



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



In the matter of:)	
)	
)	ISCR Case No. 08-05764
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard A. Stevens, Esq., Department Counsel
For Applicant: Michael D. Moore, Esq.

July 27, 2009

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Based upon a review of the testimony, submissions, and exhibits, I find Applicant failed to meet his burden regarding the security concerns raised. Security clearance is denied.

Applicant completed a security clearance application (SF-86) dated October 19, 2007. On October 31, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising 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 for SORs issued after September 1, 2006.

In a response dated January 13, 2009, Applicant admitted 18 of the 19 allegations noted in the SOR and requested a hearing. The matter was referred to

DOHA on March 4, 2009, and the case was assigned to me that day. Department Counsel and Applicant agreed to a hearing date of April 30, 2009. A notice of hearing was issued to that effect on April 1, 2009. I was unable to timely convene the hearing as scheduled and the hearing was rescheduled for May 7, 2009, without objection. I convened the hearing as scheduled. Applicant was represented by counsel. Applicant gave testimony and offered one document which was admitted without objection as exhibit (Ex.) A. Department Counsel offered seven documents admitted as Exs. 1-7 without objection. Applicant was given through May 18, 2009, to supplement the record with any additional materials and to substitute a copy for the original document offered as Ex. A. On May 18, 2009, I closed the record. On May 19, 2009, Applicant's attorney sent Department Counsel a facsimile transmission copy of what was previously marked as Ex. A. On June 22, 2009, Department Counsel forwarded that document to me, noting he had no objection to it being admitted into the record. On that same day, I reopened the record, admitted the document, and then again closed the record. In the interim, the transcript (Tr.) of the proceeding was received on May 21, 2009.

Findings of Fact

Applicant is a 30-year-old supervisory electronics technician working for a defense contractor. He has worked for the same employer for a little over two years. Applicant has approximately eight years of military service and has attended some college. Currently separated from his wife, Applicant has custody of their two minor children. He also has a third minor child for whom he pays regular child support. Applicant has not received financial counseling.

In 1996, Applicant joined the military following completion of high school. He enjoyed solid credit and lived within his means for several years thereafter. He married in December 1998 and he received a military discharge in June 2004.¹ Soon thereafter, he fell into a "rut" and failed to keep himself "neat and tidy."² Meanwhile, he and his wife experienced marital problems that began as he served overseas while his wife remained in the United States and oversaw their finances.³ Unbeknownst to Applicant, his wife did not pay some of their bills, causing them to become delinquent.⁴ She continued to conceal her non-payment of the bills even after the couple separated in July 2005.⁵ Shortly thereafter, Applicant moved in with his mother. He then moved in with his father in 2006 with plans to work for one of his father's colleagues. Applicant

¹ Tr. 67-68.

² Tr. 21.

³ Tr. 25.

⁴ Tr. 25-27.

⁵ Tr. 27-28.

failed to leave forwarding addresses when he moved. Consequently, he received no correspondence from creditors reflecting balances owed.⁶

In the interim, Applicant faced a period of unemployment from November 2006 through April 2007 after his father's colleague lost his business. In July 2007, following his divorce, Applicant won custody of his two children from his now ex-wife.⁷

Applicant remained unaware that he had any delinquent debts until after he submitted his security clearance application in late 2007. He first became aware of these debts at some point between his application date and his receipt of the SOR in 2008. Had he learned of his debt earlier, he would not have had the financial resources to pay these debts and still meet his regular expenses and child support obligations.⁸ Since learning of their existence, he has contemplated various methods of addressing his debt. Before the hearing, Applicant consulted with a bankruptcy attorney. Applicant and the bankruptcy attorney are presently preparing a Chapter 7 bankruptcy filing. That attorney advised him to make no payments on his debts until the filing has been made so as not to demonstrate an illegal preference for individual creditors.⁹ The SOR enumerates 19 delinquent accounts, amounting to about \$30,000 in debt. The only debt he has addressed is the child support obligation for approximately \$786 noted in allegation ¶ 1.r.¹⁰ He also disputes the \$3 obligation noted in allegation ¶ 1.l, which he claims, without evidence, is no longer reflected on his credit report.¹¹

Currently, Applicant earns an approximate net salary of \$1,000 a month after withholding and child support payments. He and his children live simply. Applicant pays a nominal rent of \$250 a month to a couple with whom he and his two children live. This rent includes utilities. Applicant has no car payment, but pays about \$86 a month for car insurance and about \$200 a month for gasoline. About \$120 a month is spent on after-school programs for the children. Groceries cost about \$100 a month while about \$50 a month is spent on clothing. Applicant no longer has any credit cards. He has no loans or debts other than those noted in the SOR.¹² Applicant does not maintain a savings

⁶ Tr. 30.

⁷ Tr. 76.

⁸ Tr. 32.

⁹ Tr. 36.

