



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



In the matter of:)	
)	
)	ISCR Case No. 08-07983
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: *Pro Se*

June 23, 2009

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the case file, pleadings, and exhibits, 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 certified an Electronic Questionnaire for Investigations Processing (e-QIP) on May 6, 2008. On February 27, 2009, the Defense Office of Hearings and Appeals (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.

Applicant responded to the SOR on March 26, 2009 and requested a decision on the record in lieu of a hearing. The Government compiled its File of Relevant Material

(FORM) on April 30, 2009. The FORM contained documents identified as Items 1 through 8. By letter dated May 1, 2009, DOHA forwarded a copy of the FORM to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the file on May 7, 2009. His response was due on June 6, 2009. He filed additional information within the required time period, and Department Counsel did not object to his submissions. On June 12, 2009, the case was assigned to me for a decision.

Findings of Fact

The SOR contains nine allegations of financial delinquency under AG F, Financial Considerations (SOR ¶¶ 1.a. through 1.i.). In his Answer to the SOR, Applicant admitted six of the Guideline F allegations (SOR ¶¶ 1.a., 1.d., 1.e., 1.f., 1.g., and 1.h.) He denied three allegations (SOR ¶¶ 1.b., 1.c., and 1.i.) Applicant's admissions are entered herein as findings of fact. (Item 1; Item 4.)

Applicant is 48 years old and employed as a senior training instructor by a government contractor. In August 1978, he enlisted in the U.S. military. He served until December 1983, and was honorably discharged. He held a security clearance when employed as a government contractor from 1984 to 1993. (Item 5; Response to FORM at 1.)

Applicant married for the first time in 1983. He was divorced in 1994, and he married his current wife in 1994. Applicant is the father of an adult son, who was born in 1984. (Item 5.)

From 1995 to 2003, Applicant was employed by a company which laid him off during the financial downturn that resulted from the terrorist attacks of September 11, 2001. As a result, he was unemployed for four months in 2003. He moved to another state to accept a job in October 2003, where he worked for approximately nine months. He thought his moving expenses would be paid by the company, but they were not, and this caused him some financial hardship. (Item 4; Item 5.)

In 2004, he moved again to another state to do contract work for a company for one year. In 2005, he returned to his home area and took a job for nine months. In 2006, he was rehired by the company which laid him off in 2003. He worked for this company for approximately two years. In March 2008, he accepted a position with his present employer. (Item 4; Item 5.)

Applicant's credit reports reflect a history of financial delinquency. In 1994 and 1995, two federal tax liens were levied against him. These debts were alleged at SOR ¶¶ 1.b. and 1.c. of the SOR. In his Answer to the SOR, dated March 9, 2009, Applicant denied responsibility for these debts and stated that he was disputing them. A communication from a firm he hired to help him identify and resolve his financial delinquencies, dated October 20, 2008, states, under a heading identified as "Federal Tax Lien," that "[c]lient was paying account, is now disputing the accuracy of the

reported information.” In correspondence with DOHA, dated October 8, 2008, he reported he had been in contact with the taxing authority and he stated he would begin making payments on the two liens, which he identified as totaling \$414.80 and \$375.14, in the “next week.” He failed to provide factual documentation to corroborate the nature of his dispute or his payment of these debts. (Item 4; Item 6; Item 8.)

Applicant’s credit reports also show, and the SOR alleges, that a judgment for approximately \$833 was entered against him in 2001, and the debt had not been paid as of October 20, 2008. (SOR ¶ 1.d.) Applicant admitted the debt in his Answer to the SOR; he reported that he had tried, without success, to contact the responsible creditor. In a document sent to Applicant and dated May 14, 2009, a national credit bureau reported that the judgment had been disputed and was no longer listed on his credit report. Applicant filed this document in response to the FORM. (Item 1; Item 4; Item 8; Response to FORM at 3.)

Applicant’s credit report of May 10, 2008 showed that he owed a debt of \$191 to a communications provider, and the debt had been delinquent since 2002. Documents provided by Applicant indicated he had entered into a payment plan to resolve the debt, but it remained unpaid as of October 20, 2008. This debt was alleged at SOR ¶ 1.e. In his Answer to the SOR, Applicant admitted the debt. He provided documentation from the creditor corroborating his payment of the debt on March 25, 2009. (Item 1; Item 4; Item 8; Response to FORM at 3.)

Applicant admitted he owed an additional delinquent debt of \$183 to a communications provider, and, as of January 30, 2009, the debt had not been paid. This debt was alleged at SOR ¶ 1.a. In his answer to the SOR, and in his response to the FORM, Applicant provided documentation to corroborate his statement that the debt had been satisfied on March 25, 2009. (Item 1; Item 4; Response to FORM at 3.)

The SOR alleged at ¶ 1.h. that Applicant owed a delinquent debt of \$111 to a bank on an overdrawn checking account. In his answer to the SOR, Applicant admitted the debt and provided documentation from the bank, dated March 10, 2009, to corroborate his statement that the debt had been satisfied in full. (Item 1; Item 4)

The SOR alleged, and Applicant admitted, that he was responsible to two automotive finance companies for unpaid accounts, in collection status, of \$4,152 and \$15,220. (SOR ¶¶ 1.f. and 1.g.) On September 29, 2008, Applicant engaged a credit management firm to assist him in contacting his creditors and identifying his debts. He instructed the credit management firm to dispute the accounts identified at SOR ¶ 1.f. and 1.g. because he believed the amounts sought by the creditors were in excess of what he actually owed. Both of these accounts had been in collection status since 2004. Applicant failed to provide documentation to substantiate his disputes. (Item 1; Item 4; Item 8.)

