



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



In the matter of:)
)
-----) ISCR Case No. 08-07486
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Stephanie Hess, Esquire, Department Counsel
For Applicant: Pro Se

February 23, 2009

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on December 17, 2007. On October 15, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. 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.

Applicant requested a hearing before an Administrative Judge. I received the case assignment on December 5, 2008. DOHA issued a notice of hearing on January 13, 2009, and I convened the hearing as scheduled on February 3, 2009. The Government offered Exhibits (GE 1-3), which were received into the record without objection. Applicant testified in his own behalf. He submitted Exhibits (AE A-C), without

objection. DOHA received the transcript on February 11, 2009. Based upon a review of the record, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, dated November 3, 2008, Applicant admitted the factual allegations in ¶¶ 1.a through 1.e, 1.g through 1.i, 1.n and 1.q. He denied the other allegations. He provided additional information to support his request for eligibility for a security clearance.

Applicant is a 44-year-old employee of a defense contractor. He graduated from high school in 1984 and attended a community college in 1985. He served in the U.S. Navy from 1986 until his retirement in August 2006 (AE B). He held a clearance during his military career. He has been employed with his current employer since September 2007 (GE 1).¹

Applicant married in November 1986. He has three children from his marriage (Tr. 12). When Applicant retired, his wife informed him that she wanted a divorce. Applicant and his wife had financial difficulties during the marriage. His wife also had credit card debt when she married Applicant. They purchased a house and lived beyond their means using credit extensively. Applicant and his wife both used credit cards on a regular basis to “get by” each month. He estimates this was a trend in their marriage from 1996 until 2000. Applicant received financial counseling on several occasions but the bills kept mounting and despite working another job, he and his wife had delinquent debt that he could not pay. They filed for Chapter 7 bankruptcy in June 2002 (Tr. 14).

After the bankruptcy, Applicant and his wife bought a new vehicle and they were timely with payments. When Applicant was at sea, his wife continued to use credit cards and did not pay the household bills. Applicant did not know that their financial situation was deteriorating. He acknowledged that there was internet access on the ship but he did not have access to his banking accounts. He did not receive emails. Therefore, he did not realize the magnitude of the delinquent debt that was being amassed while he was deployed.

When Applicant and his wife separated and divorced in 2007, she received half of his property. Applicant paid alimony and child support directly to his wife (\$3,000 a month). His wife sought court relief in 2007, because she asserted that Applicant had not paid all the alimony or child support according to the Settlement Agreement. Applicant was found to be in arrears. He is attempting to contest the arrears because he paid the money directly to his ex-wife but he does not have receipts for money given to her. Applicant’s wages are garnished for 50% of his income (AE A). Half of his retirement check also goes for support. He also pays for health insurance and life insurance for a total of \$1,572.79 per month.

¹Applicant was unemployed from August to September 2007, just prior to his current employment.

Applicant has a Modification Hearing scheduled for March 24, 2009 (AE C). He hopes to have the child support lowered from \$3,000 a month to a more reasonable amount based on his current salary (Tr. 34). Applicant has been working on this modification process since fall 2008 (AE C).

In 2008, Applicant asked his exwife to work with him without Court involvement. He wanted to reduce the amount of support to \$1,300 a month because he was not making enough income due to a lower paying job. She would not agree. He was still paying the health insurance from his retirement income.

The SOR alleged delinquent debts/collection accounts totaling approximately \$98,000. The credit bureau reports confirm the amounts owed (GE 2).

SOR ¶ 1.a is the Chapter 7 bankruptcy. Applicant and his wife filed jointly in June 2002. The bankruptcy (\$93,622.60) was discharged in September 2002.

SOR ¶ 1.b is a judgment in the amount of \$6,025. Applicant admits this is not paid.

SOR ¶ 1.c is a collection account in the amount of \$103. Applicant admits this is not paid.

SOR ¶ 1.d is a collection account in the amount of \$104. Applicant admits this is not paid.

SOR ¶ 1.e is a charged-off account in the amount of \$305. Applicant admits this is not paid.

SOR ¶ 1.f is for a charged-off account in the amount of \$8,391. Applicant denied owing this because he had no knowledge of the account. He believes his wife opened the account when they were separated.

SOR ¶ 1.g is a charged-off account in the amount of \$952 that is not paid.

SOR ¶ 1.h is a charged-off account in the amount of \$7,377. Applicant admits this debt and acknowledges that it is not paid.

SOR ¶ 1.i. is a charged-off account in the amount of \$817. Applicant admits this account is not paid.

SOR ¶ 1.j is a collection account for \$17,896. This has been removed from Applicant's credit report. This account was included in Applicant's 2002 bankruptcy (GE.)

SOR ¶ 1.k is a collection account in the amount of \$4,311. Applicant denies this account. This is unpaid.

SOR ¶ 1.l is a child/family support account that is 120 days delinquent in the amount of \$24,459. Applicant denied this allegation because the amount is incorrect.

SOR ¶ 1.m is another child/family support delinquent account in the amount of \$16,660. Applicant denies this allegation because the amount is incorrect. He owes less than this amount. Applicant believes the total amount for the two child/family support accounts is \$30,767. He produced documentation showing one account number and the amount owed (AE A).

SOR ¶ 1.n is for an auto loan charged-off in the amount of \$1,335. Applicant admits that this account is not paid.

