



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-08332
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Francisco Mendez, Esq., Department Counsel
For Applicant: *Pro se*

August 24, 2010

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

February 26, 2010, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) enumerating security concerns arising 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 adjudicative guidelines (AG).

In an April 7, 2010, answer to the SOR, Applicant admitted the six allegations set forth under Guideline F and requested a hearing before an administrative judge. DOHA assigned the case to me on July 2, 2010. The parties proposed a hearing date of August 5, 2010. A notice setting that date for the hearing was issued on July 15, 2010. I convened the hearing as scheduled. Applicant gave testimony and presented four documents, which were accepted into evidence without objection as exhibits (Exs.) A-D. Department Counsel offered 14 documents, which were admitted as exhibits (Exs.) 1-14 without objection. Applicant was given until August 16, 2010, to submit any additional materials. The transcript (Tr.) of the proceeding was received on August 12, 2010. On August 16, 2010, Department Counsel forwarded two additional documents

received from Applicant on August 12, 2010. They were accepted into the record as Exs. F-G without objection. The record was then closed. Based on a review of the testimony, submissions, and exhibits, I find Applicant failed to meet his burden in mitigating security concerns. Clearance is denied.

Findings of Fact

Applicant is a 43-year-old national account manager working for a defense contractor. He has worked for the same entity since 2001. Applicant has earned a high school diploma. He is divorced and has three children, for whom he provides financial support.

From 1988 to 1992, Applicant served on active duty in the United States Marine Corps. During that time, he completed a vocational program in computerized business systems and married. Applicant and his wife had two children during their marriage, but they divorced in 2000. From 2000 until 2005, Applicant “was just barely making it, and surviving,” working for government agencies at low wages in order to gain work experience in his field.¹ Most of his earnings went toward his child support obligations.² His finances steadily improved.

In late 2005, while pursuing a job in another state, Applicant bought a home in that state.³ He payed his mortgage payments on this property for a few months. By April 2007, however, a judgment had been secured against him for the balance owed.⁴

Within about a month after purchasing the house, Applicant learned he did not get the job he was seeking. He quickly returned to his current area of residence to seek other employment options. At the end of 2005 or early 2006, while earning about \$36,000, he secured a mortgage and bought a second house for \$417,000, which he hoped would serve as both his home and as an investment.⁵ He did not put any money down toward the purchase.⁶ He hoped to cover his mortgage payments by renting some of the rooms in the house to boarders. His attempts to secure local employment failed, as did his plans to find boarders. Consequently, he was not able to make any mortgage payments. He was then unable to refinance his mortgage at more favorable terms in time to avoid foreclosure or negotiate a short-sale. At some point between 2007 and

¹ Tr. 13.

² Ex. 9 (Interrogatories, Interview notes at 2). Applicant originally was obligated to pay about \$2,100 per month in child support. (Elsewhere, Applicant states the sum was about \$2,700 per month. See Tr. 49). Applicant and his ex-wife later verbally agreed that he should only pay about \$1,400-\$1,500 per month to cover their expenses and after school activities. At one point, an arrearage of about \$33,000 was accrued. Applicant believes that sum was dismissed, but has not had the issue finalized. Tr. 50.

³ Tr. 39.

⁴ Tr. 37.

⁵ Tr. 27-28, 39. The mortgage was ultimately divided into two loans. Tr. 30. See SOR allegations ¶¶ 1.d-1.e.

⁶ Tr. 30.

2008, Applicant was asked to vacate the second home so that the mortgagor could try to sell the property.⁷ The house ultimately sold, but Applicant is unclear as to how much he currently owes the mortgagors after the house's foreclosure and sale.⁸ He is also unclear as to what entity now holds his obligation for the home.

Meanwhile, Applicant took his period of unemployment as an opportunity to reorganize his life.⁹ He worked on refocusing his life between 2008 and 2009, concentrating on work in his prior field. Because wages were low for his area, he fell further behind on his bills.¹⁰ In 2009, Applicant and a girlfriend had a son, for whom he is currently paying approximately \$300 a month in child support. In late 2009, Applicant reconciled with his ex-wife. Their reunion re-energized Applicant in his attempts to find a better job.¹¹ In May 2010, Applicant was awarded a contract to provide services to a defense-related agency. In July 2010, he started drawing a salary for himself based on his current gross salary of approximately \$14,750 per month.

At issue in the SOR are six alleged debts:

1.a – Homeowner's Association debt/judgment (\$1,030) – *Payment pending*. This debt is comprised of a judgment in the amount of \$760.79 plus fees and costs.¹² Applicant stated that he has attempted to contact the creditor "during the last 7 months" in order to settle the matter, but he has not been successful.¹³ On July 15, 2010, he petitioned the court to accept payment of the sum at issue and have the judgment released due to his inability to locate the creditor.¹⁴ He is awaiting action by the court. Otherwise, he is willing and prepared to pay the obligation.¹⁵

1.b – Utility bill (\$539) – *Paid*. This debt was settled by payment of \$370 on July 14, 2010.

⁷ Tr. 15, 40.

⁸ Tr. 31.

⁹ Tr. 16.

¹⁰ Tr. 17. Applicant's salary had "been less than 50,000. . . (L)ess than what I really need to sustain myself in this community here. . . ."

