



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



In the matter of:)
)
-----) ISCR Case No. 08-08166
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Tom Coale, Esquire, Department Counsel
For Applicant: *Pro Se*

March 31, 2010

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant fell behind on some of his financial obligations due to a divorce and having to cover the costs of his father’s burial. As of July 2009, the credit reporting agencies were reporting a total of \$2,424 in past due balances. Financial concerns are mitigated because of his efforts to correct his credit record and his intent to pay legitimate balances. Clearance is granted.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on February 9, 2008. On June 25, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline F, financial considerations, that provided the basis for its preliminary decision to deny him a security clearance and refer the matter to an administrative judge. 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 adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense as of September 1, 2006.

Applicant answered the SOR on August 3, 2009. There is no indication in the file submitted for review that he requested a hearing.¹ On August 12, 2009, the government submitted a File of Relevant Material (FORM) consisting of seven exhibits (Items 1-7).² DOHA forwarded a copy of the FORM to Applicant and instructed him to respond within 30 days of receipt. No response was received by the October 11, 2009, due-date. On December 2, 2009, the case was assigned to me to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Based upon a review of the government's FORM, eligibility for access to classified information is granted.

Findings of Fact

DOHA alleged under Guideline F, financial considerations, that Applicant owes eight delinquent debts totaling \$25,667 (SOR 1.a-1.h) (Item 1). Applicant indicated the \$435 tax lien in SOR 1.a had been paid, and that the \$389 telephone debt in SOR 1.c and the \$1,600 debt in SOR 1.h were pending negotiations and would be "corrected" by 2010. Applicant denied any responsibility for the other debts in the SOR and averred they had been cleared from his credit report (Item 3). After considering the evidence of record, I make the following findings of fact.

Applicant is a 39-year-old electrician, who worked for a defense contractor in a war zone in Southwest Asia from August 2004 to September 2005. He now works for a different company performing installations in various countries, including at consulates abroad. He requires a secret-level security clearance.³

¹In its correspondence forwarding the FORM to Applicant on August 12, 2009, DOHA indicated that he requested a determination without a hearing. The file for review does not contain a document from Applicant confirming that request. Applicant acknowledged receipt of the FORM on September 11, 2009, and he did not object to proceeding without a hearing. In its FORM, the government took the position, consistent with ¶ E3.1.7 of the Directive, that since Applicant did not request a hearing, his case defaulted to an administrative determination.

²Included in Item 2 of the FORM is a transmittal letter from DOHA to Applicant dated March 31, 2009, referencing an enclosed SOR and a receipt signed by Applicant on April 15, 2009. The SOR of record, which was included in the FORM as Item 1, is dated June 25, 2009. Presumably, an earlier version of the SOR was forwarded to Applicant by the transmittal letter dated March 31, 2009. Item 7 of the FORM consists of an unsigned statement from Applicant dated May 1, 2009, which Department Counsel indicates was Applicant's original answer to the SOR allegations. Whether due to a copying error or some other cause, text was missing, from lines 3 through 10 and 12 through 19, of Item 7 forwarded to me for review. At my request, Chief Department Counsel submitted a complete copy of the document by facsimile on March 22, 2010, and it was included in Item 7.

³Applicant did not indicate on his e-QIP that the company was a federal contractor (Item 4). But in his letter of May 1, 2009, Applicant related that he was "traveling all over the world doing projects" and was abroad working on a consulate. He is apparently seeking a secret-level security clearance (Item 7).

In May 2000, Applicant purchased his home by taking out a 30-year mortgage of \$91,650, to be repaid at \$1,036 per month (Item 3, 5). In October 2002, he went into business for himself, as an electrical contractor (Item 4). He began having financial troubles when he had to cover the cost of his father's burial sometime before August 2004. He terminated a lease agreement prematurely around July 2003, and the lender placed a balance of \$1,215 for collection in March 2004 (SOR 1.h) (Item 3, 5). But the full extent of his delinquencies at that time cannot be readily ascertained from the file.

Before Applicant left for Southwest Asia in August 2004, he retained the services of a credit resolution company to help him clear up his credit problems. His spouse was supposed to work with the credit resolution company on his behalf while he was overseas, but she failed to do so (Item 4, 7). In September 2005, Applicant returned to the U.S. and began working for his current employer. He and his spouse began to have marital problems, in part over her spending (Item 7), and they were divorced in January 2007 (Item 4). From February 2006 through June 2006, Applicant was regularly 30 days late in his monthly mortgage payment. Over part of that time, from March 2006 to May 2006, Applicant was in Southeast Asia on business for his employer (Item 4). As of July 2006, his mortgage was 60 days past due. Applicant brought his mortgage current in August and September 2006, but he did not pay the mortgage on time for the months of October 2006 through February 2007, and April 2007. Applicant paid his mortgage on time after April 2007 (Item 3).

