



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



In the matter of:)
)
) ISCR Case No. 08-05310
)
)
Applicant for Security Clearance)

Appearances

For Government: John Bayard Glendon, Esquire, Department Counsel
For Applicant: *Pro Se*

October 20, 2008

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the case file, pleadings, and exhibits, I conclude that Applicant failed to rebut or mitigate the Government's security concerns under Guideline F, Financial Considerations. His eligibility for a security clearance is denied.

Applicant submitted his Electronic Questionnaires for Investigations Processing (EQIP) Questionnaire on January 23, 2008. On July 14, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the 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 within the Department of Defense for SORs issued after September 1, 2006.

On August 11, 2008, Applicant answered the SOR in writing and elected to have a hearing before an administrative judge. The case was assigned to me on August 25,

2008. I convened a hearing on September 22, 2008 to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses and introduced six exhibits, which were marked Ex. 1 through 6 and admitted to the record without objection. Applicant testified on his own behalf and called no witnesses. He introduced two exhibits, which were identified and marked as Applicant's Ex. A and B and admitted to the record without objection.¹

At the conclusion of the hearing, I left the record open for one week, until close of business September 29, 2008, so that Applicant could provide additional information for the record. Applicant timely filed a document clarifying his employment between December 1992 and November 1995 and two of his personal checking account statements. I marked Applicant's additional submissions as his Ex. C, D, and E, and they were admitted to the record without objection. DOHA received the transcript (Tr.) of the hearing on September 26, 2008.

Findings of Fact

The SOR contains seven allegations of disqualifying conduct under AG F, Financial Considerations (SOR ¶¶ 1.a. through 1.g.) In his Answer to the SOR, Applicant admitted five of the allegations (¶¶ 1.a., 1.b., 1.c., 1.f., and 1.g.); he denied two allegations (¶¶ 1.d. and 1.e.). Applicant's admissions are admitted as findings of fact. (Answer to SOR; Tr. 19-20, 28-31, 35-46, 55-63.)

Applicant is 54 years old and a high school graduate. He has been married to his wife for 34 years. They are the parents of five adult children. All of Applicant's children are self-supporting, although he provides some financial help to a daughter who has three children. Applicant's annual gross salary is approximately \$41,000. His wife's annual gross salary is about \$25,000. Applicant also receives about \$13,000 annually in military retirement pay. His total gross annual household income is approximately \$80,000. (Tr. 25-27, 73-74.)

Applicant enlisted in the U.S. military at age 18 and served for 20 years. He held a security clearance while in the military. He retired in 1992. (Tr. 25-26, 89-90; Ex. 1.)

Since his retirement, Applicant has held a number of civilian jobs. From June 1992 to December 1992, he worked as a sales associate. From December 1992 until November 1995, he was a computer helpdesk technician. From December 1995 to February 2003, he was employed as a contract computer technician. He earned about \$42,000 a year in that job. (Tr. 30-31.)

¹ While the Government did not object to the admission of Applicant's Ex. B, Counsel noted that Applicant had previously submitted the document identified as Ex. B in response to DOHA interrogatories on June 19, 2008. (Ex. 3 at 9.)

In 1996, Applicant's wife became ill, required surgery, and lost her job. Applicant filed for Chapter 7 bankruptcy in January 1996 (SOR ¶ 1.f.) In May 1996, the bankruptcy court discharged approximately \$14,000 in debts owed by Applicant and his wife. Applicant's wife's health improved, and, with a few exceptions, she has been steadily employed since the end of 1996. (Tr. 28-30, 69-70; Ex. 6.)

For about 3½ years between 2003 and September 2006, Applicant had a series of short-term jobs as a contractor. In September 2006, he began to work as a computer technician for his present employer, a government contractor. His job requires a security clearance. (Tr. 30-32.)

In 1993, Applicant and his wife purchased a home. In 2004, they sold the home and realized a profit of about \$41,000. They did not purchase another home, but used some of the proceeds from the sale of their house to pay credit card debt. (Tr. 33-34.)

