



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



In the matter of:)
)
) ISCR Case No. 08-04867
)
)
Applicant for Security Clearance)

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: *Pro Se*

August 31, 2009

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated Financial Considerations security concerns. Eligibility for access to classified information is denied.

On March 17, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 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 April 10, 2009, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on April 30, 2009. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file

objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on May 12, 2009. As of July 29, 2009, he had not responded. The case was assigned to me on August 3, 2009.

Findings of Fact

Applicant is a 58-year-old employee of a defense contractor. He has worked for his current employer since 2002, but he has worked at the same facility for different contractors since 1992. Applicant had a security clearance through a previous employer, but it was apparently not transferred when he moved to his current job in 2002. He has an associate's degree, awarded in 1989. He was married from 1970 until his divorce in February 2002. He married again in March 2002. He has three children, ages 36, 34 and 26. He also has two adult stepchildren.¹

The SOR alleges 11 delinquent debts, as listed on credit reports obtained on November 3, 2007 and May 15, 2008. Applicant denied all the allegations, with the exception of the \$10,047 debt alleged in SOR ¶ 1.h, which he admitted was partially his responsibility. He also provided additional information to support his request for eligibility for a security clearance.

Applicant attributed much of his financial issues to his separation from his ex-wife in 2000, and his divorce in 2002. He stated that she was awarded the house and land, and they split their liabilities. She did not maintain payments on a number of the debts that the court ordered her to pay. She filed bankruptcy, leaving Applicant as the creditors' only recourse for payment. His finances were also hampered by other events. His car was destroyed in an accident in about 2001. He bought a used car to replace it. The following year, the engine on that car "blew out," requiring major repair work. His father passed away four years ago after a lengthy illness that required Applicant to travel many of his weekends to see him. His mother passed away last year. Applicant's wife contracted a serious disease which required five operations. She was out of work from about 2005 through at least January 2008.²

Applicant stated that he believed the delinquent debt of \$729 alleged in SOR ¶ 1.a represents the same debt as the \$469 debt alleged in SOR ¶ 1.b, under a different collection agency. The credit reports list different creditors/collection agencies and account numbers for the two debts, but account numbers often change when the debt is transferred to a different collection company. Applicant stated the original account was with a public utility company. He stated he moved out of the house in 2000, and left a signed letter with the utility company stating that he would no longer be using their services. He stated that he contacted the utility company and they understood and agreed that he did not owe the bill, but that he would have to contact the collection

¹ Item 5. Information in this paragraph was obtained from Applicant's Questionnaire for National Security Positions (SF 86) dated October 24, 2007.

² Items 4-7. It is unclear from the limited information in the FORM if Applicant's wife was ever able to return to work.

companies and address it with them. He submitted no documentation that he has disputed this, or any other debt, with the creditor or the credit reporting agencies.³

Applicant denied owing the delinquent credit card debts of \$844 (SOR ¶ 1.c), \$1,041 (SOR ¶ 1.d), \$2,475 (SOR ¶ 1.e), and \$564 (SOR ¶ 1.i). He admitted he had accounts with the companies at one time, but stated they were his ex-wife's responsibility. He did not submit a copy of the divorce order, listing the division of liabilities. The \$514 debt alleged in SOR ¶ 1.f is a duplicate of the debt in SOR ¶ 1.i.⁴

Applicant denied owing the delinquent debt of \$1,316 to a collection company, as alleged in SOR ¶ 1.g. The November 3, 2007 credit report indicates that the original creditor was an oil company. Applicant was asked about the status of this debt in DOHA interrogatories. The interrogatories listed the collection company and the oil company. Applicant admitted having a credit card with the oil company, but stated what he owed them was significantly less than the \$1,287 balance listed in the interrogatories. He stated that he would contact the creditor. No additional evidence was submitted on this debt.⁵

