



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-05820
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Pamela C. Benson, Esquire, Department Counsel
For Applicant: *Pro Se*

April 16, 2009

Decision

HOWE, Philip S., Administrative Judge:

On September 18, 2007, Applicant submitted his Security Clearance Application (SF 86). On September 22, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline 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 September 29, 2008, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on October 21, 2008, and I received the case assignment on October 23, 2008. DOHA issued a Notice of Hearing on January 21, 2009, and I convened the hearing as scheduled on February 3, 2009. The Government offered Exhibits 1 through 5, which were received without objection. Applicant testified and submitted Exhibits A through C,

without objection. DOHA received the transcript of the hearing (Tr.) on February 11, 2009. I granted Applicant's request to keep the record open until February 17, 2009, to submit additional matters, including a plan to repay his delinquent debts (Tr. 94-96). Applicant did not submit any plan or documents by that date. The record closed on February 17, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Procedural and Evidentiary Rulings

Notice

At the hearing, I advised Applicant of his right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing. Applicant affirmatively waived his right to 15 days notice. (Tr. 8)

Findings of Fact

In his Answer to the SOR, dated September 22, 2008, Applicant admitted the factual allegations in ¶¶ 1.a to 1.d, 1.f, 1.k to 1.m, 1.p, and 1.q of the SOR, with explanations. He denied the factual allegations in ¶¶ 1.e, 1.g to 1.j, 1.n, and 1.o of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 37 years old, married for 13 years, and has three pre-teenaged children. He is employed by a defense contractor as a network administrator. He does not have a security clearance at the present time. He had a clearance from 1990 to 1996 when he served in the Navy. He seeks a clearance now because he has an opportunity to be the Information Systems Security Manager (ISSM) for his employer. He earns about \$74,000 annually in his job, which is the highest income he has had since leaving the Navy in 1996. (Tr. 22-32; Exhibit 1)

Applicant bought a house in October 2007 for \$173,000, with no down payment under the Veterans Administration Home Mortgage Program, and recently refinanced it to reduce his monthly mortgage payments from \$1,528 monthly to \$1,350. The \$5,000 of expenses for the refinancing was included in his mortgage balance on this 30 year mortgage. His monthly expenses total \$1,715, plus the \$1,350 for the house mortgage, and \$568 for a car payment. Applicant bought his wife a used 2006 Mercury Mountaineer in 2007 for about \$22,000 at 18% interest, resulting in the \$568 monthly car payments. Applicant and his wife also have student loans, on which they pay about \$226 monthly. His wife does not work outside the home. Applicant's net monthly income is about \$4,000. He has about \$200 remaining at the end of each month, a change from the negative \$96 loss shown on his Personal Financial Statement in 2008. In 2008 he received an income tax refund of \$3,000 which he spent on family expenses. In 2009 he expects to receive about a \$6,000 income tax refund, which he claims he will use to repay some of the delinquent debts listed in the SOR. Applicant was given two weeks after the hearing to submit proof of payments to creditors, and a repayment plan

for the remaining unresolved debts. He did not submit any documentation. (Tr. 20, 33-37, 62-64, 82, 89-100; Exhibit 5)

Applicant filed Chapter 7 bankruptcy in 1999 on about \$30,000 worth of credit card debt. He was discharged in bankruptcy in January 2000. Those debts resulted from a former fiancée's access to Applicant's accounts while he was deployed on naval duty in the 1990s. She spent his money and incurred debts he could not pay, so he filed the bankruptcy. (Tr. 28, 37; Exhibits 1-5, A-C)

Applicant had one month of unemployment in 1999. He had three months of unemployment in 2005. His final period of unemployment was for a little more than a month from November 2006 to mid-January 2007. (Tr. 28, 38, 41)

Applicant has a savings account presently, but no money is in it. All his income is deposited into his checking account. He has a debit card, and no credit cards. He claims to have a household budget, but did not submit a copy of it at the hearing, nor did he detail the contents of the budget. (Tr. 64, 66, 67)

