



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-06956
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: *Pro Se*

July 29, 2009

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant owes about \$28,000 in delinquent debt largely attributable to unemployment. Financial concerns persist because he has taken no steps to address the debt despite steady employment since October 2005. Clearance is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on December 10, 2007. On November 7, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline F that provided the basis for its decision to deny him a security clearance and refer the matter to an administrative judge. 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 adjudicative guidelines (AG) promulgated by the President

on December 29, 2005, and effective within the Department of Defense as of September 1, 2006.

Applicant acknowledged receipt of the SOR on January 29, 2009. He answered the SOR on February 3, 2009, and requested a decision without a hearing. On March 30, 2009, the government submitted a File of Relevant Material (FORM) consisting of ten exhibits (Items 1-10). DOHA forwarded a copy of the FORM to Applicant and instructed him to respond within 30 days of receipt. No response was received by the May 14, 2009, due date. On June 11, 2009, the case was assigned to me to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Based upon a review of the government's FORM, including Applicant's Answer to the SOR allegations (Item 4), eligibility for access to classified information is denied.

Findings of Fact

DOHA alleged under Guideline F, financial considerations, that Applicant owes ten delinquent debts totaling \$28,869 (SOR ¶¶ 1.b through 1.k) that were incurred after he was granted a discharge in bankruptcy in 1992 (SOR ¶ 1.a). Applicant admitted the Chapter 7 bankruptcy filing in 1991 and subsequent delinquencies, which he attributed to unemployment. However, he averred that the debt balances were higher than his creditors could collect under state law. He added that the debts would be reviewed in court and those allowed to be collected would be paid (Item 4). After considering the evidence of record, I make the following findings of fact.

Applicant is a 51-year-old software developer with a Master of Science degree awarded in March 1996 (Item 5). As of December 2008, Applicant had been working as a contractor for the U.S. Army Reserve for about six months (Item 4).¹ He held a top secret security clearance in the past, which was granted to him in December 1997 for his duties with a previous employer (Item 5).

While employed as a chemist at a state university, Applicant filed for Chapter 7 bankruptcy in early June 1991. He listed unsecured claims of \$33,685.45 consisting primarily of credit card debt. In late October 1991,² he was granted a discharge of his dischargeable debts (Item 10).

By the late 1990s, credit was again being extended to Applicant (Item 9). In March 1997, he went to work as an associate consultant for a defense contractor. He opened credit card accounts in June 1997 (SOR ¶ 1.e), February 1999 (SOR ¶ 1.d), and November 2000 (SOR ¶ 1.c) (Item 9). He bought a computer on credit (SOR ¶ 1.g) (Item 7). He took out a primary mortgage of \$165,000 in August 1998, and a second

¹Applicant listed a different employer on his December 10, 2007, e-QIP.

²The records of the bankruptcy confirm a discharge date in October 1991 rather than in 1992 as alleged in the SOR.

mortgage of \$27,015 in December 1999. Both loans were repaid under agreed upon terms. In January 2000, he financed an automobile through a loan of \$18,365. He made his payments on time, and the loan was closed satisfactorily. In July 2001, he took out a new automobile loan of \$22,407, and he paid that loan off in December 2003 (Item 9). In late 2003, he took out a new vehicle loan for the purchase of a truck (SOR ¶ 1.f) (Items 7, 9).

Following a job layoff, Applicant was unemployed from November 2002 until September 2004, with the exception of April 2004 when he had a short-term contract assignment for the Air Force. He was the primary caregiver for his mother, who had Alzheimer's (Items 5, 7). In about August 2003, he incurred a medical debt of \$2,300 for an emergency room visit. He paid \$1,000 of the cost, and a \$1,311 delinquent balance was referred for collection in December 2003 (SOR ¶ 1.k) (Item 9). Applicant disputed the balance with the hospital as he had been told the emergency room visit would cost him \$1,000 (Item 7). In September 2004, he began working for \$55 an hour with a subcontractor to a major computer company, but he was again laid off in late April 2005 (Items 5, 7). Applicant collected unemployment compensation through August 2005 (Item 7). He resided with his sister while he was out of work and she helped him financially (Items 5, 7). Already delinquent on the debts in SOR ¶¶ 1.e³ and 1.k, he stopped paying on several other accounts (SOR ¶¶ 1.b, 1.c, 1.d, 1.f, 1.g, 1.h, and 1.i) in 2005. His vehicle was repossessed and sold at an auction, leaving him with a deficiency balance of about \$3,000 (Item 7).⁴

Applicant returned to work in August 2005, initially in a temporary job that lasted only a couple of months. In October 2005, he began employment with a software developer. The record does not include information about his earnings with that employer. He repaid a state tax debt of \$2,394 to remove a lien filed against him in November 2005 (Items 7, 9). While in that job, Applicant completed his e-QIP on December 10, 2007. Applicant disclosed the repossession of his vehicle in about January 2006 and unsecured delinquent credit card debt that he estimated at \$10,000. He responded "No" to whether he was currently over 90 days delinquent on any debts, although the debts in the SOR had not been repaid (Items 5, 7).

