



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



In the matter of:)	
)	
)	ISCR Case No. 08-06880
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro Se*

April 24, 2009

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated the Financial Considerations security concerns. Eligibility for access to classified information is denied.

On December 5, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant 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 answered the SOR in an undated response. He did not state whether he wanted a hearing before an administrative judge or the case decided on the written record in lieu of a hearing. The case was scheduled for a hearing, during which Applicant specifically stated that he wanted a hearing. The case was assigned to me on

February 11, 2009. DOHA issued a notice of hearing on February 26, 2009, and the hearing was convened as scheduled on March 18, 2009. The Government offered Exhibits (GE) 1 through 6, which were received without objection. Applicant testified on his own behalf, and submitted Exhibits (AE) A and B, which were received without objection. DOHA received the transcript of the hearing (Tr.) on March 26, 2009.

Procedural Rulings

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.

Findings of Fact

Applicant is a 46-year-old employee of a defense contractor. He has worked for his current employer since March 2008. He attended college for a period but did not obtain a degree. Applicant served in the U.S. Army from 1984 to 1995, and the National Guard from 1995 to 1998. He has honorably discharged from the Army and National Guard. He was married from 1996 until his divorce in 2002. He married again in 2008. He has one adult child and two stepchildren; one stepchild is an adult and the other is a minor that lives with Applicant and his wife.¹

Applicant and his ex-wife separated in about January 2002. He was able to maintain his bills until February 2002, when he lost his job. He was unemployed for about three to four months. When he obtained a job, it was at a salary much lower than his previous job. His divorce was final in May 2002. The divorce decree ordered that Applicant was responsible for all joint debts. He was able to lower the monthly payments on his credit cards, but the institutions that owned his mortgage and car loans would not lower their monthly payments. He was unable to maintain the payments on his debts and they became delinquent.²

Applicant filed Chapter 13 bankruptcy in September 2003. His bankruptcy plan was confirmed in April 2004. His plan called for him to pay about \$640 per month to the trustee to be disbursed to his creditors. He maintained the payments until about March 2007, when he again lost his job. He was unemployed for about six months. The bankruptcy was dismissed in July 2007. The trustee's final report showed that Applicant paid the trustee \$25,213. Of that amount, \$21,175 went to his creditors; \$1,750 was paid to his bankruptcy attorney; and the trustee received \$2,288. Most of the payments went to his secured debts. The trustee paid \$6,968 to the holder of one car loan, leaving a balance due of \$6,512. An additional \$13,517 was paid to the holder of another car loan, leaving a balance due of \$13,000. The trustee paid \$690 to a creditor on an unsecured debt, paying the debt in full.³

¹ Tr. at 20-26, 45; GE 1.

² Tr. at 17-18, 29, 44; GE 4.

³ Tr. at 18, 32-33, 45; GE 1-6.

SOR ¶¶ 1.f.(3) and 1.f.(4) allege debts of \$1,689 and \$4,822 to the holder of one of the car loans that was included in Applicant's bankruptcy. The trustee divided the loan into the amount that was secured by the value of car and the amount that was unsecured because the loan was for greater than the car was worth. The amount of the loan was \$12,227 when he filed bankruptcy. The trustee paid \$5,796 toward the principal on this loan and \$1,171 in interest, for a total of \$6,968. The remaining amount of the loan that was secured by the value of the car after the bankruptcy payments was \$1,689; and \$4,822 was the remaining unsecured amount of the loan. The car was voluntarily repossessed in about July 2007. There is no indication of what, if anything, Applicant owes as a deficiency after the vehicle was sold or auctioned.⁴

SOR ¶¶ 1.f.(6) and 1.f.(7) allege debts of \$2,998 and \$10,002 to the holder of the other car loan that was included in Applicant's bankruptcy. The amount of the loan was \$25,467 when he filed bankruptcy. The trustee paid \$12,514 toward the principal on this loan and \$1,003 in interest, for a total of \$13,517. The remaining amount of the loan that was secured by the value of the car after the bankruptcy payments was \$2,998; and \$10,002 was the remaining unsecured amount of the loan. The car was voluntarily repossessed in about July or August 2007. Applicant indicated that the creditor reported to him that the deficiency owed on the car loan after the car was sold at auction was \$8,000. He has made no payments on this debt.⁵

Applicant's Chapter 13 plan included three additional unsecured debts for credit cards, totaling \$16,414. No payments to these three debts were made in the bankruptcy plan. Applicant has made no payments on any of the three debts since the bankruptcy was dismissed. The three debts are alleged in SOR ¶¶ 1.f.(1), 1.f.(2), and 1.f.(5). The debts alleged in SOR ¶¶ 1.a and 1.b are duplicates of the debts alleged in SOR ¶¶ 1.f.(1) and 1.f.(2).⁶

Applicant denied owing the delinquent medical debt of \$100 which is alleged in SOR ¶ 1.c. The debt is listed on a credit report obtained on June 23, 2008. The name of the medical provider is not included in the credit report. Applicant testified that the debt was supposed to be covered by his medical insurance from his former employer. He indicated that he spoke with the hospital and was told that the medical claim would be re-filed with his insurance carrier.⁷

SOR ¶¶ 1.d and 1.e allege debts of \$327 and \$257 to a collection company on behalf of a cellular telephone services company. The debts are listed on the June 23, 2008 credit report. Applicant denied owing the debts. He stated that he had a business

⁴ Tr. at 35-38; Applicant's response to SOR; GE 2-6.

