



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



In the matter of:)	
)	
)	ISCR Case No. 08-07408
)	
Applicant for Security Clearance)	

Appearances

For Government: Emilio Jaksetic, Esquire, Department Counsel
For Applicant: *Pro Se*

June 26, 2009

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings, exhibits, and testimony, I conclude that Applicant failed to mitigate the Government's security concerns under Guideline F, Financial Considerations. His eligibility for a security clearance is denied.

Applicant completed and signed an Electronic Questionnaire for Investigations Processing (e-QIP) on September 26, 2005. He was interviewed about his financial issues by authorized investigators from the U.S. Office of Personnel Management (OPM) on January 4, 2007 and June 27, 2007. On October 21, 2008, Applicant provided a notarized response to interrogatories posed by the Defense Office of Hearings and Appeals (DOHA). On January 30, 2009, DOHA issued Applicant a Statement of Reasons (SOR) detailing the 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.

On February 27, 2009, Applicant answered the SOR in writing and elected to have a hearing before an administrative judge. The case was assigned to me on April 2, 2009. I convened a hearing on May 13, 2009, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses and introduced six exhibits, which were marked Ex. 1 through 6 and admitted to the record without objection. Applicant testified on his own behalf and called no witnesses. He introduced thirteen exhibits, which were marked as Ex. A through M and admitted to the record without objection. DOHA received the transcript (Tr.) of the hearing on May 21, 2009.

Findings of Fact

The SOR contains nine allegations of disqualifying conduct under AG F, Financial Considerations (SOR ¶¶ 1.a. through 1.i.) In his Answer to the SOR, Applicant admitted four allegations and denied five. Applicant's admissions are included herein as findings of fact.

Applicant is 54 years old, a high school graduate, and employed by a government contractor. In March 2005, Applicant retired and received an honorable discharge after serving for 25 years in the U.S. military. He was first awarded a security clearance in 1988 during his military service. He now seeks a security clearance as a government contractor. (Ex. 1; Tr. 57-61.)

Applicant was married for the first time in 1971. Two children were born to the marriage. He and his first wife divorced in 1979. Applicant married for the second time in 1982. He and his second wife have three children, one of whom is deceased. Applicant and his second wife have been separated, but not divorced, since May 1989. His wife does not participate in Applicant's health insurance. (Ex. 1; Tr. 64-65, 105-106.)

Applicant currently lives in a spouse-like relationship with a woman who has two young children from a previous relationship. Applicant contributes to the support of the woman's children. He also has a four-year-old child from another relationship, who lives elsewhere with his mother. Monthly child support payments of \$809 are deducted from his military retirement pay for the support of the four-year-old. (Ex. L; Tr. 107-109, 114-115.)

Applicant owes a tax lien of \$18,056¹ to the Internal Revenue Service. The lien, alleged at SOR ¶ 1.a., was filed in May 1996. Applicant's wife filed taxes in the late 1980s and early 1990s that claimed their three children as dependents. Applicant also

¹ This figure includes interest and penalties. (Ex. 2 at 7-8.)

claimed the children as dependents, and he did not change his tax status to reflect that the children were not his dependents. Applicant made \$500 monthly payments on the tax debt from 1994 to about the beginning of 1997. When he changed his job and status from active reserve to active duty, money to pay the federal tax lien was not deducted from his pay, although he was aware that the federal government was intercepting his annual federal tax refunds for several years to pay the delinquent tax lien. (Ex. 2 at 7-8; Ex. 3 at 2; Tr. 62-63.)

In November 2008, Applicant hired a tax representation firm to assist him in resolving his federal tax delinquency. He has not filed required documents with the firm, and until it receives the documents from Applicant, it cannot prepare his amended tax returns and move forward in representing him. Applicant has made two payments of approximately \$1100 to the tax representation firm. One of the two payments was delinquent, and it was not clear whether it had been received and credited to Applicant's account. Applicant's checking account of November 2008 showed a payment of \$430 to the tax representation firm on November 7, 2008. At the time of his hearing, the matter of Applicant's delinquent federal tax lien remained unresolved. (Ex. A; Ex. J; Tr.65-69.)