In 1999 and 2000, Applicant opened two credit card accounts with the same creditor. He defaulted on these accounts in about 2004, and both accounts were placed for collection. These accounts are alleged at SOR ¶¶ 1.a. and 1.b. of the SOR. The delinquency alleged at SOR ¶ 1.a. is approximately \$4,515. The delinquency alleged at SOR 1.b. is approximately \$2,707. Applicant entered into a judgment agreement with the creditor on the debt alleged at SOR ¶ 1.b. The judgment entered against Applicant reduced the debt to \$2,500, and he agreed to pay the creditor \$25 a month, with interest continuing to accrue. Applicant believes he has paid about \$600 on the debt, and he estimates it will take him approximately 80 months to pay off the principal amount of the debt. He has taken no action to pay the debt alleged at SOR ¶ 1.a. (Tr. 37-42.)

In his response to the SOR, Applicant denied he had not satisfied a delinquent medical debt of approximately \$492 alleged at SOR ¶ 1.d. He provided a cancelled check for \$60, \$30 of which he claimed was related to the medical debt alleged at SOR ¶ 1.d. He also provided documentation that showed insurance payments of \$445. At his hearing, he stated he had recently paid a balance due of \$20 on the account. He failed to provide documentation to show that his payments were directly related to the debt alleged at SOR ¶ 1.d. or that the debt had been satisfied in full. (Ex. 3 at 8, 9; Ex. B; Tr. 60-63.)

Applicant also denied a debt in collection status alleged at SOR ¶1.e. He claimed that the debt of approximately \$205 to an electric company had been satisfied. In a post-hearing submission, Applicant provided copies of his bank statement corroborating that the debt had been satisfied by a payment of \$104.50 on April 9, 2008, and a payment of \$105.28 on May 12, 2008. (Tr. 55-60; Ex. D; Ex. E.)

In the last seven years, Applicant has purchased a number of automobiles. In 2001, he acquired a loan of \$27,000 to purchase an automobile. In 2005, the automobile was voluntarily repossessed and sold, leaving a deficiency balance of

\$7,000.² In 2002, he borrowed \$33,000 to purchase a vehicle for his wife. He was unable to make the monthly loan payments on the vehicle, and it was also voluntarily repossessed in 2005. After it was sold by the creditor, Applicant owed a deficiency balance of approximately \$13,000, which he did not pay. The debt grew to approximately \$14,400, was placed for collection, and was alleged at SOR ¶ 1.c. The debt remains unsatisfied. (Tr. 42-46.)

In October 2005, Applicant purchased another vehicle with a loan of approximately \$20,000. Applicant's monthly payments on this vehicle are \$470. In May 2007, Applicant borrowed \$10,000 to purchase another vehicle for his wife. In February 2008, he traded that vehicle to a dealer, and took out another loan of \$25,000 to purchase still another vehicle. His monthly payments on his most recently-acquired vehicle are \$485. (Tr. 48-52.)

In June 19, 2008, Applicant responded to financial interrogatories sent to him by DOHA. In a personal financial statement, he reported his net monthly income as \$2,340 and his wife's net monthly income as \$1,630. He also reported that each month he received \$1,019 in military retirement pay. His total net monthly income was \$4,989. After subtracting his monthly living expenses, Applicant had \$20 remaining at the end of each month. He reported he had owned no real estate and had no savings. At his hearing, Applicant reported an increase of \$54 in his net monthly salary, making his total net monthly income \$5,043. (Ex. 3; Ex. A.)