⁵ Tr. at 36-38; Applicant's response to SOR; GE 2-6.

⁶ Tr. at 26-29, 33-36; Applicant's response to SOR; GE 2-6.

⁷ Tr. at 29-30; Applicant's response to SOR; GE 2, 3.

phone at his previous job. When he left the job, the phone was supposed to be turned off. He received a bill from the company and has been disputing it since.⁸

Applicant owes the Internal Revenue Service for tax years 2002 and 2006. He stated that he made mistakes on the returns for those years which led to him owing additional taxes. He has been paying \$200 per month to the IRS since about February 2008. He reported the balance of the debt in August 2008 as \$4,761. The IRS withheld \$1,104 from his income tax refund in February or early March 2009. The IRS reported on March 4, 2009, after the \$1,104 was withheld, that Applicant owed \$2,401 for the two tax years.⁹

Applicant was interviewed for his background investigation in February 2008. His finances and bankruptcy were discussed. He told the investigator that he had not received any demand letters from the creditors after the bankruptcy was dismissed. He stated that he was waiting for the creditors to call and he would then make payment arrangements. He also discussed the possibility that the Chapter 13 could be reinstated. Applicant's current plan is to pay the IRS first because the IRS has levied penalties and interest, and seized his income tax refunds. He will then begin addressing his remaining delinquent debts. He has not received financial counseling.¹⁰

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 to be used 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, administrative judges apply the guidelines 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

⁸ Tr. at 30-32; Applicant's response to SOR; GE 2-4.

⁹ Tr. at 19-20, 41, 45-47; GE 4; AE A, B. The IRS debts were not alleged as a basis for the denial of Applicant's security clearance in the SOR and will not be used for disqualification purposes. The debts and Applicant's payment of the debts will be used in assessing Applicant's total financial picture; in the application of mitigating conditions; and in evaluating the "whole person."

¹⁰ Tr. at 19-20, 45; GE 3, 4.

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 the 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 adverse 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 *a/so* 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. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay his obligations for a period of time. The evidence is sufficient to raise the above disqualifying conditions.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

- (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; and
- (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.

Applicant still owes a number of the debts alleged in the SOR. His financial issues are ongoing. AG ¶ 20(a) is not applicable. His financial problems are directly attributable to a separation, divorce, and two periods of unemployment. These qualify as conditions that were outside his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant acted responsibly for a period by filing Chapter 13 bankruptcy in 2003, and maintaining the plan's payments for several years. He was unable to continue making the payments because of his second period of unemployment, and the bankruptcy was dismissed. Applicant has worked for his current employer since March 2008. He has not made any payments on the debts included in the bankruptcy since it was dismissed. He has been paying his IRS debt first because his tax debts are incurring interest and penalties, and the IRS withholds his income tax refunds. Applicant is acting somewhat responsibly by paying his IRS debt. However, the IRS has much stronger enforcement mechanisms than the other creditors. I am unable to conclude that the IRS payments are a sincere

acceptance of all his financial responsibilities, rather than a concession that the tax debts will not go away and will ultimately have to be paid. AG ¶ 20(b) is partially applicable. I further find that his IRS payments constitute a good-faith effort to repay the IRS debts, but are insufficient for Applicant to receive full mitigation under AG ¶ 20(d) as a good-faith effort to repay all his overdue creditors.

Applicant has not received financial counseling. I am unable to find clear indications that his financial problems are being resolved or are under control. AG ¶¶ 20(c) is applicable.

Applicant disputed owing the debts alleged in SOR ¶¶ 1.c through 1.e, and submitted evidence through his testimony of his actions to resolve those debts. AG ¶ 20(e) is applicable to those debts.

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. I have incorporated my comments under Guideline F in my whole person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant is 46 years old. He served in the Army for eleven years and the National Guard for another three years, and was honorably discharged from both. He separated, divorced, and lost his job all within a short period in 2002. He filed Chapter 13 bankruptcy and maintained the payments for several years until he again lost his job and the bankruptcy was dismissed. He paid the trustee \$25,213 during the payment plan. Most of that amount went to pay his two car loans, his bankruptcy attorney, and the trustee. Only \$690 was paid to creditors holding unsecured debts. As such, when the bankruptcy was dismissed, Applicant still owed \$16,414 on three unsecured credit card debts, and \$19,512 on the two car loans. Both cars were involuntarily repossessed, leaving a

deficiency of about \$8,000 on one car loan. The deficiency amount, if any, on the second car loan is unknown. Applicant has not made any payments on the debts in his bankruptcy plan since it was dismissed. He also owes the IRS for tax years 2002 and 2006. He has been making \$200 payments and the IRS has withheld his income tax refunds, but he still owes \$2,401. Applicant's payments to the IRS are a good start on addressing his delinquent debts, but are insufficient at this time to mitigate security concerns.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the Financial Considerations security concerns.

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-1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.f.(1):	Against Applicant
Subparagraph 1.f.(2):	Against Applicant
Subparagraph 1.f.(3):	For Applicant
Subparagraph 1.f.(4):	For Applicant
Subparagraph 1.f.(5):	Against Applicant
Subparagraph 1.f.(6):	For Applicant
Subparagraph 1.f.(7):	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge