



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



In the matter of:)
)
) ISCR Case No. 08-07352
SSN:)
)
Applicant for Security Clearance)

Appearances

For Government: Caroline H. Jeffreys, Esquire, Department Counsel
For Applicant: *Pro se*

May 14, 2009

Decision

MASON, Paul J., Administrative Judge:

Based on a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted his Security Clearance Application (SCA) on December 20, 2007. On January 23, 2009, 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.

Applicant submitted his answer to the SOR on February 20, 2009. DOHA issued a notice of hearing on March 6, 2009 for a hearing on March 25, 2009. At the hearing, four exhibits (GE 1 through 4) were admitted in evidence without objection to support the government's case. Applicant testified and submitted four exhibits (AE A-AE D). In the time allowed for him to furnish additional documentation, he submitted AE E through I. DOHA received the transcript, and the record closed on April 10, 2009.

Applicant is 45 years old. He remarried in February 2009. He has one child from a previous marriage. He served in the United States Air Force from March 1983 to December 2003. According to his security clearance application (SCA) (GE 1), he is presently in the active reserves. He has worked as a computer operator for a defense contractor since August 2007. He seeks a security clearance.

Findings of Fact

The SOR lists 12 delinquent accounts under the financial considerations guideline, totaling \$50,242. The debts became delinquent between 2002 and 2008 (GE 3, 4). Applicant admitted all factual allegations except for SOR 1.j., a worthless check his former wife wrote. She provided restitution for the check in 2008 (Tr. 73; GE 4). SOR 1.j is found in Applicant's favor, and reduces the total indebtedness to \$50,139. Applicant's primary position regarding the listed debts is that his former wife, whom he was married to from January 24, 2004 (GE 1) to November 6, 2008 (AE A), was not paying the bills after he left for his overseas job on January 26, 2004. Applicant claims he did not find out about the delinquent bills until June 2007 when he was stateside on business at the United States Air Force base in the region (Tr. 61). He testified he found his house a mess and his mortgage behind by 10 months (Tr. 41). GE 3 shows Applicant's mortgage was delinquent three times in 2006. AE B (credit report) indicates, according to the Credit Report Key located at the end of the exhibit, that his mortgage was delinquent 13 times in seven years before January 2009, and overdue by 90 days on 8 occasions. Yet, the 24-month history on the account, dating from December 2008, shows the mortgage delinquent by 30 days on three occasions in 2008, and no occasions in 2007.

Applicant never checked on the status of any of the debts; he claims he never received notice of any debt problem because all the mail came to his home address in the United States (U.S.), and he was not using any credit cards at his overseas work location (Tr. 43).

In response to the overdue debts identified in SOR 1.a., 1.b., 1.e., 1.k.,¹ that either were past due or became delinquent before Applicant left on his overseas employment on January 26, 2004, he realized the debts were delinquent though he

¹ Without SOR 1.i., the total past due amount is \$32,415 SOR 1.i. is also included because the last activity on this debt (GE 3) is August 2003, about five months before Applicant began his overseas job. After adding SOR 1.i., the total is \$47,170.

never contacted the creditors after the debts became delinquent (Tr. 46). He believed his wife would be making payments on those debts as well (*Id.*). He stated that:

Yes, because at the time I was getting ready to retire, and at the time my money was very tight for me, which is one of the main reasons why I too, that job in [European country], was to get out of debt because my income in [European country] was not only very good, but it was also tax free because of the amount of time I stayed there, hence, there again, trying to take care of my financial responsibilities and the work that I do. That's what my goal was (Tr. 45).

SOR 1.a. - credit card (\$12,009). The last activity or last payment on this account was in July 2003 (GE 3). Applicant still owes this debt.

SOR 1.b. - credit card (\$11,852). The last activity on this account was June 2003 (GE 3). Applicant still owes this account.

SOR 1.c. - credit card (\$856). The last activity on this account was October 2005. The debt remains unpaid.

SOR 1.d. - telephone account (\$166). The last activity on this account was in December 2007. On March 30, 2009, Applicant was notified his payment of \$167.47 paid the account in full (AE G).

SOR 1.e. - deficiency balance (\$1,483). The last payment on this debt was December 2002 (GE 3). Applicant indicated under question 27b. of his SCA (GE 1) that his car was repossessed in December 2003.² In his post hearing submission dated April 2, 2009, Applicant explained that the collection agency for the creditor had gone bankrupt, and he would continue to pursue the proper source to pay (AE I). Applicant is responsible for the account.

SOR 1.f. - (\$255). The last activity on this account was December 2003 (GE 3). On March 27, 2009, Applicant paid this \$255 (AE E) in full satisfaction of this creditor.

SOR 1.g. - satellite television (\$503). The last activity on this account was in March 2008, and the account became delinquent in November 2008 (GE 3). Applicant testified he was disputing the debt, and referred to the documentation from the debt consolidation firm (Tr. 47; AE C). On March 29, 2009, Applicant paid the creditor \$503 by credit card to eliminate the delinquent amount, and on March 30, 2009, Applicant was advised his account was zero (AE F). There is no additional information in the record regarding Applicant's dispute with the SOR 1.g. creditor.

² In his SCA (GE 1), Applicant answered "No" to debt questions 27a. (debts over 180 days in the last 7 years) and question 27b. (debts at least 90 days delinquent). He then stated he was currently reviewing his finances and divorcing his wife, after returning from overseas where he had been working for three years.

SOR 1.h. - credit card (\$646). The last activity on this account was in November 2005. Applicant owes this debt.

SOR 1.i. - credit card (\$14,755). The last activity on this account was August 2003. Applicant still owes the debt.

SOR 1.j. - insufficient funds check (\$103). The check was paid by Applicant's wife in 2008 (AE H). The account is resolved in Applicant's favor.

SOR 1.k. - credit card (\$7,071). The last activity on this account was February 2003.

SOR 1.l. - unidentified (\$543). The last activity on this account was in June 2006. Applicant is responsible for this debt.

Of the 12 listed delinquent accounts that Applicant blamed his wife for not paying, activity or payment on five accounts (SOR 1.a., 1.b., 1.e., 1.i., and 1.k.) stopped before Applicant left on his overseas job in January 2004. The total amount of past due debt on four of the five accounts is \$32,415. The total for five accounts is \$47,170. The remaining seven delinquent debts total \$2,969.

In his interrogatory responses (GE 2), Applicant indicated he had taken no action on the debts because he received legal advice recommending he obtain a final divorce order to avoid the possibility of having to pay for debt for which he was not legally responsible (GE 2; Tr. 44). No additional evidence was provided regarding the legal advice.

Although Applicant testified he started negotiating with the debt firm (AE C) during the Christmas holidays of 2008 (Tr. 62), the documentation from the debt consolidation firm is dated March 3, 2009 (AE C). Applicant testified he made his first payment (\$1,000) to the firm in February 2009. No additional documentation was provided regarding the actual service contract or payment.

Applicant recalled having financial counseling in 1987 while in the service (Tr. 63). In the future, if he cannot afford an item he intends to buy, he is not going to charge it, and he is not going to take out a loan (*Id.*).

Applicant remarried in February 2009. His debt consolidation plan (AE C) includes delinquent debts of his current wife totaling about \$17,000. Applicant does not know why his wife has financial problems (Tr. 56).

Applicant is scheduled to begin training on the day after the hearing for a job that is located in the Middle East. He is confident he will not have the same financial problems while working overseas that he had with his former wife because the debt firm payments come directly out of his checking account, and his current wife has no access to the checking account (*Id.*). In addition, the periods of employment rotations are only

60 to 90 days (AE D), so he can periodically return to the United States, an option that he claimed was not available to him in his previous overseas job (Tr. 56-57).

Having carefully observed Applicant as he testified about his financial problems, and his claim his wife was supposed to pay the bills while he was working overseas, his credibility is undermined by the amount of debt he knew he had before he departed on the overseas job in January 2004, the overall lack of independent evidence to support his testimony concerning his former wife's financial responsibilities while he was working overseas, and the sketchy evidence describing his financial practices.

Character Evidence

Applicant's first witness (A) has become good friends with him over the last three years because of common interests, and both serving in the military. Witness A is aware of Applicant's debt problems and his participation in a debt consolidation agency. Witness A's belief Applicant's former wife was a drug user is based on the information Applicant provided him, and on Witness A's visit to Applicant's house where he saw drug needles on the floor (Tr. 20). He also believes Applicant's former wife is the reason for Applicant's financial problems (*Id.*).

Witness B has known Applicant for 10 to 12 years. They met at a horseshoe tournament. Applicant told Witness B he was sending money home from his overseas job, but his wife was not paying the bills. (Tr. 27). According to Witness B, Applicant also explained he had contacted a debt consolidation agency.

Witness C, retired from the military after serving 27 years, sees Applicant socially about 15 to 20 times a month. Applicant told Witness C he has a plan and is paying off his creditors (Tr. 32). Witness C believes Applicant is trustworthy (Tr. 33).

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. Reasonable 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 sensible, 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."

FC disqualifying condition (DC) ¶ 19.a. (*inability or unwillingness to satisfy debts*), and FC DC ¶ 19.c. (*a history not meeting financial obligations*) are applicable to the circumstances of this case. When the SOR was published in January 2009, Applicant owed more than \$50,000. After tabulating the delinquent accounts in SOR 1.a., 1.b. 1.e., 1.i., and 1k., more than \$47,000, or more than 90% of the larger amount was delinquent in January 2004 when he left for his overseas job.

