⁵ Tr. 24.

⁶ I have not considered the discrepancies between Applicant's SCA and his testimony for disqualifying purposes, but have considered it when analyzing the whole person and his credibility.

⁷ Tr. 47-48, 71-77.

⁸ Tr. 50.

paid or if there was a remaining balance. He stated he never received notification from any court or collection agency. He made no attempts to contact the dentist and pay the additional funds. At the time of his interview he said he would satisfy the judgment if it was proved that he was responsible. Applicant's testimony contradicted statements he made to the OPM investigator.⁹

Applicant acknowledged that at the time he saw the dentist he did not have dental insurance. He later moved and said he had no money. There is no evidence that he provided a forwarding address to the dentist. On June 3, 2008, he sent the creditor a letter disputing that he owed the amount alleged. His letter stated it was the first time he had heard from the creditor about the alleged debt. He further inquired "Please explain the nature of the alleged debt, that is, what the money I allegedly owe is for."¹⁰ On April 15, 2009, Appellant received a letter from the creditor, noting the current balance due as \$20,402.47. The letter referred to a conversation between Applicant and the creditor and an offer to settle the debt for \$5,000. Applicant had not made any payments to the creditor by the date of his hearing. Applicant is purchasing a house and did not want to use his savings to make the payment to the creditor until he closes on the house to ensure he has enough money. He stated at his hearing he considered a partial payment, but the creditor wanted the full amount. Applicant has been aware of this debt for a considerable period of time.¹¹ The record remained open to afford him additional time to provide documentation regarding the debt. Applicant stated that regardless of whether he closes on his house he would pay the \$5,000.¹² Applicant provided proof that he made a payment of \$1,000 to the creditor on May 6, 2009, with a promise to satisfy the additional \$4,000 by June 15, 2009. The creditor acknowledged the payment and next payment date.¹³

The delinquent debt in SOR 1.b (\$88) Applicant stated is for a charge on a savings account that was closed. He stated:

I went to the bank Saturday, and they couldn't even find it at first. Actually they can't find it at all. And I've got--she gave me phone number, and we're still researching it. I've got to call this phone number and research it some more to find out why there's an \$88 fee there. And they wouldn't accept a check Saturday when I went there to give them a check for it, even though I'm sure I don't owe it.¹⁴

⁹ Tr.35-37, 48-54.

¹⁰ AE H.

¹¹ Tr. 55-60.

¹² Tr. 86.

¹³ Tr. 35-37, 48-60; AE N.

¹⁴ Tr. 37-38.

He stated that he talked to the creditor about the charge sometime in 2004 or 2005. The charge was incurred because his account went below a certain dollar amount. He stated he went to the bank to resolve the account, but they would not accept payment. He did not provide an account number. The account was in collection. Applicant was aware of the debt at least since the date of his interview on February 14, 2008. Applicant paid the account on May 1, 2009.¹⁵

The debt in SOR 1.c (\$89) is to the gas company. Appellant had a residence in State A that he vacated in 2000-2001, however his daughter remained in the house. The house was sold in 2006. He paid this debt on July 28, 2008.¹⁶

The debt in SOR 1.d (\$1,981) is for a loan that Applicant believed was from sometime around 1996 to 1998. During his interview with OPM he stated he had no knowledge of the debt. He contacted the creditor requesting information. Applicant did not include an account number on his inquiry and did not sign the letter.¹⁷ He admitted he did not pay the debt. It was reported on his credit report as of October 23, 2008.¹⁸ Applicant stated the debt has now dropped off his credit report. On April 29, 2009, Applicant's attorney sent a letter to the creditor with an account number expressing interest in resolving the debt.¹⁹

Applicant stated that the debt in SOR 1.e (\$298) was for his last telephone bill from his house in State A. He testified he moved in 2000-2001. He paid the debt in December 2008.²⁰

Applicant moved to State C in September 2007. He stated he is current on all of his bills. He has approximately \$13,000 in savings that he wants to use for the closing costs on a house he is purchasing. He is not sure when he will close on his house. He believes he will owe approximately \$4,000 on his 2008 tax return. He earns approximately \$120,000 a year. I have considered the character letters provided by Applicant.²¹

At times I found Applicant's testimony and explanations to be evasive, somewhat convoluted and not credible.