¹¹ Tr. 16.

¹² Ex. A (Account information).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Tr. 21, 23.

1.c – Bank debt (\$188) – *No evidence of payment*. Applicant testified that he paid this balance prior to July 2009, but has no record of the payment. He has been unable to obtain evidence of satisfaction.¹⁶

1.d – Charged-off mortgage (\$82,980) – *No evidence of payment*. This mortgage is related to the second home Applicant purchased. He has not addressed or made any inquiries regarding this obligation.¹⁷

1.e – Past-due mortgage (\$18,737) – *No evidence of payment*. This debt is related to the same property as the one described above.¹⁸ He has not addressed or made any inquiries regarding this obligation.¹⁹

1.f – Foreclosure judgment (\$62,282) – *No evidence of payment*. This debt is related to the Applicant first home purchase in 2006. Applicant offered no documentary evidence indicating he has made any progress in addressing this debt.²⁰

With Applicant’s recent and significant increase in income, he sought and is currently receiving financial counseling with a financial planner.²¹ Applicant now has a budget in place.²² He hopes to make progress on his debts within the next few months.

Policies

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions. 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. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all reliable information about the person, past and present, favorable and unfavorable, in making a decision.

¹⁶ Tr. 24-26.

¹⁷ Tr. 30-32.

¹⁸ Tr. 27.

¹⁹ Tr. 30-32.

²⁰ Tr. 41-44.

²¹ Tr. 19, 45.

²² Ex. F (Budget).

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.

The government must present evidence to establish controverted facts alleged in the SOR. 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. . . .”²³ The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.²⁴

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 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). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”²⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²⁶

Based upon consideration of the evidence, Guideline F (Financial Considerations) is pertinent to this case. Conditions pertaining to this AG that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

²³ See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

²⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

²⁵ *Id.*

²⁶ *Id.*

Analysis

Under Guideline F, “failure or an inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or an 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.”²⁷ The guideline sets out several potentially disqualifying conditions. Here, Applicant acquired six admitted debts amounting to approximately \$166,000, of which he has settled one debt of about \$539. The rest of the debt at issue remains unpaid or unaddressed. Such facts are sufficient to raise Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts) and FC DC AG ¶ 9(c) (a history of not meeting financial obligations). With such conditions raised, the burden shifts to Applicant to overcome the case against him and mitigate security concerns.

Between 2005 and 2008, Applicant acquired significant debt. Most of that debt arose from neglected mortgages. Applicant only submitted evidence indicating he has attempted to address two debts (SOR allegations ¶¶ 1.a-1.b), debts amounting to about \$1,570 of the approximately \$166,000 at issue. While he offered evidence that he recently received a significant raise in salary and that he now has a budget in place, there is no clear evidence of an articulated strategy to address the remaining debts. While promises to address the remainder of his debt in the future were offered, the case law deems that such overtures are insufficient to raise Financial Considerations Mitigating Condition (FC MC) 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).

The majority of Applicant’s delinquent debts arose during times of unemployment or underemployment, conditions which could be sufficient to raise FC MC AG ¶ 20(b) (the conditions that resulted in the behavior 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). However, Applicant’s testimony reflects that most of the debt at issue is related to real estate mortgages, debts he voluntarily acquired when his income was admittedly deficient for the financial burden assumed. Such facts do not reflect responsible behavior under the circumstances, obviating application of this FC MC.

Applicant is receiving financial counseling, a factor giving rise to FC MC ¶ 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). While there is evidence he recently has tried to address about \$1,570 of the approximately \$166,000 in debt at issue, given the length of time this debt has remained neglected, FC MC ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply.

²⁷ AG ¶ 18.

While the relatively minor debts noted in SOR allegations ¶¶ 1.a-1.c, amounting to about \$1,757, could be discounted given Applicant's earlier periods of underemployment and unemployment, the mortgage-related debts reflect a dubious sense of financial responsibility. While his first home purchase appears to have been within his means, he ceased making payments on that mortgage only a few months after it was assumed. In the interim, he sought mortgages and put no money down on a costly second home that was significantly beyond his means. That investment also proved to be beyond his means. While he is now receiving financial counseling that should apprise him as to how to live within his means, financial considerations security concerns presently remain unmitigated.

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. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense 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, as well as the "whole-person" factors. Applicant is a credible and mature man who served in the U.S. armed forces. He has honored his child support obligations as best he can. He has reconciled with his ex-wife. Applicant recently ascended to a highly lucrative position.

While Applicant has made some attempts to address his more minor debts, his comparatively exorbitant mortgage-related debts remain uninvestigated, unaddressed, and unpaid. While financial counseling should help set him back on course with regard to their satisfaction, these unaddressed debts, amounting to approximately \$164,000, remain at issue. Consequently, with no concrete plan in place to address these debts, financial considerations security concerns remain unmitigated. Clearance denied.

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	For Applicant
Subparagraph 1.c	Against Applicant
Subparagraph 1.d	Against Applicant
Subparagraph 1.e	Against Applicant
Subparagraph 1.f	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 a security clearance. Clearance denied.

ARTHUR E. MARSHALL, JR.
Administrative Judge