SOR ¶ 1.h alleges a delinquent debt of \$10,047 owed to a collection company, on behalf of a financial institution. Applicant listed the underlying debt on his SF 86 submitted in October 2007. He listed a balance of \$6,000 and stated that the debt was incurred in January 2000. In the comments section he wrote: "[w]hen my wife and I divorced this was a large credit card bill that was owed. I am in a court case at this time trying to resolve this, and believe it should be taken care of soon." He told the Office of Personnel Management (OPM) investigator in January 2008 that he stopped paying the account because he disagreed with the fees he was being charged by the credit card company. He stated that he had sought legal help to dispute the charges and was still attempting to resolve the issue. When he responded to DOHA interrogatories, he wrote that the debt was in litigation and should be his ex-wife's responsibility. In his response to the SOR, Applicant admitted the debt, but stated, "the remaining amount was owed by ex-wife." He stated that he paid his portion of the debt, but acknowledged that because his ex-wife filed bankruptcy, he was responsible for the debt. He stated that he was "dealing with" the debt.⁶

Applicant denied owing the delinquent debts of \$419 and \$200, as alleged in SOR ¶¶ 1.j and 1.k. He did not recognize the collection company identified with the \$200 debt, and he thought the \$419 debt might be a duplicate of the debt in SOR ¶ 1.b. Neither debt appears on the May 15, 2008 credit report.⁷

³ Items 4, 8, 9.

⁴ Items 4-9.

⁵ Items 4, 6, 8, 9.

⁶ Items 4-9.

⁷ Items 4, 8, 9.

Applicant has not received financial counseling. He stated he and his wife are current on their debts that they have accrued in the last five years. He has three sons in the military, two serving overseas, and he just returned from serving overseas as a contractor. He stated that he would never do anything to jeopardize his sons.⁸

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 to be used 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, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching 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 the 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.

⁸ Items 4, 6, 7.

Section 7 of Executive Order 10865 provides that adverse 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. Two are potentially applicable in this case:

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

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay his obligations for a period of time. The evidence is sufficient to raise the above disqualifying conditions.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

- (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 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;

(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 has not resolved a number of the debts alleged in the SOR. His financial issues are recent and ongoing. AG ¶ 20(a) is not applicable.

Applicant attributed his financial problems to his separation and divorce, his car problems, his parents' health problems and death, his wife's severe medical problems, and his ex-wife's failure to pay her share of the marital debts. These all qualify as conditions that were outside his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant did not submit evidence of payments of any of the debts, credit counseling, a budget, dispute letters, or any realistic plan to address his delinquent debts. There is insufficient evidence in the record for a finding that he acted responsibly. AG ¶ 20(b) is partially applicable.

Applicant has not received financial counseling and there is no evidence that his financial problems are being resolved or under control. AG ¶ 20(c) is not applicable. There has not been a good-faith effort to pay or resolve his delinquent debts. AG ¶ 20(d) is not applicable.

The debt alleged in SOR ¶ 1.f is a duplicate of the SOR ¶ 1.i debt. AG ¶ 20(e) is applicable to that debt. I accept Applicant's belief that the debt alleged in SOR ¶ 1.b is a duplicate of the SOR ¶ 1.a debt. AG ¶ 20(e) is also applicable to that debt. Applicant denied owing the debts alleged in SOR ¶¶ 1.j and 1.k. Neither debt appears on the most recent credit report. AG ¶ 20(e) is applicable to those debts. Applicant denied owing several other debts but did not submit evidence to substantiate the basis of the dispute. AG ¶ 20(e) is not applicable to any other debt.

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. I have incorporated my comments under Guideline F in my whole person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant has been through much in the last several years, including his divorce, the death of his parents, and his wife's illness. He stated that his ex-wife filed for bankruptcy, leaving him responsible for debts that she was court-ordered to handle. He did not submit a realistic plan to address his delinquent debts. Applicant's children are to be commended for their service to this country in the military, as should Applicant for his service overseas as a defense contractor. Unfortunately, there is simply not enough evidence in the record for me to conclude that his finances are in order.

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 Financial Considerations security concerns.

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
Subparagraphs 1.c-1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g-1.i:	Against Applicant
Subparagraphs 1.j-1.k:	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.

Edward W. Loughran
Administrative Judge