SOR ¶ 1.o is a collection account in the amount of \$7,688. Applicant disputed this account to the credit bureau because he had no knowledge of it. It is unpaid.

SOR ¶ 1.p is a collection account in the amount of \$94. Applicant denied this account.

SOR ¶ 1.q is a collection account in the amount of \$1,906. Applicant admits this account is not paid.

When Applicant learned about the delinquent debts listed in the SOR, he researched his credit report. He disputed some accounts because he believed they were in his 2002 bankruptcy. He also did not know about many of the accounts that were opened online by his wife. He contacted creditors/collection agents and tried to track the original debt.

Applicant earns \$20 an hour. He does not usually earn overtime. His Navy retirement is approximately \$1,450 gross (Tr. 50). After monthly expenses and payment on some debt, he has approximately \$50 net remainder (Tr. 53). He is current with his car payment and daily expenses. He recently paid off a personal loan (Tr. 18). He has not been able to pay the \$3,000 a month for child/family support payments for a period of time. He has gone further into arrears.

Applicant remarried in 2008 and his wife is employed. She earns approximately \$15 an hour. He does not use credit cards. He received financial counseling in 2007. He does not want to file for bankruptcy again.

Applicant's annual performance appraisals rate him as "above standards" with "greatly exceeds standards" in several areas. The appraisals note that he displays superb management skills and his performance is marked by integrity and initiative (AE B).

Applicant was entrusted with a \$624,000 budget and saved his command money. He has been trusted with classified information during his entire career and has not had

any adverse incidents. He has an ability to remain unflustered during frenzied periods at work. He is an asset to his team and described as an exceptional team player who is ready for positions of greater scope and trust.

Applicant's commanding officer described him as an exceptionally outstanding professional. He works long, hard hours at considerable personal sacrifice. This attests to his reliability, maturity and high level of dedication to his work. He has received various awards, medals, and letters of commendation in recognition of his achievements (AE B).

Applicant's plan to pay his delinquent debt is to use extra money from any reduction in child/family support. He also hopes to contest the arrears that he believes are not correct. He is not certain if he can legally contest the child support arrears. He has received conflicting information on this issue (Tr. 41). He will pay the smaller debts first. He also acknowledged that he may think about bankruptcy due to the substantial amount of delinquent debt (Tr. 50).

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, 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 and his wife filed for bankruptcy in 2002 because they could not pay their delinquent debts. Since that time, Applicant incurred more delinquent debt. He is in arrears for family/child support in the amount of \$30,767. His total delinquent debt is approximately \$50,000. He was not able to pay his financial obligations from 2006 until the present. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying conditions may be mitigated where “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." Applicant's financial worries are partially the result of allowing his credit to be used by his wife. While Applicant was deployed on active duty, his wife would spend and perhaps live beyond her means. However he and his wife filed for bankruptcy in 2002 and a significant amount of debt is still unresolved in 2009. This potentially mitigating condition does not apply.

Under AG ¶ 20(b), it may be mitigating where "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." As noted above, his financial problems may have been exacerbated by his ex-wife. Applicant's separation and divorce caused family and child support payments. Applicant admitted that they had large credit card debt and bought a house. Applicant and his wife were overwhelmed financially. His separation and divorce exacerbated the problem. Applicant's pay decreased when he retired. Applicant did not act responsibly in identifying and resolving his debts after the 2002 bankruptcy. He did not take an active stance when he learned about many of them. I find this potentially mitigating condition does not apply.

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" is potentially mitigating under AG ¶ 20(c). Applicant has received financial counseling in the past. He is paying child support through a garnishment. He does not have a handle on his financial affairs at this time. He plans to pay his delinquent debt but has no firm plan in place at this time. He hopes to have the child/family support amount modified so that he has money to pay some debts. This mitigating condition partially applies.

AG ¶ 20(d) applies where the evidence shows "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Applicant filed bankruptcy in 2002 which is a legal means to resolve debt. He paid several small debts not alleged on the SOR and one of the debts was included in his 2002 bankruptcy but the majority are unresolved. He was paying child/family support but is in arrears at this point. I conclude this mitigating condition partially applies.

AG ¶ 20(e) applies where the evidence shows "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." In this case, Applicant stated that the alleged debts were due to his wife not paying on accounts while he was deployed and creating more credit accounts that he had no knowledge about. He has disputed some of them. He is responsible for them. I conclude this potentially mitigating condition does not apply.

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 common sense 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 and conclude that under the whole person, there is not sufficient mitigation to overcome the government's case.

Applicant served in the military for 20 years and retired. He has an exemplary work record. He received many awards, citations and achievements. He held a security clearance for his entire career with no adverse incidents. He is a valuable and trusted employee. He received outstanding evaluations.

Applicant's marriage, separation and divorce created many of his financial problems. However, he admitted that he and his wife overextended themselves and lived on credit cards for a period of time. They filed for bankruptcy in 2002. The divorce and family/child support payments and Applicant's reduced income have left him unable to pay his delinquent debts. He is attempting to reduce his support payments. He has a hearing in March 2009. Applicant plans to pay his smaller debts first after he has his support payments reduced. However, he is still in arrears and has a substantial amount of delinquent debt. He has not provided sufficient mitigation to sustain his burden in this case.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising under financial considerations.

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:	For 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:	For Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	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.

NOREEN A. LYNCH
Administrative Judge