



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



In the matter of:)	
)	
)	ISCR Case No. 08-08760
)	
Applicant for Security Clearance)	

Appearances

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

August 25, 2009

Decision

HEINY, Claude R., Administrative Judge:

Applicant had 13 debts that totaled in excess of \$24,000. Payments on his mortgage were also \$17,000 delinquent. He paid two debts totaling \$750 and included another debt in a repayment plan. Applicant failed to rebut or mitigate the government's security concerns under financial considerations. Clearance is denied.

Statement of the Case

Applicant contests the Defense Department's intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a

¹ 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)

Statement of Reasons (SOR) on March 2, 2008, detailing security concerns about his finances.

On March 23, 2009, Applicant answered the SOR and elected to have the matter decided without a hearing. Department Counsel submitted the government's case in a File of Relevant Material (FORM), dated May 12, 2009. The FORM contained ten attachments. On May 19, 2009, Applicant received a copy of the FORM, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions.

Responses to the FORM are due 30 days after receipt of the FORM. Applicant's response was due on June 18, 2009. As of July 31, 2009, no response had been received. On August 6, 2009, I was assigned the case.

Findings of Fact

In Applicant's Answer to the SOR, he denied the factual allegations related to the mortgage debt listed in SOR ¶ 1.n. He admitted the remaining debts. Applicant's admissions to the SOR allegations are incorporated herein. After a thorough review of the record, pleadings, and exhibits, I make the following findings of fact:

Applicant is 40 years and has worked for a defense contractor in procurements since December 2007, and is seeking to obtain security clearance.

In June 2008, Applicant entered into an agreement with a company to assist in paying his delinquent debts. He agreed to pay a \$249 fee plus make monthly deposits of \$156. Included in the monthly installment fee is a \$49 maintenance fee. Applicant also agreed that twenty-five percent of the difference between the amount demanded by a creditor and the amount a creditor agreed to take in settlement will be paid to the company as an additional settlement fee. (Item 8, page I 19) If Applicant pays the entire amount of the debt, the company will receive five percent of the amount paid as a fee. (Item 8, page I 19)

Applicant acknowledged that any amount between what he originally owed on a debt and the amount the debt settles for will be reported to the IRS as ordinary income. (Item 8, page I 18) Only one (SOR ¶ 1.i, \$2,125) of the 14 SOR debts is included in the agreement. (Item 8, page I 21) On June 16, 2008, he paid the company \$253.95 and made \$160 payments on October 1, 2008, October 17, 2008, and November 17, 2008. (Item 8, pages I 23 and I 26) There is no documentation to establish that payment has been made on any debt or payment made to the company after November 2008.

promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

In December 2008, Applicant answered written interrogatories related to his finances. (Item 8) He indicated the \$1,700 debt (SOR ¶ 1.k), \$1,508 debt (SOR ¶ 1.g), \$738 debt (SOR ¶ 1.j), and the \$1,294 debt (SOR ¶ 1.l) were also included in the agreement. However, debts listed in the repayment agreement were not the names of the creditors listed in the SOR. (Item 8, page I 24) Applicant's January 2009 credit bureau report (CBR) indicates these four accounts were transferred or sold. Applicant failed to establish they were sold to the creditors listed in his agreement with the debt company.

In his response to interrogatories, Applicant disputed the amounts owed on three accounts (SOR ¶¶ 1.b, \$3,500, 1.c., \$1,862, 1.d, \$10,765) with the same creditor. He stated that the debt management company was working with the creditor to resolve the matter. Applicant asserted the accounts were related to a failed business, for which he provided no additional information. (Item 8, page I 15) Applicant disputed charges added to the accounts after July 2007. Applicant failed to document which charges were incurred before notifying the creditor of the failed business and which occurred after July 2007.

Applicant asserted he consolidated accounts with the creditor listed in SOR ¶ 1.f. (\$506) He asserted this was a family business account with a consolidated balance of \$23,875. (Item 8, page I 13) The debt was settled and paid in the amount of \$4,701. (Item 8, page I 14) However, there is no evidence the debt listed in SOR ¶ 1.k was part of the consolidation. The account numbers do not indicate a consolidation.

Applicant paid the \$280 telephone debt (SOR ¶ 1.a). (Item 8, pages I 9, I 10, I 11) Applicant had two loans with a mortgage lender, a \$256,000 conventional first real estate mortgage and a \$57,571 second mortgage. (Item 8, page I 7) Applicant's January 2009 CBR lists \$16,199 past due on the first mortgage and \$1,178 past due on the second mortgage. (Item 9, page C 8) Applicant provided a letter from his ex-wife which stated she was paying the mortgage and would, at some future date, refinance the mortgage and have Applicant's name removed from the mortgage loan. There is no evidence the mortgage loan has been refinanced, nor is there evidence Applicant is not liable on these mortgages. Applicant asserts his wife is responsible for the \$60 telephone bill listed in SOR ¶ 1.e.