¹⁵ Tr. 37-38, 60-64; GE 4, AE M.

¹⁶ Tr. 64-65; AE D and E.

¹⁷ Tr. 38-39-AE H. The letter is dated June 3, 2008 and is unsigned.

¹⁸ GE 5.

¹⁹ Tr. 39, 65-70; AE L.

²⁰ Tr. 40; AE C.

²¹ Tr. 82-83; AE A and B.

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. I have considered all of them under AG ¶ 19 and especially considered the following:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations

Applicant has delinquent debts that have remained unpaid for years, despite having the income and assets to resolve the debts since at least 2006. I find both disqualifying conditions have been raised.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and especially considered the following:

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

(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.

Applicant's behavior is recent because he still has delinquent debts that remain unpaid, despite his ability to pay them. He has been aware of his debts and only recently resolved some of the small ones. His conduct casts doubt on his reliability, trustworthiness and good judgment. I find (a) does not apply. For mitigating condition (b) to be fully applicable Applicant must have acted responsibly under the circumstances. For a period of time Applicant did not have sufficient means to satisfy his debts due to his employment situation. However, Applicant has been working for his present employer since June 2006 and has provided overwhelming proof that he has the money to pay all of his delinquent debts, but he has not. He did not address the smaller debts in the SOR until his security clearance became an issue. Regarding the largest debt in SOR ¶ 1.a, a judgment, he admitted in his answer that he owed this debt and admitted he had the money to pay it, yet to date it is still not completely paid. Regarding the large debt in SOR ¶ 1.d he sent the creditor a letter, but failed to put the account number on the correspondence. After his hearing he sent another letter, this time with the account number and offering to settle the debt. I find under the circumstances Applicant did not act responsibly toward his debts and has lagged in addressing them. I also find he has not acted in good-faith to resolve his delinquent debts. Applicant has had the money to pay his delinquent debts, but appears to have made other choices rather than paying those he has owed money to for a long time. He had an opportunity to resolve his financial issues and has not done so. I find mitigating condition (b) only partially applies. There is no evidence Applicant has received counseling. Frankly, I am concerned as to why Applicant has dragged his feet in paying all of his debts. He waited for months to resolve his small debts. He waited until days before his hearing to contact the bank about the debt in SOR ¶ 1.d. He knew his largest debt was a concern; admitted owing it; has the means to pay the lower settlement amount, yet has not completely resolved it. Instead he has made a promise to pay it at a later date. I find mitigating conditions (c) and (d) do not apply. It appears by Applicant actions he acknowledges the debts in the SOR and does not dispute them. I find mitigating condition (e) 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) 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is a mature person who experienced a period of unemployment that impacted his finances. He did not provide an accurate accounting of where he was living for a period of five years on his SCA. He is an intelligent person and I do not find his explanation for this discrepancy to be credible. Although these matters are not considered for disqualifying purposes, I have considered them along with his testimony, demeanor and candor when analyzing the whole person. Applicant has been employed for almost three year with his present employer. He is earning a substantial salary. He has sufficient means to satisfy all of his debts. He paid the smaller ones months after his OPM interview. He did not make a payment on his largest debt until after his hearing and then only a partial payment and a promise to pay the remainder in the future. This debt is years old. I held the record open to allow Applicant additional time to address his delinquent debts. I will not speculate as to why he continues to delay paying the two largest debts. Clearly Applicant is making conscious decisions about his delinquent debts. Under the circumstances I find he has not acted responsibly toward his financial obligations and it is too early to conclude that he will satisfy his remaining delinquent debts. I find Applicant has not met his burden of persuasion. Overall, the record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from 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:	Against Applicant
Subparagraph 1.e:	For Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge