



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



In the matter of:)) -----) SSN: -----)) Applicant for Security Clearance)	ISCR Case No. 08-06066
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Appearances

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

June 23, 2009

Decision

HOWE, Philip S., Administrative Judge:

On August 28, 2007, Applicant submitted his electronic Security Clearance Application (SF 86) (e-QIP). On November 26, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing 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.

Applicant acknowledged receipt of the SOR on December 10, 2008. He answered the SOR in writing on January 12, 2009, and requested a hearing before an administrative judge. DOHA received the request on January 12, 2009. Department Counsel was prepared to proceed on January 16, 2009, and I received the case assignment on April 27, 2009. DOHA issued a Notice of Hearing on April 27, 2009 and I

convened the hearing as scheduled on May 12, 2009. The Government offered Exhibits 1 through 12, which were received without objection. Applicant testified and submitted Exhibit A, without objection. DOHA received the transcript of the hearing (Tr.) on May 18, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, dated January 12, 2009, Applicant admitted the factual allegations in ¶¶ 1.m and 1.n of the SOR, with explanations. He denied all the other factual allegations in the SOR concerning any alleged delinquent debt. His defense was that his former wife owed all the alleged debts. He provided additional information to support his request for eligibility for a security clearance.

Applicant is 60 years old, married to his fourth wife, and is employed as a senior software engineer by a defense contractor. He does not have a security clearance now. He earns \$108,000 annually, and has a net remainder income each month of about \$5,000. He has one daughter who is 30 years old. He married his third wife in 1984, to whom he was married while they accumulated about \$51,000 in delinquent debt. He became aware of his wife's mismanagement of their funds in 1995. He knew in 1994 about two tax liens against him from 1988 and 1989, yet took no action to resolve them. Applicant has not filed his 2002 and 2004 Federal income tax returns. Applicant does not know the status of his state income tax returns for those years. He filed his 2006 through 2008 Federal and state tax returns. He admitted these facts in his Answer. (Tr. 21-25, 30, 33, 37, 64; Answer; Exhibits 1, 2, 10)

Applicant has 11 delinquent debts totaling \$51,015 listed in the SOR. He has not repaid or otherwise resolved any of these debts. Applicant gave his former wife a general power of attorney in the early 1990s to manage his finances, and never revoked it. He never looked at his finances during their marriage, even after his 1995 Chapter 7 bankruptcy. He states all the debts are the responsibility of his former third wife. She accepts responsibility for them in the Answer and her undated letter entered into the record as Exhibit A. Applicant trusts her to pay these debts and clean up his credit record after she inherits her money from someone. (Tr. 30, 31, 33, 39-54, 63; Exhibits 2-12)

Applicant owes a state \$6,096, \$10,007, \$8,703, and \$5,854 on four separate tax liens (SOR Para. 1. a, 1.b, 1.k, and 1.l) for the 1986, 1988 and 1989 tax years. He owes another state \$2,687 on a different tax lien (SOR Para. 1. a to c) for the 1992 and 1993 tax years. All five tax liens remain unpaid. Applicant took no action to resolve these liens, even after he learned of them in 1994. (Tr. 39 to 43; Exhibits 2-12)

A natural gas utility is owed \$402 on a bill (SOR Para. 1.d). This bill remains unpaid. Applicant took no action to resolve this debt. (Tr. 44; Exhibits 2-12)

Applicant owes a car maker \$8,880 on a judgment (SOR Para. 1.e). This debt remains unpaid. Applicant took no action to resolve it. (Tr. 45-47; Exhibits 2-12)

Applicant owes a credit card provider \$1,332 (SOR Para. 1.f). This debt remains unpaid. Applicant took no action to resolve this debt after learning of it in 2007 when questioned about it by the Government investigator. (Tr. 47; Exhibits 2-12)

A telephone company placed Applicant's account for collection, seeking \$2,240 (SOR Para. 1.g). This debt remains unpaid. Applicant took no action to resolve this debt. (Tr. 51; Exhibits 2-12)

Applicant owes another credit card company \$3,553 (SOR Para. 1.h). This debt also remains unpaid. Applicant has done nothing to resolve this debt. (Tr. 53; Exhibits 2-12)

Applicant owes a bank \$1,261 on an account (SOR Para. 1.i). This debt is unpaid. Applicant denies any knowledge of this debt and has not taken any action to resolve it. (Tr. 53; Exhibits 2-12)

Applicant's home was foreclosed in August 2006 (SOR Para. 1.j). Applicant has not paid the balance due on this mortgage. Applicant denies any knowledge of any home foreclosure. (Tr. 54; Exhibits 2-12)

Applicant filed Chapter 7 bankruptcy on November 13, 1995. He was discharged of his debts in bankruptcy on February 14, 1996. The delinquent debts alleged in the SOR in the previous paragraphs occurred after the bankruptcy discharge. (Tr. 29; Exhibit 11)

Applicant was ordered to pay his former wife \$3,000 monthly in alimony from 2006 until 2008. He did so, and after the legal obligation to pay expired, he continued to pay her \$2,000 monthly to help her. He estimates he has paid her about \$100,000 in the past three years. Applicant's net monthly income after all deductions and expenses is about \$1,000, which he saves in his checking account. He now has \$7,000 in that account. His car is paid and his rent is \$850 per month. Applicant has not sought or received any financial counseling. (Tr. 55-73)

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 four of nine disqualifying conditions that could raise security concerns. They apply in this case.

Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. AG ¶ 19(b) applies because of the irresponsible spending and the absence of any effort to repay the debts or enter into installment payment agreements. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant accumulated 11 delinquent debts, totaling about \$51,000, and did not pay these obligations for several years, including the current year. His testimony shows he did not engage himself in any effort to resolve these debts, or stop accumulating them, even after his 1995 Chapter 7 bankruptcy. Applicant disengaged himself from his finances and now seeks to avoid responsibility for his debts. His repeated failure to pay his taxes to two states and the Federal government is a serious legal problem that he has not resolved for 23 years, in the case of the earliest tax lien. That fact triggers the application of AG ¶ 19(g). The 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. There are six mitigating conditions:

(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;

(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; and,

(f) the affluence resulted from a legal source of income.

Under AG ¶ 20(a), Applicant's financial worries arose between 1984 when he married his third wife and 2006 when he divorced her. His irresponsible behavior continues to the present day as he refuses to repay the debts. There is a regular pattern of going into debt and not taking any action to resolve those financial obligations. Applicant has a constant history of this type of action. The evidence does not raise this potentially mitigating condition.

Under AG ¶ 20(b), the financial problems arose from his wife's failure to pay the family debts and Applicant refusing to do anything to rectify her misconduct, even when his name appeared as an obligee of the debt. Applicant also failed continuously to monitor and manage properly the family finances and arrange the repayment of their debts incurred during the marriage. I find this potentially mitigating condition is not a factor for consideration in this case.

For AG ¶ 20(c) to apply Applicant would have to present evidence of counseling or that the problem is under control. In fact, the debts remain unpaid, and Applicant has placed the entire repayment obligation on his wife. He has the income and ability to repay the debts, but has not done so since they were incurred. He admitted he had not undertaken any financial counseling.

Applicant has not resolved any of the delinquent debts, either by payment or settlement. He places the burden on his former wife, aided by her written statement that the debts occurred when her company failed. She admits in the statement in the Answer that she handled the debts irresponsibly (Answer and Exhibit A). She did not testify at the hearing, and was not subject to cross-examination. Applicant was aware of these debts for several years, and did nothing to rectify them. Instead, he has paid his former wife alimony as ordered in the court for the specified time, and then voluntarily continued to support her. He estimates he paid her \$100,000 since their divorce. He claims his former wife will pay these debts at some time in the future when she inherits an undisclosed amount of money from an unnamed benefactor. Applicant offered no written documents evidencing this commitment. If true, he would have been better off to pay his \$51,000 in debts and seek reimbursement later from the person who caused his financial problem in the first place. He did not, further demonstrating his poor judgment in financial matters. I conclude AG ¶ 20(d) does not apply.

The final mitigating condition of AG ¶ 20 (f) pertains to affluence resulting from a legal source of income. Applicant testified he earned over \$100,000 annually, and has a net monthly income remainder of about \$2,000. His income was spent on his former wife's needs, and his current family. He alleges affluence being inherited by his former wife, but it has not occurred yet. 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. Applicant did not pay attention to his financial debts between 1984 and 2006, and allowed them to accumulate. He completely abdicated his duty to pay his debts during that time period. Even when on notice of a problem after his 1995 bankruptcy, he still purposefully remained oblivious to his debts and financial status. After the November 26, 2008, SOR was sent to him, Applicant did nothing to repay his debts. He has acted irresponsibly for 23 years about financial matters.

His former wife may claim the debts are her responsibility, but Applicant has had ample time to rectify the situation by repaying them or resolving them in installment payment plans over the past 14 years. Both Applicant and his wife have done nothing to repay debt, except file bankruptcy in 1995. Then they incur more debt. These are actions of an irresponsible Applicant lacking in good judgment.

The burden of proof being on him, Applicant failed to present his former wife in person to give testimony about the debts. He also failed to take the initiative and resolve the debts, or to seek reimbursement from his former wife if she persists in accepting responsibility for those debts. All these actions show a lack of good judgment by Applicant. The conduct by this adult was continuous, voluntary, and frequent. He has made no changes in his behavior to take responsibility to resolve any of the debts. He is subject to pressure and coercion because of the magnitude of his delinquent debt. The conduct is continuing. His explanation of trusting his wife to pay the debts and clean up his credit report one day in the future when she inherits an undisclosed amount

of money is not credible or persuasive. Applicant was evasive in the explanation of this supposed inheritance.

Overall, the record evidence leaves me with serious 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 him.

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.n: 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