On February 9, 2008, Applicant completed an e-QIP for a secret-level security clearance. In response to inquiries about his finances, he indicated that there was an outstanding lien against his business for \$325.62 from December 2007. He tried to pay it, but was told there was no delinquency. He also listed a \$2,965 judgment in collection since February 2002, which he was trying to clear up because some of the charges were not correct. Applicant responded "Yes" to questions 28.a ("In the last 7 years, have you been over 180 days delinquent on any debt(s)?") and 28.b ("Are you currently over 90 days delinquent on any debt(s)?"), listing two credit card balances of \$1,423.27 and \$1,220 from 2002. He was negotiating settlements on both accounts. He attributed his debt problems to his divorce and the expenses of his father's burial:

Just to give explanation of my troubles. I got over my head in credit problems but was maintaining. I fell short after my father had passed away with the cost of burial. Once this happened then of course I fell too far behind and tried to work with my creditors but could never catch up. I have since divorced and this has compounded my situation but nevertheless I will complete a recovery in all [financial matters] (Item 4).

Applicant's consolidated credit report of April 2008 revealed that a \$435 tax lien had been filed against him in May 2005 by his county clerk,⁴ and that a \$2,965 judgment

⁴I took judicial notice *sua sponte* of a map of the pertinent state. The municipality in which Applicant maintains his residency is incorporated within the county that issued the lien reported on his credit report. It is unclear whether this is a different lien from that reported on his e-QIP. The county named on his e-QIP is

had been awarded a credit card lender in September 2001. Several collection debts also were on his record: \$389 for wireless telephone services (SOR 1.c), \$13,416 on an installment loan that had a high credit of \$4,590 (SOR 1.d), \$1,640 on an installment account with a home improvement retailer (SOR 1.g), \$4,821 in a credit card balance (SOR 1.f), and \$1,600 for early termination of a lease (SOR 1.h). Applicant was listed as an authorized user on a credit card account with a delinquent \$401 balance (SOR 1.e) (Item 5).

Around the fall of 2008, DOHA asked Applicant to verify the current status and any payments of the debts on his credit report. Applicant responded that some of the debts “occurred [sic] due to [his] ex-wife.” He asserted that he had worked through a debt resolution firm to reduce and eventually eliminate his debts before his divorce, but that he was seeking assistance from a better debt management company to take care of his debts by 2010. Applicant provided DOHA with an agreement dated November 3, 2008, between him and a new credit services firm. Applicant agreed to pay a retainer fee of \$781 plus \$99 monthly for the company to audit the credit reporting agencies and Applicant’s creditors, and to demand that any information on Applicant’s credit report that is erroneous or inaccurate be corrected or deleted (Item 6).

In April 2009, Applicant was 30 days past due on his automobile loan payment. He had taken out a loan of \$11,729 in October 2008, to be repaid at \$256 per month for 60 months (Item 3). Applicant was apparently overseas working at the time. On May 1, 2009, Applicant notified DOHA that the information on his credit report was outdated, and that he was working with a credit repair agency to correct the issues. He had been unsuccessful in obtaining a recent credit record due to him being overseas working on a new consulate. He was scheduled to return to the U.S. on May 24, 2009, and would obtain a credit report at that time to submit to DOHA (Item 7). He brought his automobile loan current in May 2009 (Item 3).

DOHA issued an SOR to Applicant on June 25, 2009, alleging the unpaid tax and credit card judgments (SOR 1.a, 1.b), and the six collection debts that appeared on his April 2008 credit report (SOR 1.c-1.h) (Item 1). On July 21, 2009, Applicant obtained a credit report from each of the three credit reporting agencies. Trans Union reported as adverse accounts only the state tax lien of \$435, the wireless telephone debt of \$389, and Applicant’s mortgage, which was current but had been last delinquent in April 2007. Experian reported the wireless telephone debt and the mortgage (again because of late payments in the past), but also the debt owed the leasing company (SOR 1.h). Equifax reported no negative accounts and no collections on file (Item 3). On July 23, 2009, Applicant paid a county property tax debt of \$361.23 plus a convenience fee of \$9.03 online.⁵ On August 3, 2009, Applicant answered the SOR. He cited his recent property tax payment as evidence that the debt in SOR 1.a had been paid. Applicant indicated

adjacent to his county.

⁵Applicant made the payment not to his county, but to the adjacent county (Item 3), which may or may not be authorized to accept payments of property taxes assessed in surrounding areas.

that false credit information had been reported on his record, including the debts alleged in SOR 1.b through 1.g, that had been deleted per his updated July 2009 credit report. He added that he had been told by his interviewer that he would be given some time to resolve the issues on his credit record, which he had not checked in many years (“I just cannot understand how false information can be posted on a report but mistakes do happen”). As for the verified debts in SOR 1.c and 1.h, Applicant indicated they were pending negotiation and would be corrected by 2010 (Item 3).

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered 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, 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 that 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 about finances 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.

