



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



In the matter of:)
)
) ISCR Case No. 08-08688
)
)
Applicant for Security Clearance)

Appearances

For Government: Francisco Mendez, Esquire, Department Counsel
For Applicant: *Pro Se*

February 23, 2009

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings, exhibits, and testimony, 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 signed an Electronic Questionnaire for Investigations Processing (e-QIP) on May 7, 2008. He was interviewed about his financial issues by an authorized investigator from the U.S. Office of Personnel Management (OPM) on June 19, 2008. On October 6, 2008, 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.

On November 6, 2008, Applicant answered the SOR in writing and elected to have a hearing before an administrative judge. The case was assigned to me on December 16, 2008. I convened a hearing on January 26, 2009, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses and introduced seven exhibits, which were marked Exs. 1 through 7 and admitted to the record without objection. Applicant testified on his own behalf and called no witnesses. He introduced five exhibits, which were marked as Exs. A through E and admitted to the record without objection.

At the conclusion of the hearing, I left the record open until close of business on February 5, 2009, so that Applicant could, if he wished, provide additional information for the record. Applicant timely filed seven additional exhibits, which I marked as Exs. F through L. Department Counsel objected to the admission of Exs. G, H, and I on the grounds of relevancy. I sustained the Government's objections and did not admit those exhibits. Applicant's Exs. F, J, K, and L were admitted to the record without objection. DOHA received the transcript (Tr.) of the hearing on February 2, 2009.

Findings of Fact

The SOR contains eight allegations of disqualifying conduct under AG F, Financial Considerations. (SOR ¶¶ 1.a. through 1.h.) In his Answer to the SOR, Applicant admitted five allegations and denied three. Applicant's admissions are included herein as findings of fact.

Applicant is 39 years old and employed by a government contractor. He seeks a security clearance. (Ex. 1; Ex. 7; Tr. 19, 25-27.)

Applicant and his wife have been married for 5 ½ years. They have no children, but Applicant recently paid approximately \$1,500 in medical bills for the child of his god-daughter. Applicant's wife is employed by a federal agency. Applicant's net monthly income is approximately \$3,100. His wife's net monthly income is \$3,600. (Ex. J; Tr. 32, 53-54, 63-64.)

In 1993, Applicant received an associate's degree in business management. In 1996, he was awarded a Bachelor of Science degree in sociology. From 1996 to 1997, Applicant attended law school at an institution in the Midwest. At the end of that year, he transferred to another law school in the Mid-Atlantic region, where he attended for one year. He needs to complete six courses to finish his law degree. He estimates that he will need to attend law school for another year or two to receive his degree. (Ex. 1; Tr. 57-60.)

Applicant served in the U.S. military as a reservist from 1988 to 1996. Since completing his undergraduate education, he has pursued a number of career paths. From September 1999 through June 2005, he was employed as a public school teacher.¹ From 2003 to 2004, he also had his own business as a home inspector. From January 2004 until July 2006, he worked as a real estate salesperson. From 2006 to 2008, he worked on commission for a business that refinanced home mortgages. Because of the decline in the housing industry, he experienced financial hardship and underemployment in 2007 as a consequence of his mortgage refinancing job. Applicant has worked for his present employer since May 2008. (Ex. 1; Tr. 32-37, 53-55.)

Applicant admits responsibility for approximately \$75,000 in federal education debt which is currently in collection or default status. These debts are alleged at SOR ¶¶ 1.c., 1.d., 1.e., and 1.f. After acquiring these education debts to finance his undergraduate education and his law school studies, Applicant made some sporadic loan repayments in the late 1990s or early 2000s. The loans were in default when he began to teach in 1999. They are currently in default status. The creditor demands an \$800 monthly payment on the outstanding education debt. Applicant asserts he cannot afford to pay \$800 a month and has proposed a \$450 monthly payment. Applicant and the creditor have not yet agreed upon a payment plan and schedule. Applicant plans to negotiate a plan to repay his delinquent student loans in the future. (Ex. A; Ex. B; Ex. C; Ex. D; Ex. K; Tr. 15-18, 57, 67-68, 71-74.)

The SOR alleged that Applicant was responsible for two delinquent debts to a communications firm. One debt was for \$205 (SOR ¶ 1.a.) and the other was for \$403 (SOR ¶ 1.b.). Applicant denied both debts and stated they had been paid in full in 2002/2003. He contacted the creditor to request documentation to corroborate his statement that the debts had been paid. The creditor responded with a request that Applicant pay the debts, and if they had been paid previously, the creditor would issue a refund. Applicant stated he had initiated a formal complaint with the creditor and was awaiting a reply. Applicant's credit report of September 15, 2008 shows both accounts in collection status. Applicant failed to provide documentation to corroborate payment or to corroborate his formal complaint. (Answer to SOR at 1; Ex. 4; Tr. 38.)