Applicant was interviewed on April 18, 2008, about his delinquent debts, including the tax lien. Applicant averred he had repaid the \$2,394 tax debt by March 2006, but acknowledged that he owed the creditors in SOR ¶¶ 1.b through 1.i and 1.k. He expressed no knowledge of a \$261 medical debt in SOR ¶ 1.j. He expressed his

³Applicant told a government investigator in April 2008 that he had stopped paying on that credit card account until November 2002, when he was laid off by a previous employer (Item 7). His credit reports (Items show discrepant last activity dates in June 2005 (Item 9) and July 2005 (Item 8), either of which could be when the \$2,570 debt balance was charged off.

⁴His credit report of January 2008 includes two listings for the automobile loan with different high credit limits, \$34,944 and \$25,715 (Item 9). When he was asked about the debt in April 2008, Applicant indicated that the initial balance of the truck loan was \$25,000. His June 2008 credit report (Item 8) lists only the \$25,715 high credit balance.

intent to make installment payments on the debts and to have them resolved within the next 18 months. He added that he had purchased property and a vehicle to reestablish his credit and was living within his means (Item 7). Checks of Applicant's credit in April and June 2008 revealed that he had taken out a conventional real estate mortgage of \$115,000 in October 2004, and a car loan of \$12,856 in August 2003. He was making his monthly payments of \$1,370 and \$246 on those loans on time. However, he also owed delinquent debt balances totaling \$28,869 as alleged in the SOR (Items 8, 9).

In response to DOHA interrogatories, Applicant acknowledged on September 8, 2008, that he had taken no action toward resolving his delinquent debts. He indicated that only the original debt balances were collectable under state law and no actions had been taken by his creditors (Item 6). As of December 2008, Applicant continued to assert that the dollar amounts claimed by his creditors exceeded those legally collectable under state law and that those balances that were determined by a court with competent jurisdiction would be paid (Item 4).

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 overarching 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. . . ." 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 that 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 about finances 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.

Applicant owes about \$28,869 in delinquent debt, most of which has been delinquent since 2005. One credit card account (SOR ¶ 1.e) may well have been in default since 2002. AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and ¶ 19(c), “a history of not meeting financial obligations,” are implicated.

Mitigating condition 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,” cannot reasonably be applied. While there is no evidence of new delinquency, he has not shown that he has the financial means or the willingness or both to resolve his substantial delinquent debt in the near future.

AG ¶ 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,” applies, but only in part. The evidence supports his position that unemployment was a significant factor, if not the cause, in him falling behind in his financial obligations. Applicant also had some unexpected medical costs that led to the hospital debt in SOR ¶ 1.k. However, AG ¶ 20(b) does not mitigate his failure to act responsibly to address his debts once he was in a position to do so.

Applicant's inaction on his consumer credit debt before March 2006 is understandable, given he was repaying a \$2,394 tax debt. However, there is no evidence of any credible circumstances, such as a break in employment, that could justify his subsequent disregard of his delinquent debts. By April 2008, if not before, he was put on notice that his unpaid debts were of concern to the Department of Defense. He indicated in April 2008 that he would make installment payments, but there is no indication that he has even contacted his creditors. A good faith effort to resolve debts is not met by waiting until his creditors seek court action against him. His timely payments of his mortgage and his newest car loan are not sufficient to overcome the considerable doubts about his financial judgment. Although he is repaying his current mortgage and car loans on time, he has not yet accepted that he has a fiduciary obligation to his creditors. AG ¶ 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," and AG ¶20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," do not apply.

Applicant does not challenge that the debts in the SOR are his responsibility. A dispute over the amount owed (e.g., the creditor in SOR ¶ 1.d would be entitled to the \$4,180 high credit balance rather than the \$10,602 balance reportedly due as of June 2008) does not invoke AG ¶ 20(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."

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 conduct and all the circumstances in light of 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.

The DOHA Appeal Board has addressed a key element in the whole person analysis in financial cases stating, in part, "an applicant is not required, as a matter of

law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has ‘ . . . established a plan to resolve his financial problems and taken significant actions to implement that plan.’” ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted). Applicant does not dispute his responsibility for the credit balances originally extended to him. Yet his willingness to pay those debts carries little weight in mitigation where he has elected to wait until the creditors pursue collection through the court. While his unemployment clearly had a negative impact on his finances, he has been gainfully employed for long enough now to require some affirmative steps on his part to resolve his debts. Based on the record before me, I cannot conclude that it is clearly consistent with the national interest to grant Applicant a security clearance at this time.

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

Conclusion

In light of 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.

ELIZABETH M. MATCHINSKI
Administrative Judge