Applicant opened an account with a creditor for a debit card. He overspent the amount on the card and did not replace the overspent amount, which totaled \$2,373. Applicant thought he opened the account in June 2004; however, his credit reports indicated he opened the account in 2000, and the account was charged off in September 2003. Applicant denied the debt, which was alleged at SOR ¶ 1.b. (Ex. 2 at 19; Ex. 3; Ex. 4; Tr. 69-71.)

At his hearing, Applicant admitted owing the creditor the debt alleged at SOR ¶ 1.b. In response to DOHA interrogatories, he provided a letter to the creditor, dated October 21, 2008, requesting resolution of the debt. Applicant had not received a reply from the creditor, and the debt remained unresolved. (Ex. 2 at 19; Tr. 70-71.)

Applicant acquired a loan from a creditor in 2004. He fell behind in his payments, and the account was charged off in April 2005. Applicant owed the creditor \$5,137. This delinquency was alleged at SOR ¶ 1.c. Applicant arranged for monthly deductions of \$250 to be made from his checking account to the creditor. Then, his bank went out of business and was taken over by another bank. The second bank failed to make the authorized deductions, and the account became delinquent again. Applicant provided documents to corroborate his statement that he had contacted the second bank and authorized the deductions to begin again. He provided documents showing that the authorized deductions had been made in August, October, and November 2008. (Ex. 4; Ex. E; Ex. F; Ex. G; Tr. 71-74.)

Applicant purchased an automobile, and because of his bad credit, was required a pay a high interest rate. He fell behind in his payments, and the automobile was

repossessed. He owes the creditor approximately \$6,593² on the automobile debt. This debt was alleged at SOR ¶ 1.d. (Tr. 74.)

The creditor wrote to Applicant on March 9, 2009 and offered to settle the debt for \$1,844.81, provided Applicant remitted the full amount on or before March 25, 2009. At his hearing, Applicant stated he had not responded to the creditor's offer and planned to pay the debt at some unspecified future date. (Ex. D; Tr. 74-76.)

The SOR alleged at ¶ 1.e. that Applicant owed a delinquent debt of \$432 to a credit card company. In his answer to the SOR, Applicant denied the debt. However, at his hearing, he provided letters, dated November 3, 2008, from the creditor stating that the debt had been transferred to successor creditor. The original creditor provided information for contacting the successor creditor. Applicant acknowledged the debt and stated he had made no arrangements to contact the creditor to satisfy the debt. (Ex. B; Ex. C; Tr. 76-77.)

The SOR alleged at ¶¶ 1.f. and 1.g. that Applicant was responsible for two judgments levied by unidentified medical providers and the judgments had not been satisfied. The judgment alleged at SOR ¶ 1.f. was for \$1,294. The judgment alleged at SOR ¶ 1.g. was for \$1,488. Both judgments were shown on Applicant's credit bureau report of November 17, 2008. Applicant denied both debts. He denied knowledge of any court actions filed against him for unpaid medical debts. He stated that as a former service member, his medical services were provided by the Department of Veterans Affairs, and he had no need to seek medical services from the private sector. The government acknowledged that the credit report was the only evidence it had showing the judgments against Applicant. Applicant provided a credit report, dated May 7, 2009, which did not list any judgments against Applicant for unpaid medical debts. I found that the evidence not sufficient to conclude that Applicant was responsible for the judgments alleged at SOR ¶¶ 1.f. and 1.g. (Ex. 6; Ex. M; Tr. 79-83.)

The SOR alleged at ¶ 1.h. that Applicant owed a delinquent debt of \$6,575. Applicant provided documentation to corroborate his statement that he had in place a payment plan authorizing a monthly allotment of \$228 from his military retirement pay to satisfy the debt. (Ex. L; Tr. 77-78.)

Applicant denied he owed debt of \$1,005 to a bank creditor, although he acknowledged he may have owed a credit card with the same name as the bank. This debt was alleged at SOR ¶ 1.i. The debt was identified on Applicant's credit report of November 2005. The government acknowledged that it had no other evidence of the debt. Applicant's credit report of May 7, 2009 did not list the debt. I found the evidence not sufficient to conclude that Applicant was responsible for the debt. (Ex. 3; Ex. M; Tr. 83-84.)

