



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



In the matter of:)	
)	
)	ISCR Case No. 08-05339
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

December 31, 2009

Decision

MASON, Paul J., Administrative Judge:

Based on a review of the case file, pleadings, testimony, and exhibits received at the hearing and following the hearing, Applicant's eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted his Security Clearance Application (SCA) on June 18, 2007. He was interviewed by the Department of Defense in February 2008. He supplied answers to interrogatories concerning his financial indebtedness on July 17, 2008. The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) on January 23, 2009 detailing security concerns under financial considerations (Guideline F). The action was taken pursuant to 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 made

effective within the Department of Defense for SORs issued on or after September 1, 2006.

Applicant provided his answer to the SOR on March 3, 2009. DOHA issued a notice of hearing on April 6, 2009 for a hearing on April 23, 2009. The hearing was cancelled on April 18, 2009. The case was reassigned to me for administrative reasons. A notice of hearing was issued on June 3, 2009 for a hearing on June 23, 2009. At the hearing, six exhibits (GE I through 6) were admitted in evidence without objection to support the government's case. Applicant provided testimony until I determined the case should be continued because he was inadequately prepared to represent himself. On July 8, 2009, a notice of hearing was issued for a continuation of the June 23 hearing to July 28, 2009. Applicant and his wife testified. Applicant offered two exhibits (AE A and AE B) that were admitted in evidence without objection. In the time period allowed to submit post-hearing exhibits, Applicant submitted AE C through AE J. The post-hearing exhibits contain a character statement of Applicant, three citations or awards, documentary proof of payment of \$1,000 to settle the debt identified in SOR 1.c., and a brochure from a financial counseling service in the state. DOHA received the transcript on August 11, 2009. References to the hearing transcript on June 23, 2009, shall be cited as Tr. I, followed by the page number. References to the hearing transcript on July 28, 2009 shall be cited as Tr. II, followed by the page number.

Rulings on Procedure

The hearing on June 23, 2009 was suspended after it became apparent Applicant was having difficulty presenting his case. I concluded he was not adequately prepared (Tr. I 21, 28-40). Applicant testified his wife always handled the finances and wrote the checks to pay bills (Tr. I 36-37). Before postponing the hearing, I explained that when he returned to complete the hearing, he should be much more aware of the status of each debt, and, because of her primary role in handling the finances, that he should bring his wife to supplement his testimony (Tr. I 50-55).

Findings of Fact

The SOR lists six delinquent debts. The accounts represent credit cards, and an auto loan account. The state tax lien was filed in April 1998. In his answer to the SOR, Applicant admitted the debts identified in SOR 1.a., 1.b., 1.c., 1.e., and 1.f. He denied the auto loan account listed in SOR 1.d. because he completed payment on the loan on February 18, 2009 (AE B at 4).

Applicant is 69 years old. He married his second wife in February 2000. He has two grown children, and two grown stepchildren (GE 1, SCA).¹ He has been employed as a security guard since April 2001 (GE 1). His wife has been employed 32 years with

¹ In his SCA, Applicant answered "No" to all financial questions in modules 27 and 28. Though these responses cannot be considered in the government's case-in-chief, the incorrect information has a negative effect on Applicant's overall credibility.

the state division of employment services (Tr. II 7). He seeks a Secret security clearance.

The six delinquent debts in the SOR total \$21,738. Five of the six debts became delinquent in 2005. The sixth delinquent account is a state tax lien (SOR 1.f.) totaling \$10,584. The lien was filed against Applicant in April 1998 for not paying taxes that were still due when he closed his business. Applicant operated a business of creating/developing animated characters for television (Tr. I 31). In developing these characters, he used his own equipment, including studios, stages and cameras (Tr. I 31). He recalled selling all the items and paying off all his debts before he closed the business in 1994 (Tr. II 32). The first time he found out about the tax lien was in February 2008 when he was interviewed by a government investigator (Tr. I 32). He did not contact the state to obtain information about the lien because he believed the lien information was incorrect (Tr. I 33; Tr. II 37). Applicant recalled when he closed his business in 1994, he did not file a final tax return (Tr. II 37). Applicant's wife testified that he scheduled an appointment with a tax agent for August 7, 2009 (Tr. II 14) to resolve the lien. Applicant indicated in a post-hearing submission he met with the tax representative on August 7, 2009, and agreed to pay him \$500 to resolve the tax lien (AE C).