Evidence of financial problems may be mitigated by FC mitigating condition (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 reliability, trustworthiness, and good judgment*), however this condition does not apply. Several of the debts are six years old, and one became delinquent as recently as 2008. The lack of documented evidence showing payments of the overdue accounts until four or five days after the hearing continues to project an adverse impact on Applicant's judgment and reliability.

FC MC ¶ 20.b. (*the conditions that resulted in the financial problem were largely beyond the person's control and the individual acted responsibly under the circumstances*) generally applies when loss of employment or other unexpected event hinders or prevents an individual from handling his financial responsibilities. The mitigating condition also requires the individual to act responsibly under the circumstances. The unexpected event in Applicant's view is his wife's failure to pay the bills as agreed. Applicant's second claim is he had no way of knowing the bills were not being paid between January 2004 and June 2007, when he returned on business, and inspected his house. Though I do not challenge Applicant's probable agreement with his wife to pay the bills while he was away, the sizable amount of the past due debt should have persuaded Applicant to exert more management over the debts himself. I do not find Applicant's lack-of-notice claim believable. In sum, FC MC ¶ 20.b. is inapplicable for mitigation as Applicant did not act responsibly under the circumstances to address the overdue debts.

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. Though Applicant testified he received counseling in 1987, there is no evidence that reveals whether he has ever incorporated the counseling in the management of his finances and/or the handling of his delinquent debt. Moreover, there are no clear indications his financial problems are under control. Notwithstanding his claims of negotiating with the debt firm during the Christmas holidays in 2008, his documentation shows he joined the debt plan in March 2009. Terms of the plan and the \$1,000 payment Applicant purportedly made are not substantiated. The absence of evidence to support Applicant's testimony about the debt plan, as well as the brief period of time Applicant has been enrolled in the plan, remove FC MC ¶ 20.c. from consideration.

Applicant receives no consideration under FC MC ¶ 20.d. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) because he waited more than two months after he received the SOR to take any action on the listed, delinquent debts. Considering the size of his overall debt, the length of time some of the debt was delinquent, and the lack of attention he devoted toward his debt since January 2004, it is too early for me to conclude that his financial indebtedness is no longer a security concern.

Whole Person Concept (WPC)

I have examined the evidence with the disqualifying and mitigating conditions in my ultimate finding against Applicant under the FC guideline. I have also weighed the circumstances within the context of nine variables known as the whole person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors:

¶ 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 the participation was 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.

In January 2004, Applicant was about 40 years old. The credit reports show he owed more than \$32,415 on four past due accounts. With the addition of SOR 1.i., that also became past due before January 2004, the total of past due debt was more than \$47,000. The existence of an agreement with his wife to pay the debt is not contested. However, Applicant's delinquent debt situation in January 2004 was different from the ordinary individual working overseas with delinquent debt. Applicant knew he had the delinquent debt before he went to work overseas. The credit reports indicate the debt was generated before he married his former wife in January 2004.

There was much testimony from Applicant's three friends about his former wife being a drug user in June 2007 (when Applicant claims he initially discovered the debt problems), and leaving Applicant's home in disorder with drug needles on the floor. His former wife may have had a drug problem which exacerbated the payment of debts. However, Applicant's significant past due debt predated their marriage, and the testimony supporting her drug problem has little probative value. On balance, the former wife's drug abuse and financial irresponsibility do not extinguish Applicant's indebtedness which he knew about in January 2004.

Applicant also claimed that as a result of legal advice, he did not act on the delinquent debt sooner. In addition to lacking documentation to support the claim, Applicant's claim is not credible due to his knowledge of at least four (and probably five) delinquent debts when he left for overseas employment in January 2004.

I have carefully weighed all the evidence. In January 2004, Applicant knew he was carrying a significant amount of past due debt, yet he let his former wife pay the bills. He should have monitored the bill paying so that he could intervene to ensure the bills were being paid. Instead, he acted irresponsibly under the circumstances in not handling the past due debts in a prudent manner. His enrollment in the debt plan in early March 2009, and his payment of four small debts (10% of the total debt) four days

after the hearing do not provide me with sufficient confidence to believe he is truly committed to paying the remaining debt. Though he has provided encouraging statements about how he plans to manage his future financial decisions, his record of financial irresponsibility makes it probable his current financial problems will persist. Judging by the totality of the circumstances, I conclude the FC guideline against Applicant.

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.	For Applicant
Subparagraph 1.e.	Against Applicant
Subparagraph 1.f.	For Applicant
Subparagraph 1.g.	For Applicant
Subparagraph 1.h.	Against Applicant
Subparagraph 1.i.	Against Applicant
Subparagraph 1.j.	For Applicant
Subparagraph 1.k.	Against Applicant
Subparagraph 1.l.	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.

Paul J. Mason
Administrative Judge

