



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 08-07341
)	
Applicant for Security Clearance)	

Appearances

For Government: Paul M. Delaney, Esquire, Department Counsel
For Applicant: *Pro se*

April 6, 2009

Decision

MASON, Paul J., Administrative Judge:

Applicant submitted his Security Clearance Application (SCA), on June 29, 2006. On November 10, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F). The action was taken pursuant to 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 made effective within the Department of Defense for SORs issued on or after September 1, 2006. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Applicant submitted his answer to the SOR on December 8, 2008, and requested a decision be made on the record in lieu of a hearing. A copy of the Government's File of Relevant Material (FORM, the government's evidence in support of the allegations of the SOR) was sent to Applicant on January 9, 2009. Applicant received the FORM on January 22, 2009. Applicant submitted a response to the FORM within the 30-day time

period. On March 24, 2009, Department Counsel indicated he had no objection to the information provided by Applicant. The case file was assigned to me on March 27, 2009.

RULINGS ON PROCEDURE

On January 9, 2009, the Government moved to amend the SOR by adding another subparagraph to Guideline F. The proposed amendment reads, "1.j. You are indebted to Citi Financial in the approximate amount of \$8,441 on a judgment filed on or about April 2007. As of October 16, 2008, this debt had not been paid." In Section V of the FORM, the government requested Applicant respond to the proposed amendment within 30 days of receipt of the FORM. Applicant's response to the FORM did not include a reply to the amendment. Items 6, 7, and 8 support this amendment. Pursuant to E3.1.17. of the Directive, allowing changes to be made in the SOR so that it conforms to the evidence presented, the Government's Motion is granted.

Findings of Fact

Applicant is divorced with three children. His 17-year-old child lives with his former wife. He has been employed as a systems administrator with his current employer since March 1998. His military background includes 15 years in the United States Army where he received an Honorable Discharge in April 1998. He seeks a security clearance.

The SOR contains 10 allegations under the financial considerations guideline. Applicant admitted all allegations listed under SOR 1.a. through SOR 1.i. The credit bureau report (CBR, Item 7) in SOR 1.j. proves that a judgment of \$8,441 was filed against Applicant in April 2007. In addition to Applicant's admissions, I make the following factual findings.

Applicant owes 10 creditors on overdue accounts totaling approximately \$42,000. The accounts include credit cards, medical accounts and one judgment.

- SOR 1.a., \$705. Applicant made a payment of \$234.46 on August 29, 2008 (Item 6). Applicant avers he paid the debt completely in January 2009, but was unable to produce documentation. Applicant still owes the account.

- SOR 1.b., \$396. Applicant claims the creditors in SOR 1.b. and 1.i. (\$635) describe the same creditor for different accounts. A representative of the collection agency agreed to accept a settlement of \$200 to pay both accounts. No supporting documentation showing payment of the settlement has been produced.

- SOR 1.c., \$8,162. This account was opened in May 2000, and became delinquent in October 2007. Applicant indicated (with documentation) he paid \$709 on March 2 and March 4, 2009. However, he provided no documentation of paying \$390 on March 15, 2009, which he claimed he did "to catch them back up (response to FORM)."

Furthermore, there is no indication from the creditor that Applicant's payments restored the account to good standing.

- SOR 1.d., \$5,216. The final activity on this account was in June 2006. Applicant says that he has been paying \$300 every month to a collection firm since November 2008. Even though Applicant stated the collection firm did not provide information about payments, Applicant could have provided the same type of documentary proof he provided in response to SOR 1.c., with internet printouts of his checking account. He still owes this account.

- SOR 1.e., \$1,929. Applicant claimed he had paid them \$800. No documentation was provided to support his claim of payments. Applicant is still responsible for this account.

- SOR 1.f., \$1,295. Applicant claimed in his response to the FORM he paid \$647 to the collection agency to pay the account off. The documentation in the attachment shows he paid \$647.75 in settlement of the delinquent account. This allegation is resolved in his favor.

- SOR 1.g., \$15,286. The last activity on the account was in November 2005. Applicant indicates that he has not found the current holder of the account. SOR 1.g. is resolved against Applicant.

- SOR 1.h., \$931. Applicant claimed he paid this delinquent account but had not received the receipt. As he had done with SOR 1.c., Applicant could have provided documentation from his bank account or internet that the debt was paid. Applicant is still responsible for the account.

- SOR 1.i., \$635. Applicant states he received an offer of settlement of \$200 to pay this debt and the account in SOR 1.b. Applicant has not provided verification that he paid the settlement.

- SOR 1.j., \$8,441. A judgment was filed against Applicant in April 2007. This judgment is resolved against Applicant.

Applicant's explanation for his financial problems is attached to his responses to interrogatories he furnished on September 15, 2008 (Item 6). He stated that his daughter got married when neither she nor her husband had a job. Applicant did not indicate when his daughter had these personal problems. Applicant's former wife was supposed to pay for half the wedding, and because she did not, he had to pay an extra \$8,000. He also found out his daughter was pregnant, and he and her mother-in-law had to pay for her diagnostic, pregnancy exams because she had no insurance. Applicant's daughter had the baby. Then, her husband entered the United States Army. He decided he wanted a divorce a year later.