Applicant listed his monthly expenses in a personal financial statement he prepared for his hearing as follows: rent: \$1,220; utilities, cable and internet: \$578; payments on loans for his two automobiles: \$952; medical insurance: \$226; car insurance: \$370; gas at \$4.00 per gallon: \$512; automobile repairs and upkeep: \$30; clothing: \$100; groceries: \$800; miscellaneous: \$125; and payment of debt identified at SOR ¶ 1.b. These expenses left him with a monthly remainder of \$41. He indicated he could cut some of his costs by spending about \$270 less for gasoline, \$50 less for clothing, and \$200 less for groceries. He noted he no longer paid \$64 a month for his son's orthodontia. Applicant acknowledged that his monthly expenses related to paying for, operating, and insuring his automobiles were approximately \$1,900 or 38% of his monthly income. (Ex. A; Tr. 74-78)

Applicant has not had financial credit counseling. He has lived from paycheck to paycheck for most of his life. (Tr. 85, 89.)

² This debt was not alleged on the SOR and is included only to show Applicant's pattern of debt acquisition to purchase automobiles.

Policies

When evaluating an Applicant's suitability for a security clearance, an 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, the administrative judge applies these guidelines 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 substantial delinquent debt and was unable or unwilling to pay his creditors. This 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. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant's financial delinquencies. Unresolved financial delinquency might be mitigated if it "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." (AG ¶ 20(a)) Additionally, unresolved financial delinquency might be mitigated if "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." (AG ¶ 20(b)) Still other mitigating circumstances that might be applicable include 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" (AG ¶ 20(c)) or "the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." (AG ¶ 20(d)) Finally, if "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 options to resolve the issue," then AG ¶ 20(e) might apply.

Applicant admitted a history of financial difficulties that spanned the period from at least 1996, when he declared Chapter 7 bankruptcy, to the present time. While his wife fell ill and required surgery in 1996, she recovered and was back at work by the end of 1996. Applicant and his wife have, for the most part, been steadily employed

since he retired from the military in 1992. Their annual income, including his military pension, is approximately \$80,000.

Applicant provided documentation to corroborate that he had paid a debt of \$205, alleged at SOR ¶1.e. He failed to provide documentation to prove that he had satisfied a medical debt of \$492, alleged at SOR ¶1.d. He provided documentation to show he had entered into a settlement agreement to pay the creditor identified at SOR ¶1.b. \$25 a month, plus accruing interest, on a debt of \$2,500, an arrangement that will cost him money in interest and not retire the debt for many years. He acknowledged two debts, totaling almost \$19,000, but has made no arrangements to pay those debts.

Applicant had not received financial counseling. While he admitted his financial delinquencies, it was not clear that he understood his financial problems or how to resolve them. He was financially over-extended, had no savings, and had very little money left at the end of each month. Nearly 40% of his income went to maintain, operate, and insure his two automobiles. He had no plan in place to systematically resolve his substantial delinquent debt and prepare for future contingencies. I conclude that none of the Financial Consideration mitigating conditions apply to the facts of Applicant's case.

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 commonsense 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 of 54 years. His financial problems began at least 12 years ago. During that time, he has lived from one paycheck to another. Despite an annual income of \$80,000, he has not taken affirmative action to live within his means and to pay or resolve his substantial delinquent debts. His lack of attention to his financial delinquencies continues to raise

security concerns. He has borrowed large sums of money to purchase automobiles. Nearly 40% of his monthly income goes to pay his automobile loans and to maintain and insure his automobiles. Despite a steady income for several years, he failed to budget his income to satisfy his many other debts. Instead, he continued on a pattern of over-extension, which, in the past, led to vehicle repossessions. He has a low net remainder at the end of every month, and he has no savings, raising concerns about his judgment and potential financial vulnerability.

Overall, the record evidence leaves me with questions and doubts at the present time as to Applicant's judgment and eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising from his financial delinquencies.

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.:	Against Applicant
Subparagraph 1.d.:	Against Applicant
Subparagraph 1.e.:	For Applicant
Subparagraph 1.f.:	Against Applicant
Subparagraph 1.g.:	Against 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. Eligibility for access to classified information is denied.

Joan Caton Anthony
Administrative Judge