The SOR alleged at ¶ 1.i. that Applicant owed a delinquent debt of \$1,161 to a communications creditor. The debt was listed on Applicant’s credit report of May 10,

2008 as a collection account, first reported in January 2006. In his answer to the SOR, Applicant denied the debt. He stated that he had instructed the credit management firm to dispute the debt. He did not provide documentation to substantiate the dispute. (Item 1; Item 4; Response to FORM at 4, 5.)

Applicant completed and certified an e-QIP on May 6, 2008. In response to questions posed under **Section 27: Your Financial Record**, Applicant answered “no” to questions which asked whether any liens had been placed against him in the past seven years, whether any judgments had been placed against him in the last seven years, whether, in the last seven years, he had been over 180 days delinquent on any debts, and whether he was currently over 90 days delinquent on any debt.¹

In response to DOHA interrogatories, Applicant provided a personal financial statement dated October 10, 2008. He reported that he and his wife had a net monthly income of \$4,993 and total monthly expenses of \$3,152. They paid \$873 each month to two automotive creditors, for vehicles they are purchasing on credit. Their net remainder each month is \$968. (Item 4.)

The record does not reflect that Applicant has sought or received credit counseling.

Policies

When evaluating an applicant’s suitability for a security clearance, an 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.

¹ The SOR made no allegations of falsification under Guideline E, Personal Conduct.

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. Over a period of at least eight years, Applicant accumulated substantial delinquent debt and did not 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)). Unresolved financial delinquency might also be mitigated if the conditions that resulted in the financial problem were largely beyond the person's control, such as 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 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 has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. (AG ¶ 20 (d)). Additionally, financial delinquencies of security concern 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 dispute or provides evidence of actions to resolve the issue. (AG ¶ 20(e)).

Applicant has a history of financial delinquencies that dates to at least the period from 2001 to 2008. Moreover, several of the delinquencies remain unpaid or unresolved and occurred under circumstances that are likely to recur. Most of his attempts to pay, settle, or dispute his debts occurred after he received the SOR in February 2009. He has not sought consumer credit counseling that could provide him with strategies for effectively managing his finances and resolving future delinquent debts.

Applicant appears to have resources sufficient to pay or settle his delinquent debts, and he has failed to do so. While he stated that he suffered financial hardship when his moving expenses were not paid by his employer when he moved to another state to take a job in 2003, he did not specify how this deficit specifically impacted his financial situation and impacted his budgeting and expenditures. The record does not reflect that the circumstances that gave rise to his delinquencies were beyond his control. Even if he suffered a financial setback in 2004, he has been steadily employed in his home region since 2006, suggesting continuity and sufficient stability to manage and meet economic challenges.

Applicant has provided documentation to corroborate his statements that he paid three of the debts alleged in the SOR. Together, these debts totaled approximately \$485. Applicant should be commended for resolving these long-standing debts. However, he has instructed the financial management firm he contacted in September 2008 to dispute three debts that total approximately \$20,533, and since he provided no specific information on the grounds upon which these debts were disputed, it is unclear at this time how these currently unresolved debts may impact his future financial stability.

Applicant provided conflicting information regarding resolution of his two federal tax liens. In response to DOHA interrogatories, he stated his intent to begin paying the liens "next week." Later, in his Answer to the SOR, he stated he was disputing the liens, asserting that he was not responsible for paying them. He did not provide documentation to corroborate his conclusion that the liens were not his responsibility. In determining an individual's security worthiness, the Government cannot rely on the possibility that an applicant might resolve his or her outstanding debts at some future date. ISCR Case No. 98-0614 at 5 (App. Bd. Jul. 12, 1999). I conclude that AG ¶¶ 20(a), 20(c), and 20(e) do not apply to the facts of Applicant's case and that AG ¶¶ 20(b) and 20(d) apply in part in mitigation.

Whole Person Concept

Under the whole person concept, an 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 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. Applicant is a mature adult. He has been steadily employed in his home region since 2006 and reports a net remainder each month of approximately \$968. He allowed many of his debts to remain delinquent for a protracted time. His failure to satisfy his creditors over a period of several years raises security concerns about his judgment and reliability.

Applicant's actions to contact his creditors and to begin to resolve his debts are recent. The three debts he resolved were paid in March 2009. While Applicant may have good intentions to turn over a new leaf and pay, settle, or dispute several debts alleged on the SOR, he fails to show a track record of financial responsibility over time. It is unclear how he will handle his financial responsibilities in the future.

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

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
Subparagraphs 1.b. and 1.c.:	Against Applicant
Subparagraphs 1.d. and 1.e.:	For Applicant
Subparagraphs 1.f. and 1.g.:	Against Applicant
Subparagraph 1.h.:	For 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 national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Joan Caton Anthony
Administrative Judge