Applicant's wife testified that no plan for repayment had been established for the delinquent debt in SOR 1.b. (Tr. II 11-12). On July 27, 2008, she contacted the collection agency identified in SOR 1.c., and arranged a settlement of the credit card debt for \$1,000 (Tr. II 12). The settlement transaction occurred on July 31, 2009 (AE G). Regarding SOR 1.e., Applicant's wife is still trying to negotiate a settlement plan their earnings can reasonably accommodate (Tr. II 14).

One of the two remaining delinquent accounts listed in the SOR is a judgment (SOR 1.a.) that was entered against Applicant in November 2007 for \$1,616. The last SOR debt that has not been addressed is Applicant's auto loan (SOR 1.d.). Applicant's wife added these two accounts to the PFS she prepared for Applicant in July 2008. (GE 2; Tr. II. 17). The PFS is being addressed because it shows additional, unlisted delinquent credit accounts that Applicant is servicing that are not listed in the SOR. The PFS shows that in July 2008 Applicant and his wife earned \$4,159 month, minus monthly expenses of \$1,422, and monthly debt payments of \$2,447, leaving a net monthly remainder of \$289 a month (*Id.*). In the monthly debt payment module of the PFS, Applicant's wife identified ten credit or installment accounts and payments they are making on each account (*Id.*). After the first account (Applicant's mortgage), the next six accounts (\$20,574) in the debt module (excluding the fifth account which is SOR 1.a.) are delinquent (GE 2). The first account (Applicant's mortgage) listed in the debt module is current (Tr. II 19-21).

The second account (not listed in the SOR) in Applicant's PFS debt module was originally his late mother-in-law's credit card she used to pay her expenses before she died in 2004 (GE 2 at 4, 5; Tr. II 21-23). After her death, Applicant and his wife agreed to assume liability for the account, and have been paying \$313 a month since August

2005 (Tr. II 21) under the creditor's special repayment program that was applied to the account prohibiting Applicant and his wife from using the card (for credit purchases) until further notice (GE 2 at 5).²

The third account (not listed in the SOR) in Applicant's PFS debt module is a credit card used by Applicant and his wife (GE 2 at 7; Tr. II 21). This card is covered by the same repayment program (applied in July 2005) that requires a \$298 monthly payment, and prevents Applicant and his wife from using the credit card (GE 2 at 7). Applicant's wife testified that the balances of the second and the third credit card accounts have each been reduced to about \$3,000 (Tr. II 23). Applicant testified the second and third credit card accounts originally carried balances of \$14,500 and \$15,000 because they were using the cards to pay off other credit cards (Tr. I 46).

The fourth account (not listed in the SOR) in Applicant's PFS debt module is a credit card (GE 2). Applicant was trying to settle the delinquent account with three payments of \$457 (Id. at 8). GE 5 shows the account was settled in 2008 (GE 5).

The fifth account (SOR 1.a.) in Applicant's PFS debt module is a credit card account that was opened in December 2003 and became delinquent after August 2005 (GE 6). A judgment was entered on the account in November 2007 (GE 5). Applicant's wife had been paying \$100 a month on the judgment from an unknown time in 2007 until July 2008, when she stopped paying on the judgment because the mortgage (first account in debt module) started falling behind (Tr. II 27). Also, she had medical problems (Tr. II 10-11). She provided no additional information about her medical problems. In July 2009, she resumed payments to the SOR 1.a. creditor. She made two payments of \$200 each on July 16, and July 22, 2009 (Tr. II 10-11; AE F).

The sixth account in Applicant's PFS is not listed in the SOR, but is another credit card account transferred for collection to the same law firm listed in SOR 1.a. (GE 2 at 10).

The seventh account in Applicant's PFS debt module is also not listed in the SOR (GE 2). The credit union account was transferred to a collection agency who advised Applicant they had received his \$200 payment on June 23, 2008 (GE 2 at 11). Applicant wrote in the column of the exhibit that the account was debited \$200 every month until the debt was paid in full; however, there is no date on the document indicating when the debt was paid-in-full (*Id.*). There is no independent documentation from the collection agency verifying the debt was paid.