² A letter from the creditor, dated March 9, 2009, identified the amount of the debt as \$5,951.02. (Ex. D.)

Applicant does not have a 401 K plan, and he does not have a savings account. He does not own a vehicle. He has two checking accounts. He has not received formal financial credit counseling. (Tr. 83-86, 90-92.)

Applicant reports a monthly net income of approximately \$4,000 from his job as a federal contractor. In addition, he nets \$1,042 each month in military retirement pay, after deductions for allocations to pay down the debt alleged at SOR ¶ 1.h. and \$809 in child support. (Ex. K; Ex. L; Tr. 110-111.)

Applicant's monthly fixed expenses are as follows: rent: \$1,465; utilities: \$400; food: \$300; clothing: \$100; and day care: \$250. He reports a net monthly remainder of approximately \$2,500. (Tr. 111-114.)

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, the administrative judge applies these 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 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 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 conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant accumulated substantial delinquent debt and was unable to pay his creditors. This evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant’s financial delinquencies. Unresolved financial delinquency might be mitigated if it “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.” (AG ¶ 20(a)). Additionally, unresolved financial delinquency might be mitigated if “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.” (AG ¶ 20(b)). Still other mitigating circumstances that might

be applicable include evidence that “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” (AG ¶ 20(c) or “the individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts” (AG ¶ 20(d)). Finally, security concerns related to financial delinquencies might be mitigated if “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.” (AG ¶ 20(e)).

Applicant’s federal tax lien arose in the 1990s and remained unresolved even though he had reliable and stable employment. While he employed a tax resolution firm to assist him in resolving the matter with the Internal Revenue Service, he failed to provide the firm with the necessary documents to begin the resolution process. Applicant’s large unresolved tax lien of over \$18,000 raises security concerns which continue to the present day, a situation which raises concerns about Applicant’s good judgment.

To his credit, Applicant has made efforts to resolve the debts alleged at SOR ¶¶ 1.c. and 1.h. He provided documentation and testimony to dispute the legitimacy of the debts alleged at SOR ¶¶ 1.f., 1.g., and 1.i. However, he had not yet made a commitment to begin regular and consistent payment of the debts alleged at SOR ¶¶ 1.b., 1.d., and 1.e. Despite some good faith efforts to pay some of his debts, Applicant has not demonstrated a track record of timely payments. It is not clear that he will be able to manage his finances and avoid financial delinquency in the future. Curiously, he has not arranged payment plans and set aside money to meet several of his financial delinquencies, despite his substantial monthly net remainder. I conclude that AG ¶¶ 20(d) and 20(e) apply partially in mitigation, but that AG ¶¶ 20(a), 20(b), and 20(c) do not apply in mitigation to the facts of Applicant’s case.

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 relevant 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 commonsense 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's financial problems began more than ten years ago, when he was a mature adult. He has known he owed a federal tax lien since the mid-1990s. While he engaged a tax resolution firm to assist him in resolving the lien, he failed to timely provide the firm with the documents necessary to initiate the resolution process. His failure to address this and three other financial delinquencies over a significant period of time raises concerns about his judgment and reliability.

To his credit, Applicant has taken action to address and successfully dispute some of his delinquencies. However, these actions are recent and do not demonstrate a track record of satisfaction of debt consistently over time. He does not have a plan to resolve his remaining debts and to avoid financial problems in the future.

Applicant can reapply for a security clearance one year after the date this decision becomes final. If he wishes, he can produce new evidence that addresses the Government's current security concerns.

Overall, the record evidence leaves me with questions and doubts at the present time as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising from his financial delinquencies.

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. and 1.b.:	Against Applicant
Subparagraph 1.c.:	For Applicant
Subparagraphs 1.d. and 1.e.:	Against Applicant
Subparagraphs 1.f. through 1.i.:	For 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.

Joan Caton Anthony
Administrative Judge