¹⁰ Ex. A (Satisfaction of Judgment); Tr. 37-46. Although caught up on his arrearage, Applicant is still under a court order to provide child support for the two children who have since come to reside with him. Given this change in circumstances, he is now trying to petition the court to end such payments for these two children. Tr. 48. He is also liable for child support for his third child, the existence of whom he first discovered in February 2008. Child support and a retroactive arrearage is being paid through garnishment or wage withholding. Tr. 76-78.

¹¹ Answer to the SOR, dated January 13, 2009.

¹² Tr. 87.

account. At the end of the month, Applicant has about \$50 left after payment of all current obligations.¹³ At work, Applicant is a valued employee. His employer is willing to work with him as he resolves his financial issues. He recently received a significant promotion and raise in salary that should help his future finances.

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. 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. Under AG ¶ 2(c), this 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.

The government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." ¹⁴ The burden of proof is something less than a preponderance of evidence. ¹⁵ The ultimate burden of persuasion is on the applicant. ¹⁶

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 an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally

¹³ Tr. 88.

¹⁴ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

¹⁵ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

¹⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

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). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹⁷ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.¹⁸ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.¹⁹ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of the evidence, I find Guideline F (Financial Considerations) to be the most pertinent to the case. Conditions pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

Analysis

Guideline F – Financial Considerations

Under Guideline F, failure or an inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or an 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.²⁰ The Directive sets out several potentially disqualifying conditions under this guideline.

Applicant acquired a number of delinquent debts when his wife mismanaged his finances. To date, those debts continue to remain largely unaddressed. Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (“inability or unwillingness to satisfy debts”) and FC DC AG ¶ 9(c) (“a history of not meeting financial obligations”) apply. With such conditions raised, the burden shifts to Applicant to overcome the case against him and mitigate security concerns.

Applicant’s ex-wife purposefully or negligently mismanaged Applicant’s finances. Nothing prevented him, however, from casually inquiring about his finances when they

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Executive Order 10865 § 7.

²⁰ Revised Adjudicative Guideline (AG) ¶ 18.

were together, personally assessing his financial status when he resumed control of his finances after their separation, or having his mail forwarded when he moved so he could receive account and business correspondence. Such actions could have demonstrated responsible behavior despite Applicant's ex-wife's mismanagement. Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) ("the conditions that resulted in the behavior 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") does not apply.

The acquisition of Applicant's debt occurred while his ex-wife managed Applicant's finances and he expressed no interest in their status. He was later neglectful of his accounts after his separation. To date, only a delinquent balance of approximately \$800 has been paid from a list of 19 delinquent accounts representing about \$30,000 in delinquent debt. The rest of the delinquent accounts remain unaddressed. Today, he is attempting to resolve his debts through bankruptcy, but has, thus far, not received financial counseling that might give some assurance he has the tools to manage his finances in the future. Given these facts, neither FC MC 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") nor FC MC ¶ 20(d) ("the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts") applies. With regard to the planned Chapter 7 bankruptcy action, he has yet to submit a petition to the bankruptcy court. Taken in conjunction with his failure to receive financial counseling or otherwise address his remaining debts, FC MC ¶ 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") does not apply. No other mitigating conditions 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 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, as well as the “whole person” factors. Speaking in Applicant’s favor is his highly credible testimony and his devotion to his children. He responsibly took custody of two of his children and has been financially responsible toward a child he only recently discovered was his. At work, he is a valued employee who has earned his employer’s trust. Moreover, his testimony makes it clear that it was not an unwillingness, but an inability, to honor his debts that precluded him from previously addressing them.

Speaking against Applicant, however, is the complete and unfettered reliance he placed on his former wife to properly manage his accounts and his failure to monitor her efforts in any manner. Applicant was equally neglectful in failing to seize control of his finances, review their status, and leave forwarding addresses for his creditors, both when he became estranged from his ex-wife and thereafter. As a result of this neglect and his lack of sufficient funds, Applicant has only addressed a \$786 debt. Moreover, aside from payment of that one obligation, Applicant’s only significant action toward resolving his debts occurred shortly before the hearing, when he retained a bankruptcy attorney for a proposed bankruptcy. A successful bankruptcy discharge may demonstrate a legally valid method for resolving one’s debts. By itself, however, testimony that a bankruptcy petition is being prepared does not mitigate financial security concerns.

As noted previously, any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant, but merely an indication that the applicant has not met the strict guidelines established for issuing a clearance. Here, Applicant has demonstrated a present inability to pay his debts, scant effort to manage his delinquent debts, and little concrete progress toward their resolution. With security concerns regarding his finances unmitigated, I conclude it is not clearly consistent with national security to grant Applicant a security clearance. Clearance is denied.

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:	Against Applicant
Subparagraph 1.c:	Against Applicant

Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against 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:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	For Applicant
Subparagraph 1.s:	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 a security clearance. Clearance is denied.

ARTHUR E. MARSHALL, JR.
Administrative Judge