The eighth, ninth and tenth debts appear on the second page of Applicant's PFS debt module. These three accounts are current or paid off. The eighth account listed in the PFS, an installment loan (SOR 1.d.), has been satisfied with a final payment made in February 2009 (AE B at 4). The ninth account is an installment loan taken out in

² Attached to GE 2 are 16 documents followed by a credit bureau report dated July 17, 2008. Each of the 16 documents are numbered chronologically (in handwriting) in the upper right hand corner.

March 2004 for \$5,118. The loan is current (GE 2 at 13). The tenth account listed in Applicant's PFS is a credit union account belonging to Applicant's wife. It is current (GE 2 at 14).

Included in GE 2 are two collection statements (GE 2 at 15, 16). Although neither account is listed in the SOR, both collection statements confirm two separate, delinquent credit accounts that remain Applicant's responsibility. (See *also* GE 5 and GE 6).

The record does not provide much detail as to why Applicant and his wife have carried so much delinquent debt in their PFS. Both said that they occasionally used their credit cards (credit accounts listed in the SOR and credit accounts not listed in SOR, but included in Applicant's PFS) to pay off their other creditors (Tr. II 22-24, 39-40). When asked whether medical issues caused their financial difficulties, Applicant described a dislocated shoulder (Tr. II 35) and his eye problems in June 2008 requiring surgery, but then indicated that his insurance covered 80% of the cost of the eye surgery (Tr. II 40-44).

The total amount of debt in the SOR is \$21,738. The total amount of unlisted indebtedness in the debt module of Applicant's PFS is \$20,534. The total amount delinquent debt is more than \$41,000. Even after subtracting the delinquent debts that Applicant settled over the last year, the delinquent debt is still at least \$25,000. Applicant's yearly income is approximately \$49,908³ (GE 2).

Although Applicant did not specifically indicate at the June 23 or July 28 hearings whether he had financial counseling, I find that he has never had financial counseling. I make this finding because: (1) Applicant was not prepared to represent himself at the hearing on June 23, 2009 (Tr. I 21, 28-40), (2) his wife makes all the financial decisions (Tr. I 36-37), and (3) he testified regarding the importance of receiving financial counseling (Tr. II 45, 46).

Character Evidence

Applicant's site supervisor, who has known Applicant professionally since January 2008, wrote a character endorsement praising Applicant's trustworthiness and dedication to his job assignments (AE E). AE H is a brochure published by a consumer credit counseling organization that Applicant plans to contact (Tr. 46; AE H). On August 7, 2009, Applicant consulted with a tax agent concerning the state tax lien identified in SOR 1.f. (AE C).

Applicant received an honorable discharge from the United States Army in October 1966 (AE I). AE J contains an undated certificate awarded Applicant for exceptional performance in coverage of aircraft posts. In November 2004 and the first

³ Applicant's annual income is computed by multiplying his monthly income of \$4,159 (GE 2, PFS) by 12 months.

quarter of 2007, Applicant was favorably recognized for an outstanding job performance (*Id.*)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). Each guideline lists potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information. These guidelines are flexible rules of law that must take into consideration the complexities of human behavior.

The administrative judge's ultimate adjudicative goal is to reach a fair and impartial decision that is based on common sense. The decision should also include a careful, thorough evaluation of a number of variables known as the "whole person concept." Finally, 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. Reasonable 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 sensible, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship is not restricted to normal duty hours. Rather, the relationship is an around-the-clock responsibility between an applicant and the federal government. 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 the potential, rather than actual, risk of compromise of classified information.

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.

Analysis

Financial Considerations (FC)

Paragraph 18 of the Adjudicative Guidelines (AG) sets forth the security concern related to 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 overextended 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 financial guideline lists three disqualifying conditions that may be applicable to this case:

AG ¶ 19(a) (*inability or unwillingness to satisfy debts*); and

AG ¶ 19(c) (*a history of failing to meet financial obligations*); and

AG ¶ 19(e) (*consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ration, and/or other financial analysis*).

The SOR lists six delinquent debts that total \$21,738. Applicant is unable to pay these debts. AG ¶ 19(a) applies. Most of the listed debts became delinquent in 2005. The state tax lien identified in SOR 1.f. was filed 11 years ago in April 1998. AG ¶ 19(c) applies because Applicant has a history of not meeting his financial obligations.