It cost Applicant \$1,500 for an attorney to represent his daughter in the divorce. The daughter's husband came home for the court action. For some unknown reason, the daughter's husband changed his mind about the divorce, and returned to his overseas duty location.

While overseas, the husband stopped the allotment he had established for Applicant's daughter and their child. Applicant stated that it took an extended amount of time to get the allotment reinstated through the command.

Applicant noted his daughter and his son are currently working, and taking care of some of the bills. Applicant noted he was getting caught up by paying off some of the bills. He provided documentation in Item 6 that he was indebted to an unlisted collection agency for a computer company, and to a collection firm that had offered him a \$208 settlement on an original \$1,402 delinquent account.

Character Evidence

Applicant provided no character evidence such as statements about his job performance or about his lifestyle away from the job. He provided no evidence of financial counseling.

In Item 6, Applicant claimed he is paying the creditor in SOR 1.i. \$50 a month until the account is paid. However, he provided no documentation.

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 flexible rules of law. Recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's ultimate adjudicative goal is a fair, impartial and common sense decision. According to the AG, the entire process is a careful, thorough evaluation 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 ¶ 2b. 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 is not restricted to normal duty hours. Rather, the relationship is an-around-the-clock responsibility between an applicant and the federal government. 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.

Analysis

Financial Considerations (FC)

18. *The Concern.* “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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.”

The Government’s case has been established under FC disqualifying condition (DC) 19.a. (*inability or unwillingness to satisfy debts*) and FC DC 19.c. (*a history of not meeting financial obligations*). Applicant owes approximately \$42,000 in debt, and is unable to repay. The CBRs (Items 7 and 8) show the debts became delinquent between November 2005 and October 2007.

There are four mitigating conditions (MC) that are potentially applicable to the circumstances. They are: 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*); FC MC 20.b. (*the conditions that resulted in the financial problems were largely beyond the person’s control, and the individual acted reasonably under the circumstances*); 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 resolved or under control*); and, FC MC 20.d. (*the individual initiated a good-faith effort to repay creditors or otherwise resolve*

debts). FC MC 20.a. does not apply. Although two of the debts fell delinquent in 2005 seven of the past due accounts and one judgment are less than four years old. Though I acknowledge his payoff of one creditor in February 2009 and other partial payments to a few of the other listed creditors, he still owes about \$40,300 to nine creditors. His financial situation continues to cast doubt on Applicant's reliability, trustworthiness and judgment.

Applicant receives mitigation under FC MC 20.b. for the unexpected decision of his former wife not to pay for half his daughter's wedding, and leaving him with a wedding bill of about \$8,000. Applicant receives credit for supporting his daughter, husband, and their child for varying periods of time when his daughter and husband were not working. Applicant is entitled to additional mitigation for having to provide food and shelter for his daughter when her husband was on an overseas assignment. Applicant receives some mitigation for paying for his daughter's legal expenses of about \$1,500 for a divorce that did not occur. Finally, Applicant should receive additional credit for providing food and shelter to his daughter and her child during the time he was trying to get the allotment reinstated.

FC MC 20.c. does not apply as there is no evidence Applicant has ever participated in financial counseling. Applicant is still more than \$40,000 in debt, so Applicant's indebtedness cannot be considered under control.

FC MC 20.d. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) has only limited application. It is clear Applicant has made \$1,635 in documented payments to the listed creditors. Using SOR 1.b. as an example, Applicant demonstrated with the assistance of internet-generated documents that he made payments to the creditor. However, Applicant failed to explain why he did not employ the same methodology to prove he had paid the other creditors. Applicant's inability to provide the necessary documentation to substantiate his payment claims negatively affects the believability of those claims. Applicant's favorable evidence under FC C 20.b. and 20.d. is not enough to overcome the adverse evidence under FC DC 19.a. and 19.c.

Whole Person Concept (WPC)

The AG indicates the ultimate determination of whether to grant a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and whole person concept. The WPC is made of nine general policy factors:

- (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) extent to which the participation is voluntary;
- (6) the presence or absence of rehabilitation and other 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.

Applicant was in the service for 15 years before starting his current job in March 1998. Based on the credit bureau reports revealing when the listed debts became delinquent, some time between November 2005 and October 2007, Applicant paid for an entire wedding costing about \$8,000. He paid \$1,500 in legal expenses for a divorce. Also, he paid shelter and food expenses for his daughter and her child for an extended period of time. However, for the same reasons Applicant supported his payment claims to some of the debts he paid on or off, he had an obligation to provide documentation showing that he shouldered the costs connected with his daughter's marital and support issues. His inability to produce any documentation for the wedding, legal expenses, and follow-up support he provided for his daughter and child, raise lingering concerns over the reasonableness of his actions in addressing his accumulating debt. In addition, given a lack documentation for debts he claims he paid, combined with the failure to provide character evidence relating to his job performance and lifestyle, and the absence of financial counseling, Applicant has failed to demonstrate he qualifies for a security clearance under the FC guideline.

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 (Financial Considerations, 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.	For Applicant
Subparagraph 1.g.	Against Applicant
Subparagraph 1.h.	Against Applicant
Subparagraph 1.i.	Against Applicant
Subparagraph 1.j.	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.

Paul J. Mason
Administrative Judge