The SOR alleged Applicant had failed to satisfy a judgment in the amount \$2,984 which had been levied against Applicant for a debt resulting from the repossession of an automobile. (SOR ¶ 1.g.) Applicant denied the debt, stated that it had been satisfied, and provided documentation to corroborate satisfaction of the debt. (Ex. E.)

The SOR also alleged that Applicant was responsible to a bank for a \$1,566 debt, in collection status, and, as of May 14, 2008, the debt had not been paid. (SOR ¶ 1.h.) The debt arose when Applicant overdrew his debit account. He attributed his lack of funds to underemployment. In a post-hearing submission, Applicant provided an offer of settlement from the creditor. In a letter to Applicant, dated February 3, 2009, the creditor offered to settle the debt for \$627.06, provided that Applicant submitted three

¹ Applicant's e-QIP lists his employment as a teacher as four years, from 2000 to 2004. (Ex. 1 at 14.)

payments of \$209.12 by the 15th day of February, March, and April, 2009. There were no documents in the record corroborating that any of these payments had been made by the time the record closed. (Ex. L; Tr. 40-42.)

In March 2007, Applicant and his wife purchased a home. Their monthly mortgage payment is \$2,972. At his hearing, Applicant stated that he had purchased a used automobile in December 2008 and had a monthly car payment of \$216. (Tr. 47-50.)

Before their marriage in 2003, Applicant and his wife had consumer credit counseling as individuals. They subscribe to an on-line credit-monitoring service to help them manage their joint finances. They have not had had formal credit counseling as a couple. (Tr. 51-53.)

As a post hearing submission, Applicant provided a copy of his household budget. The budget did not list his monthly car payment. Applicant's budget shows that after paying his monthly living expenses and current debts, Applicant has a net monthly remainder of over \$1,500. (Ex. J.)

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, 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.

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 accumulated substantial delinquent debt and was unable to 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)). Additionally, unresolved financial delinquency might be mitigated if "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." (AG ¶ 20(b)). Still other mitigating circumstances that might be applicable include 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" (AG ¶ 20(c)) or "the individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts" (AG ¶ 20 (d)). Finally, security concerns related to financial delinquencies 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 the dispute or provides evidence of actions to resolve the issue." (AG ¶ 20 (e)).

Applicant's student loan delinquencies arose in the 1990s and have remained unresolved even though, until recently, he had reliable full-time employment. Appellant's large unresolved student debt raises security concerns which continue to the present day, a situation which raises concerns about Applicant's good judgment.

Applicant, who was employed in mortgage refinancing, experienced financial uncertainties in the last year or eighteen months because of the downturn in the national housing market. At the same time, he and his wife purchased a home, and their monthly mortgage payment equals his net monthly take-home pay. Even so, they have organized their financial life to remain solvent. Additionally, Applicant helped a family member who needed money to pay for health care for a sick child.

Applicant has made some efforts to work out a payment plan for his student loan debt. However, he had not yet made a commitment to begin regular and consistent payment. He provided documentation to corroborate his payment of one debt. He failed to provide documentation to corroborate his statement that he had contested two debts and initiated payment of another. Despite some good faith efforts to pay some of his debts, Applicant has not demonstrated a track record of timely payments. It is not clear that he will be able to manage his finances and avoid financial delinquency in the future. Curiously, he has not set aside money to meet his student loan delinquencies, despite his substantial monthly net remainder. I conclude that AG ¶¶ 20(b), 20(d), and 20(e) apply in part in mitigation, but that AG ¶ 20(a) and AG ¶ 20(c) do not apply in mitigation to the facts of Applicant's case.

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 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. Applicant's financial problems began more than ten years ago, when he was a mature adult. He did not address \$75,000 in delinquent student loans even though he was steadily employed. His failure to address these substantial delinquencies over a significant period of time raises concerns about his judgment and reliability.

To his credit, Applicant has taken recent action to address some of his delinquencies. However, these actions are recent and do not demonstrate a track record of satisfaction of debt consistently over time.

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.

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.

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
Subparagraphs 1.a. through 1.f.:	Against Applicant
Subparagraph 1.g.:	For Applicant
Subparagraph 1.h.:	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