When Applicant and his wife were asked why they had so much delinquent debt, their main response was that occasionally they used the credit cards to pay off other bills or credit cards. After adding the delinquent debt listed in the SOR to the unlisted delinquent accounts listed on the first page of Applicant's PFS, the total is more than \$41,000. Even though Applicant's payments on some accounts and settlements on other accounts over the last year have reduced the total delinquent amount to about \$25,000, AG ¶ 19(e) still applies because of the excessive indebtedness and high debt (\$25,000)-to-income (\$49,908) ratio.

The financial guideline identifies four mitigating conditions that may apply to the case:

AG ¶ 20(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*); and

AG ¶ 20(b) (*the conditions that resulted in the financial problem were largely beyond the person's control, and the person acted responsibly under the circumstances*); and

AG ¶ 20(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

AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

AG ¶ 20(a) does not apply because Applicant has failed to establish that the circumstances are unlikely to recur. First, Applicant still owes four of six listed accounts. Second, in addition to the listed delinquent debts, Applicant is servicing at least three delinquent accounts that are identified in his PFS. Neither Applicant nor his wife could adequately explain why they had so much delinquent debt. The age of the listed and unlisted delinquent debt, the amount of the debt, and Applicant's inability to explain why there was a large amount of delinquent debt, all raise security concerns about Applicant's reliability, and good judgment.

AG ¶ 20(b) has only limited application as Applicant has presented minimal evidence that his financial problems were caused by events beyond his control. Applicant mentioned a dislocated shoulder and eye surgery. His wife mentioned medical problems. However, without documentation outlining the costs, assigning more weight to the mitigator would be grounded upon speculation rather than the record.

Applicant has received no financial counseling, and there is no indication the indebtedness is under control. Applicant still owes four of six delinquent accounts listed in the SOR. In addition, he owes at least three additional delinquent debts identified in his PFS. AG ¶ 20(c) does not apply. Applicant receives some mitigation under AG ¶ 20(d), but not nearly enough to meet his burden of demonstrating he warrants a security clearance.

Whole Person Concept

I have examined the evidence with the disqualifying and mitigating conditions in my ultimate finding against Applicant under the FC guideline. I have also weighed the circumstances within the context of nine variables known as the whole person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors:

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 the participation was 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.

Applicant was 67 years old in 2007 when he filled out his SCA. In February 2008, Applicant was told by the government that a state tax lien had been filed against him. On July 17, 2008, Applicant was asked to provide information about the state lien and other debts listed in the SOR. In his PFS (attached to his interrogatory answers), Applicant provided information in the debt module that showed his unlisted delinquent debt almost equaled the delinquent debt listed in the SOR. On January 30, 2009, an SOR was mailed to Applicant. Along with the five other delinquent accounts, the SOR included the state tax lien filed in April 1998. In his March 2009 response to the SOR, Applicant admitted the state tax lien. On July 28, 2009, Applicant was asked why he did not take action on the tax lien. His reply was that he thought the lien information was a mistake.

The settlement of SOR 1.c. and 1.d. constitutes favorable evidence weighing in Applicant's favor. On the other hand, Applicant has made no progress concerning SOR 1.b., 1.e., 1.f., and only recently has resumed payments on SOR 1.a. Even though he has been on notice since February 2008 that there are debts he should address, except for the debt identified in SOR 1.d., he took no action to repay any of the delinquent SOR accounts until March 2009. Applicant's three awards and the favorable reference from his site supervisor have been considered. The fact he has settled some unlisted delinquent accounts also weighs in his favor. Having weighed and balanced the entire record as a whole, given Applicant's excessive indebtedness, the high income-to-debt ratio, and the absence of financial counseling, I am unable to conclude his indebtedness is being effectively managed and/or is under control. Applicant has not met his burden under the financial considerations guideline.

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 (Financial Considerations, Guideline F): AGAINST APPLICANT

Subparagraph 1.a.	Against Applicant
Subparagraph 1.b.	Against Applicant
Subparagraph 1.c.	For Applicant
Subparagraph 1.d.	For Applicant
Subparagraph 1.e.	Against Applicant
Subparagraph 1.f.	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.

Paul J. Mason
Administrative Judge