Applicant has 15 delinquent debts unresolved. Those debts total \$62,602. He has no repayment plan to resolve the debts. He has made no payments to those creditors for the past four years. He has not filed disputes in writing against any of these debts. (Tr. 38-72; Exhibits 1-5, A-C)

The unresolved delinquent debts are as follows:

1. A department store credit card balance for \$568 (Subparagraph 1.b). The last payment was made in August 2006. Applicant claims he forgot about it. (Tr. 38-43; Exhibits 1-5, A-C)

2. A credit card debt for \$3,038 (Subparagraph 1.c). Applicant took out this card in 2002. (Tr. 43; Exhibits 1-5, A-C)

3. \$607 owed on a credit card (Subparagraph 1.d). Applicant claims this debt resulted from fraud, but did not file disputes with the credit reporting agencies. (Tr. 44, 71, 72; Exhibits 1-5, A-C)

4. Applicant owes \$7,112 on a credit card (Subparagraph 1.e). Applicant claims it is a duplicate listing for the next debt listed in Subparagraph 1.f, but has no documentation to support his assertion. Applicant is not making payments on this debt. He claims he could pay \$150 monthly; however the creditor wants \$500 monthly. (Tr. 45; Exhibits 1-5, A-C)

5. A debt on a credit card for \$5,669 (Subparagraph 1.f). This debt is shown as charged off on Exhibit A and continues to be owed. (Tr. 45; Exhibits 1-5, A-C)

6. Applicant owes \$8 and \$87 to the city of his former residence for parking tickets owed on cars he claims he sold, but the new owner did not change the registration ownership (Subparagraphs 1.g and 1.h). Applicant claims he resolved these debts with the city, but has no documentation to support his position. He has not disputed the debts with the credit reporting agencies. (Tr. 47; Exhibits 1-5, A-C)

7. Applicant owes \$71 and \$1,674 to a creditor for medical treatments (Subparagraphs 1.i and 1.j). He claims they were paid by his insurance company, but has no documentation to validate his contention. They continue on his credit reports. (Tr. 48, 68; Exhibits 1-5, A-C)

8. Applicant owes three debts to a credit union. Two debts are for cars repossessed in 2005 when he lost his job for three months. The first debt is for \$16,682 (Subparagraph 1.k) and Applicant's Exhibit B shows the debt currently as \$17,482. The second debt is for \$19,753 (Subparagraph 1.l) and currently is \$21,672. The third debt was for a personal loan of \$5,000 (Subparagraph 1.m) taken out to start a small business. The balance owed as shown on the SOR is \$5,081, and on Applicant's Exhibit B is \$6,126. No payments have been made on any of these debts. The repossessed autos were a 2002 Mercury Mountaineer and a 1996 BMW. Applicant claims he could afford the autos while he was working and earning \$65,000 annually. He attempted to arrange a repayment amount, but the creditor wanted \$900 a month, which he could not pay. (Tr. 50-55, 80; Exhibits 1-5, A-C)

9. Applicant owes \$1,557 on a telephone bill (Subparagraph 1.n). He claims he does not owe this money, but has documentary proof to support that position. He has not paid any money on this debt. His credit report in Exhibit B shows this debt was verified in July 2007. (Tr. 56, 73; Exhibits 1-5, A-C)

10. Applicant owes a creditor \$466 (Subparagraph 1.o). He claims this debt is the same as the next debt owed on a department store credit card for \$503 (Subparagraph 1.p). He has not paid anything on the \$466 debt, and last made any payment on the \$503 in 2005. (Tr. 57-60, 76; Exhibits 1-5, A-C)

Applicant's lack of any efforts to resolve these delinquent debts in the past four years, and his failure to submit any plan or proof of payments of these 15 debts, diminish his credibility. His presentation was not persuasive when his apparent desire to submit a plan, expressed at the end of the hearing, is compared to his lack of action to send such a plan when given the opportunity to do so. Applicant used his \$3,000 income tax refund in 2008 to pay other expenses, not those of greater age as listed in the SOR. His assertion that he will use his \$6,000 tax refund in 2009 to repay debts is not credible in view of his history of debt non-payment. (Tr. 89-100)

