



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



In the matter of:)	
)	
)	ISCR Case No. 08-07664
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

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

September 24, 2009

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, and exhibits, I conclude that Applicant's eligibility for access to classified information is denied.

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on February 19, 2008. The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline F on May 15, 2009. 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 acknowledged receipt of the SOR on May 18, 2009. He submitted a notarized, written response to the SOR allegations on June 3, 2009, and requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a File of Relevant Material (FORM) and mailed Applicant a complete copy on June 29, 2009. Applicant received the FORM on August 6, 2009. He had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He submitted a response and additional evidence on September 1, 2009. DOHA assigned this case to me on September 21, 2009. The government submitted eight exhibits, which have been marked as Items 1-8 and admitted into the record. Applicant's response to the SOR has been marked and admitted as Item 2. His response and attachments to the FORM are admitted into evidence.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a through 1.i of the SOR, with explanations. He denied that his finances should be a security concern.¹ He also provided additional explanations, but not documentary evidence to support his request for eligibility for a security clearance.

Applicant, who is 38 years old, works as a project manager for a Department of Defense contractor. Applicant started his employment with this company in 1998. Applicant and his wife married in 1992 and divorced in 2008. He has a son, age 15, and a daughter, age 11.²

In January 2004, doctors diagnosed his young daughter with diabetes. She required extensive and expensive medical treatment for a long period of time. Because insurance did not cover all of her medical costs, Applicant used credit cards to pay for her treatment. Over time, his expenses became overwhelming. In early 2007, Applicant contacted several credit management agencies to consolidate his debts. Upon the recommendation of these credit counseling companies, he allowed his debts to become 60 days delinquent. One company established a suggested repayment plan, which he could not afford. He and his former wife then decided to file for Chapter 13 bankruptcy, which they did in September 2007 without the assistance of counsel. They met once with the bankruptcy trustee and learned that their debt-to-income ratio was not sufficient

¹When SOR allegations are controverted, the government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted).

²Item 3.

for filing bankruptcy. Based on this information, they requested the Bankruptcy court to dismiss their petition.³

In April 2009, Applicant's employer reduced his weekly work hours from 40 hours to 32 hours, resulting in a 20 percent reduction in his income. Applicant's current net monthly income from his work is \$2,512. He also receives \$857 a month in Veteran's Administration (VA) compensation for a total net monthly income of \$3,369. Applicant's monthly expenses total \$3,094, and include \$900 for child support, cell phone, two car payments, car insurance, and other expenses. He included in his budget a \$250 payment to the creditor in allegation 1.b, and two \$50 payments for two debts not alleged in the SOR. After paying his expenses, Applicant has a remainder of \$275 each month. He rents the house he owns. His rental income pays the mortgage on the house. He lives with his parents.⁴

Applicant and his former wife purchased a travel trailer in 2005 for \$18,000. They paid their monthly payments on the travel trailer, but they were late once just before their bankruptcy filing. The creditor eventually charged off the debt. Applicant entered into a stipulated judgment with the creditor's attorneys in February 2009, which was filed in and endorsed by the court on February 11, 2009. Under the terms of the agreement, Applicant pays \$250 a month until the debt is paid in full. Although Applicant included this payment in his budget, he did not provide documentary proof that he is in compliance with the terms of the stipulated judgment.⁵

In his response to the FORM, Applicant stated that he resolved the remaining eight debts listed in the SOR. When he met with the security clearance investigator on October 30, 2008, he showed the investigator a bank statement regarding payments to the creditor listed in SOR allegation 1.g. The investigator verified that Applicant paid a settlement for this debt on September 29, 2008. The debt is no longer on his credit report. Applicant verified that he paid another debt, but the evidence of record does not indicate that the \$3,000 debt he paid is the same as the debt listed in SOR allegation 1.e. Applicant did not provide documentary proof to support his statement that he resolved the remaining seven SOR debts.⁶

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

³Item 5, at 5-6; Response to FORM.

⁴Response to FORM; Item 6.

⁵Item 6, attachment. Documentary proof could be a letter from the creditor or its agent indicating the payments he has made, copies of cancelled checks, or copies of his bank statement showing the payments.

⁶Response to FORM.

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 overarching adjudicative goal is a fair, impartial, and commonsense 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, an applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." An 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 an 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 delinquent debt and was unable to pay some obligations for a period of time. 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 condition 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." While Applicant's financial worries arose subsequent to his daughter's diabetes diagnosis in 2004 and the resulting medical bills, his debt did not arise from circumstances that are unlikely to recur.⁷ Thus, this 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, Applicant's financial problems started with his daughter's health problems. His divorce increased his financial burdens. Circumstances beyond his control contributed to his financial problems. Had he provided the documentary evidence showing his debt payments, I would find he acted responsibly in identifying and resolving these debts. I find this mitigating condition only partially applicable in this case.

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 indicated that he contacted several credit counseling companies, but failed to provide documentary evidence that he did so. There is no evidence in the record that his debts are being resolved. This mitigating condition is not applicable.

Similarly, AG ¶ 20(d) applies where the evidence shows "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Applicant resolved one debt, but has not provided proof that he resolved the remaining debts and

⁷His delinquent debts are "a continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 3 (App. BD. Aug. 29, 2008)(citing ISCR Case No. 01-03695 (App. BD. Oct. 16, 2002)).

is in compliance with his one payment plan. This mitigating condition applies to the debt in allegation 1.g.

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 an 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant's financial problems first began when his young daughter was diagnosed with diabetes and required expensive and long-term treatment. He accumulated significant debt trying to pay for her medical care, which is a circumstance largely beyond his control. His recent divorce also impacted his finances. Although Applicant indicated that he paid eight of the nine debts listed in the SOR and is resolving the remaining debt through a payment plan, he failed to submit any documents which show his debt payments and compliance with his payment plan. Thus, he has not provided evidence which indicated that he mitigated the government's security concerns about his finances.

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 from his 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:	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:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	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.

MARY E. HENRY
Administrative Judge