Applicant admitted to a history of financial delinquency when he applied for his security clearance in February 2008 (Item 4). He was not specific about the extent and nature of his past due accounts. While he listed four debts totaling \$5,933.89 (including two credit card delinquencies that may or may not appear on his April 2008 credit report), he disputed the balance of the \$2,965 judgment debt (Item 4). A subsequent check of his credit in April 2008 revealed an outstanding tax lien, albeit of \$435 rather than \$325, and the \$2,965 judgment debt. But also on his credit record were six collection accounts totaling \$22,267, all but \$1,989 (SOR 1.c, 1.h) disputed by Applicant. While Applicant has the ultimate burden of persuasion as to obtaining a favorable clearance decision (see Directive 5220.6, ¶ E3.1.15), Department Counsel has the burden to establish facts in the SOR that have been controverted (see Directive 5220.6, ¶ E3.1.14). AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and ¶ 19(c), “a history of not meeting financial obligations,” are established, but the evidence falls short of substantiating the amount of delinquency alleged by the government.

Applicant’s credit report of July 21, 2009, confirms the validity of the tax lien, the wireless phone debt, and the leasing company debt, which altogether total about \$2,424. As noted by the government in the FORM, it is unclear whether the online tax payment of \$361.23, to a county adjacent to the county that filed the lien, suffices to resolve the \$435 tax lien. As for the contested debts, the government submits that removal of the debts from Applicant’s credit report is circumstantial evidence of a valid dispute but is not dispositive of whether Applicant owed the debt. Applicant was sufficiently concerned about the information on his credit record to retain the services of a credit restoration company in November 2008 to pursue the deletion of inaccurate or erroneous information from his credit record, and most of the collection debt had been removed. AG ¶ 20(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,” applies in part. Furthermore, the deletion of the adverse information from Applicant’s credit record raises considerable doubt about the extent to which the April 2008 credit report can be relied on to establish Applicant’s indebtedness.

That being said, Applicant knew as of February 2008 that a judgment of \$2,965 had been awarded against him (SOR 1.b). It is unclear whether all of the charges on that credit account were determined to be illegitimate, as his denial of the debt would suggest. On his e-QIP, he stated that “some” of the charges were not correct. Even if Applicant had resolved the two credit card debts on his e-QIP, and if all or part of the judgment debt in the SOR was determined to be invalid or not his responsibility, his credit situation has not always been as stable as it now appears. Although not alleged, Applicant had a history of late payments on his mortgage, albeit primarily when he was overseas for business and later around his divorce.

Applicant presented no evidence showing that the undisputed debts in SOR 1.c and 1.h have been paid, even if the July 2009 property tax payment covered the tax judgment filed in 2005. So, it is difficult to fully apply AG ¶ 20(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.”

AG ¶ 20(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,” applies, in that Applicant’s financial problems were due in part to his ex-spouse, and to the unexpected costs of his father’s burial. Applicant was in Southwest Asia working with the U.S. military in a war zone from August 2004 to September 2005, when the tax lien was filed against him. His ex-spouse failed to work with the credit restoration agency while he was overseas, and her spending contributed to their subsequent divorce (“All she could do was waste my money while I [sic] being patriotic and hence the divorce reason.” Item 7).

Applicant knew in February 2008 that his financial issues could be of concern to the Department of Defense. He “initiated a good faith effort to repay overdue creditors or otherwise resolve debts,” which is required under AG ¶ 20(d), by retaining the services of a credit restoration company in November 2008 to investigate debt information that appeared to him to be incorrect. The company acted as his agent while he was working overseas. Applicant’s payment of a property tax debt in July 2009 is evidence of his intent to pay his legitimate financial obligations, irrespective of whether that payment resolved the tax lien.

Applicant elected not to respond to the FORM, so the status of any negotiations with the creditors in SOR 1.c and 1.h is unknown. Certainly, Applicant’s case in mitigation would have been stronger had he presented evidence of recent payments on those verified debts. But his overall financial picture is now stable. His July 2009 credit

report shows no new accounts delinquent over 90 days. He has been timely in his mortgage payments since May 2007. As of April 2009, he was past due 30 days on an automobile loan taken out in October 2008 for \$11,729, but it was when he was working on a consulate abroad. He brought the account current in May 2009. The credit card delinquencies he listed on his e-QIP are not on his July 2009 credit report, so it is likely that they have been resolved or successfully disputed. He is likely to resolve his remaining financial issues in the near future. AG ¶ 20(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,” applies.

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 conduct and all the circumstances in light of 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.

The DOHA Appeal Board has addressed a key element in the whole person analysis in financial cases stating, in part, “an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has ‘ . . . established a plan to resolve his financial problems and taken significant actions to implement that plan.” ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted). Applicant took action to investigate debt information that did not seem accurate to him, and most of the debt listed on his April 2008 credit report has been deleted. Business assignments overseas do not relieve him of his responsibility for monitoring his credit, but he now knows that failure to do so can have adverse consequences in time and money. Based on what can be gleaned from his July 2009 credit report, his present financial situation causes little concern. I conclude that it is clearly consistent with the national interest to grant Applicant a security clearance at this time.

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: FOR APPLICANT

Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant

Conclusion

In light of the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Elizabeth M. Matchinski
Administrative Judge