



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



In the matter of:)	
)	
)	ISCR Case No. 08-07446
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert Coacher, Esquire, Department Counsel
For Applicant: Pro Se

May 20, 2009

Decision

HEINY, Claude R., Administrative Judge:

Applicant owes more than \$42,000 in past due obligations that have been placed for collection. Applicant has failed to rebut or mitigate the government's security concerns under financial considerations. Clearance is denied.

Statement of the Case

Applicant contests the Defense Department's intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) on September 25, 2008, detailing security concerns under financial considerations.

¹ 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 November 21, 2008, Applicant answered the SOR, and requested a hearing. On February 12, 2009, I was assigned the case. On February 19, 2009, DOHA issued a notice of hearing scheduling the hearing which was held on March 17, 2009.

The government offered Exhibits (Ex.) 1 through 3, which were admitted into evidence. Applicant testified on his own behalf. The record was held open one week to allow Applicant to submit documents. No documents were received. On March 31, 2009, the transcript (Tr.) was received.

Findings of Fact

In his Answer to the SOR, Applicant denied the factual allegations in ¶¶ 1.a, 1.b, 1.i, 1.j, and 1.o of the SOR. He admitted the remaining factual allegations. The admissions are admitted into evidence.

Applicant is a 39-year-old internet security and vulnerability analyst who has worked for a defense contractor since December 2006, and is seeking to obtain a security clearance. (Tr. 18) The SOR alleges Applicant owes 17 debts totaling approximately \$45,000. Applicant asserts four of the debts, which total approximately \$3,300, are debts belonging to his ex-wife. Applicant asserts he returned some traction equipment (SOR ¶ 1.o, \$355) used in his physical therapy. The equipment was not covered by his health insurance. In 2005, Applicant asserts he returned the item but was never credited with the return. (Tr. 41)

In September 2000, Applicant separated from the Navy as an E-5 having enlisted in January 1993. (Ex. 1) While in the Navy, Applicant held a clearance. (Tr. 23) From September 2000 until July 2003, he had three different sales jobs at which he stated he did not perform well. (Tr. 20-21) During those years there were also brief periods of unemployment. His wife worked as a self-employed court reporter. (Tr. 21) In July 2003, Applicant separated from his ex-wife and they divorced in March 2004. Prior to the marriage, Applicant's now ex-wife had a son. Applicant and his wife married when the child was one year old. Following the divorce, Applicant agreed to provide tuition for a private school for the child and his ex-wife agreed to allow visitation. (Tr. 22)

Following the divorce, his ex-wife stayed in their home and assumed the mortgage. Applicant continued to make payments on real estate property located with the home. His ex-wife denied visitation when payments were not made. In order to keep his obligation to his ex-wife current so he could see the child, Applicant failed to make credit card payments. (Tr. 22)

In November 2008, in response to the SOR, Applicant stated he had put together a personal plan to pay off many of his debts in the coming months. He planned to start with the smaller and more recent debts and work backwards from there. The plan consisted of him and his wife understanding their debts. (Tr. 55) No payments have been made as a result of any plan.

Applicant has made no payment on the \$16,237 (SOR ¶ 1.a), \$2,103 (SOR ¶ 1.d), \$1,478 (SOR ¶ 1.e), \$283 (SOR ¶ 1.f, the remaining balance on a computer purchased while married and used by his ex-wife in her work), \$2,688 (SOR ¶ 1.h), \$1,014 (SOR ¶ 1.i), \$15,893 (SOR ¶ 1.m), and \$469 (SOR ¶ 1.p) he owes on a credit card debt. (Tr. 27) Applicant disputes the \$15,893 (SOR ¶ 1.m) credit card debt. In 1999 or 2000, he asserts he made two payments in one month that were not properly credited to his account. (Tr. 39) He stopped making payments on the debt when he failed to receive a return call from a supervisor at the credit card company.

Applicant asserts three of the debts (SOR ¶ 1.b, \$80, SOR ¶ 1.c, \$160, and SOR ¶ 1.j, \$411) were medical debts incurred by his ex-wife after they separated. (Tr. 29) While married, Applicant and his wife purchased a dining room set (SOR ¶ 1.i, \$2,716), which was awarded in the divorce to his wife. (Tr. 33) Applicant offered to submit a copy of the divorce decree, but no copy of the decree was received following the hearing.

Applicant asserted he thought he had paid the \$243 telephone bill (SOR ¶ 1.k), but provided no documentation showing payment. Applicant owes a \$184 electrical bill (SOR ¶ 1.q). (Tr. 42)

In July 2005, Applicant remarried. His wife is a case manager for a law firm. (Tr. 44) Applicant and his wife do not have a budget. (Tr. 45) Applicant owns a 2007 pick up truck and his wife owns a 2006 car on which their combined monthly car payments are more than \$1,000. Applicant also owes federal income tax for tax years 2003 through and including 2007. (Tr. 49) He owes more than \$3,400 in tax on which he pays \$200 each month. (Tr. 56) Applicant and his wife have approximately \$47,000 in student loans that are deferred until May 2009. (Tr. 62, 63)

Applicant makes \$58,000 a year. His wife makes \$48,000. (Tr. 53-54) Applicant has three or four current credit card accounts each less than \$1,000. He no longer uses the cards and is behind on payments for all the accounts. (Tr. 47) The credit card companies are calling him for payment. (Tr. 60)

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, these guidelines are applied 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

Revised Adjudicative (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances so as to meet his financial obligations.

The record evidence supports a conclusion Applicant has a history of financial problems. Applicant has 12 past due accounts placed for collection that total in excess of \$42,000. Applicant's history of delinquent debt is documented in his credit report, his SOR response, and his testimony at hearing. Throughout this process, he had admitted responsibility for all but four delinquent debts. None of the debts have been paid. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶19(c), "a history of not meeting financial obligations," apply.

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a) – (e) 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 has failed to document that four of the debts (SOR ¶ 1.b, 1.c, 1.i, and 1.j) are his ex-wife's obligations. These debts total approximately \$3,300. He failed to

document the return of the \$355 traction devise. (SOR ¶ 1.o) Even accepting these five debts, which total less than \$4,000, are not his obligations, he still has past due obligations placed for collection that total approximately \$42,000. None of the mitigating factors apply to the remaining 12 past due obligations.

Under AG ¶ 20(a), Applicant's debts remain unpaid so they are considered a current concern. There are numerous debts. The debts were incurred for credit card obligations, utility bills, and he owes past due federal tax. These debts are likely to recur. In fact Applicant is past due on his three or four current credit card accounts. AG ¶ 20(a) does not apply.

Under AG ¶ 20(b), Applicant experienced both separation and divorce along with the financial burden associated with each. However, he failed to establish how his 2004 divorce affects his current ability to pay his debts. Applicant and his current wife have a combined income of more that \$100,000 and the electric bill of less than \$200 remains unpaid. AG ¶ 20(b) has limited applicability.

Under AG ¶ 20(c) and ¶ 20(d), Applicant is paying the IRS \$200 per month on his past due tax obligation for tax years 2003 through 2007. This is a good faith effort to repay his debt. However, his income tax obligation is not listed as a debt of concern in the SOR. He has made no payment on any debt listed in the SOR. He is behind on his current credit card accounts and receiving calls demanding he pay his bills. AG ¶ 20(c) and ¶ 20(d) do not apply.

His failure to pay his past due obligations raises concerns about his current reliability, trustworthiness, and good judgment.

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 commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