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, and 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 of over \$62,000 in eight years after declaring bankruptcy in 2000 on \$30,000. He is unable and unwilling to pay these obligations for the past four years, and particularly the past two years when he has been earning a good income. Also, AG ¶ 19 (e), "consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis," is exemplified by Applicant's current debt being twice the amount discharged in the 1999 bankruptcy. Applicant's large current debt results in large part from his purchasing two autos he could barely afford in 2004, which were later repossessed during a short period of unemployment, and borrowing \$5,000 from the same credit union and not repaying it. The evidence is sufficient to raise these potentially disqualifying conditions

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. An examination of the evidence in the case as applied to these mitigating conditions results in the following analysis.

Under AG ¶ 20(a), the disqualifying condition may be mitigated where "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." Applicant's delinquent debt arose after 2000 when he was discharged in bankruptcy. The debt is current, and shows a repeated pattern by Applicant incurring debt and not taking any action to repay it. The evidence does not raise this potentially mitigating condition.

Under AG ¶ 20(b), it may be mitigating where "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." Applicant's

unemployment periods were short and not the cause of his debt problems. He simply spends too much money, and does not manage his income properly. He did not act responsibly in identifying and resolving these debts. I find this potentially mitigating condition is not a factor for consideration in this case.

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” is potentially mitigating under AG ¶ 20(c). There is no evidence that Applicant received any counseling. Nor is there any evidence that his debt problem is under control. This mitigating condition is not applicable to the disqualifying conditions.

Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant has not repaid any debt listed in the SOR or made any good-faith effort to resolve his delinquent debt. I conclude this potentially mitigating condition does not apply.

Under AG ¶ 20 (e) 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 actions to resolve the issue,” then the mitigating condition would apply. Here, Applicant has no reasonable basis to dispute these debts. He admitted eight of these debts, and denies seven of them. He never articulated any reasonable basis to dispute any of these debts. This mitigating condition does not apply.

Finally, AG ¶ 20 (f) pertains to affluence resulting from a legitimate source. There is no evidence of any affluence being a factor in this Applicant’s case. Therefore, this mitigating condition is not applicable.

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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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. When these problems first began, Applicant was a mature married man, father of three children, who had already declared Chapter 7 bankruptcy. His accumulation of double the debt that was discharged in his 1999 bankruptcy displays, quite clearly, Applicant's continued inability to manage his finances reasonably. His delinquent debt situation has recurred, and his lack of action to date on resolving these debts shows there is a continuing problem. Because of his lack of resolving action, they are a source of potential coercion, duress, pressure, and exploitation.

Applicant has not exhibited any behavioral changes regarding his financial decisions and situation. He accepted my offer of additional time to prepare a plan and repay some debts as part of that plan, but never submitted anything on a resolution program. He again revealed his lack of interest in resolving his debts. For example, Applicant owes one credit union about \$43,000 on car repossessions and a personal loan. These debts alone would be sufficient to demonstrate that Applicant lacks integrity and good judgment, and is untrustworthy, regarding his financial decisions. He presents a record of borrowing money or incurring financial obligations, and then ignoring his legal and moral duty to repay the money. Those actions are unacceptable and a repeat the financial irresponsibility he exhibited in the 1990s.

Of course, the issue is not simply whether all his debts are paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. His cavalier attitude toward his delinquent debts and duty to repay them weighs heavily against him in this analysis. His credibility on the issue of his debts is non-existent. All his debts listed in the SOR remain unpaid and they are amply sufficient to raise security concerns.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from his financial considerations. I conclude the "whole person" concept against Applicant.

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
Subparagraphs 1.a to 1.q:	Against 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.

PHILIP S. HOWE
Administrative Judge