



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



In the matter of:)	
)	
)	ISCR Case No. 08-06497
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: Pro Se

June 24, 2009

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted an electronic questionnaire for investigations processing (e-QIP) on December 26, 2007. On February 9, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations, for Applicant. 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 March 17, 2009, Applicant answered the SOR and requested his case be decided on the written record. Department Counsel prepared a File of Relevant Material (FORM) on April 16, 2009. The FORM was forwarded to Applicant on April 17, 2009. Applicant received the FORM on April 28, 2009. He had 30 days to submit a response to the FORM. He did not submit a response. On June 16, 2009, the FORM was forwarded to the hearing office. The FORM was assigned to me on June 17, 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, Applicant admits to all of the allegations in the SOR. (Item 4)

Applicant is a 36-year-old employee of a Department of Defense contractor seeking a security clearance. He has been employed as a security officer with the defense contractor since December 2007. He has a bachelor's degree. He is married and has no children. (Item 5; Item 6)

Applicant's background investigation revealed the following delinquent accounts: a \$5,110 delinquent credit card account that was charged off in April 2006 (SOR ¶ 1.a: Item 6 at 15, 22; Item 7 at 2; Item 8 at 5); an \$8,331 credit card account that was charged off in May 2006 (SOR ¶ 1.b: Item 6 at 14, 23, 29-30; Item 7 at 3; Item 8 at 6); a \$1,898 account that was charged off in April 2007 (SOR ¶ 1.c: Item 6 at 15, 23; Item 7 at 3; Item 8 at 10); a \$6,382 department store credit card account that was placed for collection in May 2006 (SOR ¶ 1.d: Item 6 at 14, 24, 31; Item 7 at 3; Item 8 at 11, 19); and a \$3,035 account that was placed for collection in May 2006 (SOR ¶ 1.e: Item 6 at 15, 25; Item 7 at 2; Item 8 at 13).

On August 21, 2008, Applicant provided a Personal Financial Statement in response to interrogatories. He listed he and his spouse's net monthly income as \$2,692.60. Monthly expenses were \$820 and monthly debt payments consisted of \$2,582.48. After expenses and debt payments, Applicant has a negative balance of \$754.88 each month. (Item 6 at 5)

Applicant's financial problems began about four years ago. Applicant was laid off and a few months later his wife was laid off as well. He was unable to find a job for a year. During the year he was unemployed, he took online courses towards completing his bachelor's degree in criminal justice. His wife eventually found a job with a mortgage company and Applicant was hired by the same company about four months later. They were not making as much money as in their prior jobs. About a year later, both Applicant and his wife were laid off. His wife soon found a job. Applicant searched for a job and continued to take courses. After graduating from college, Applicant had difficulty finding employment. He and his wife were unable to pay the bills. They discussed filing bankruptcy but felt an obligation to pay their bills. In September 2007, his wife was laid off again. She was unemployed for five months and found a job that paid significantly less than what she was making. She got a second job at night in order to meet expenses.

Applicant was hired by his current employer in December 2007. His wife was let go from her day job. She currently works part-time as a cashier and continues to look

for employment. They hope to resolve their credit issues. The current status of the delinquent accounts are:

SOR ¶1.a: \$5,110 charged off credit card account. The debt is not paid. Applicant was offered a settlement of \$4,235 or \$321 a month. He and his wife were not able to afford the monthly payment. (Item 4 at 3)

SOR ¶ 1.b: \$8,331 charged off credit card account. Applicant states that he set up a payment plan in July 2008. He claims that they have timely paid \$50 a month since that time but offered no proof of payment such as bank records, cancelled checks or a receipt from the company. (Item 4 at 3)

SOR ¶ 1.c: \$1,898 charged off deficiency resulting from an automobile repossession. Applicant states he and his wife have paid \$105.45 per month on this debt. The company offered to settle the account for \$900. Applicant hopes to resolve this debt with his income tax return. He provided no proof that payments were made each month in a timely manner and/or proof the debt was resolved. (Item 4 at 3)

SOR ¶ 1.d: \$6,382 credit card account placed for collection. Applicant claims he arranged a payment plan of \$30 a month. He claims he has made payments each month over the phone or by sending in a check. He provided no proof of payments. (Item 4 at 3)

SOR ¶ 1.e: \$3,035 account placed for collection. Applicant was offered a settlement of \$3,200 or payments of \$119 per month over a period of 36 months. Applicant and his wife were unable to afford the monthly payment. (Item 4 at 3)

Applicant states that he and his wife have every intention of paying off their debts. He indicates they will have an extra \$105 each month once the debt alleged in SOR ¶ 1.c is settled. In May 2009, their first mortgage lien payment will decrease by \$170 because they will no longer have an escrow shortfall. They plan to use the additional money to pay down debts. (Item 4)

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.

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 disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition (FC DC) ¶19(a) (an inability or unwillingness to satisfy debts); and FC DC ¶19(c), (a history of not meeting financial obligations); apply to Applicant's case. Between 2006 and 2007, Applicant incurred 5 delinquent debts, totaling \$24,756.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Financial Considerations Mitigating Condition (FC MC) ¶ 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) is not applicable. Applicant's financial problems are relatively recent. None of the delinquent accounts have been resolved. Applicant claims he is incapable of resolving all of these delinquent accounts. His household debts are greater than his income each month.

FC MC ¶ 20(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) partially applies. Applicant and his wife have been laid off on numerous occasions within the past several years which affected their ability to pay their debts. It is not clear whether Applicant acted responsibly under the circumstances. Applicant claims he was unable to find work for a period of two years. While he took on-line college courses during this time, one could argue that he could have found some sort of part-time employment to help out with the household bills.

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. There is no evidence that Applicant attended financial counseling. While Applicant claims that he has entered repayment plans for three of the five accounts, he admits that he is unable to afford the payments on the two remaining debts. He provided no proof to corroborate his assertions that he is timely making payments towards three of the accounts. He admits that he and his wife have a negative monthly balance each month. His financial situation is unlikely to be resolved soon.

FC MC ¶20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) partially applies. Applicant claims he has been paying towards three of the accounts. However, he did not provide documentation which would corroborate his statement. He has been unable to pay on two of the accounts because he cannot afford to make payments.

Although Applicant has been employed since December 2007, he took no action towards resolving his delinquent accounts. He claims he does not have the means to repay all of his accounts but hopes to repay all of them in the future. His inability to

resolve his delinquent accounts remains a security concern. He has not mitigated the security concerns raised under financial considerations.

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 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. Applicant has a significant amount of unresolved delinquent debt. Although his financial problems were aggravated by several periods of unemployment over the past three years, Applicant remains unable to meet his financial obligations as well as pay his delinquent debts. He provided insufficient documentation to corroborate that he and his wife have been timely making payments on three of the accounts. Applicant has failed to meet his burden to mitigate the security concerns raised under financial considerations.

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

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.

ERIN C. HOGAN
Administrative Judge