The record fails to indicate when the divorce occurred. As of March 2008, when Applicant completed his Questionnaire for National Security Positions, Standard Form (SF) 86, he was still married. (Item 4, pages 9 and 10 of 14) He indicated he had been separated since June 2007. (Item 4, page 10 of 14) Under additional comments in his SF 86, he refers to his "ex-wife" as sole owner of the home. (item 4, page 7 of 8)

The FORM put Applicant on notice that he had failed to provide proof regarding a number of his debts or assertions. Additionally, he was notified that his repayment plan did not include a number of the SOR debts. Applicant did not respond to the FORM. Therefore, no additional documentation was received related to his debts.

A summary of the 14 SOR debts and their current status follows:

	Creditor	Amount	Current Status
a	Account placed for collection for a telephone company.	\$244	Paid. (Item 8, page I 10)
b	Credit card account. The same creditor is listed in SOR ¶ 1.b, 1.c, and 1.d.	\$3,500	Unpaid. Applicant is disputing the amount owed. (Item 8, page I 15)
c	Credit card account.	\$1,862	Unpaid. See SOR ¶ 1.b.
d	Credit card account.	\$10,765	Unpaid. See SOR ¶ 1.b.
e	Telephone bill.	\$60	Unpaid. Applicant asserts his ex-wife is responsible for this debt.
f	Credit card account.	\$506	Settled. Applicant consolidated \$23,875 of debt with this credit and settled it for \$4,701. (Item 8, pages I 13, I 14)
g	Credit card debt.	\$1,694	Unpaid. Applicant asserts it is part of his debt agreement.
h	Credit card debt.	\$600	Unpaid.
i	Jewelry store account.	\$2,125	Included in debt agreement. (Item 8, page I 21)
j	Credit card debt.	\$807	Unpaid. Applicant asserts it is part of his debt agreement.
k	Debt.	\$1,700	Unpaid. Applicant asserts it is part of his debt agreement.
l	Department store credit card account.	\$1,294	Unpaid. Applicant asserts it is part of his debt agreement.
m	medical service debt.	\$171	Unpaid. Applicant stated he was unaware of this account and would look into it. (Item 8, page I 6)
n	Mortgage debt was denied by Applicant.	\$256,000	Past due. As of January 2009, \$17,377 was past due. (Item 9, page C 8)
	Total debt listed in SOR	\$281,328	\$25,328 excluding the mortgage.

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 must 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 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

Revised Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances so as to meet his financial obligations.

Applicant has a history of financial problems. He has 11 unpaid debts totaling approximately \$24,500. Additionally, as of January 2009, his first and second mortgages were more than \$17,000 past due. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Five financial considerations mitigating conditions under AG ¶¶ 20(a) – (e) are potentially applicable:

(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;

(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;

(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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; or

(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.

Applicant meets none of the mitigating factors for financial considerations. His financial difficulties are both recent and multiple, and they occurred under circumstances likely to recur. He failed to demonstrate that his debts were largely due to circumstances beyond his control, or that he has acted responsibly in addressing his debts. Further, he has not sought credit counseling or otherwise brought the problem under control as his circumstances permitted.

Applicant asserts five SOR debts are included in a debt payment agreement, but only one (SOR 1.i) is listed in the creditor's list. The other four accounts have been sold or transferred and might be the accounts listed in the creditor's list, but Applicant failed to document they are the same debts. Applicant failed to show any payments to the plan after November 2008.

Applicant states his ex-wife is owner of the home and asserts she is responsible for the mortgages. The fact Applicant may have relinquished ownership in the home does not have any legal effect on his obligation to repay the mortgage. Applicant's ex-wife submitted a letter stating she intended to refinance the mortgage notes and have Applicant removed from the loans. Such an agreement may be binding on Applicant and his wife, but it has no binding effect on the creditor.

At some future time, the mortgages may be refinanced and Applicant relieved of liability. The creditor would have to agree to the release. The creditor is unlikely to release Applicant from liability while the mortgages remain more than \$17,000 past due.

AG ¶ 20(a) does not apply because the debts are numerous and remain unpaid. Applicant has failed to provide sufficient documentation to establish that AG ¶ 20(b) applies. Applicant mentioned a family business which failed in 2007 and indicated he had been separated since June 2007. These are normally conditions beyond a person's control. However, he failed to provide any documentation as to why the business failed or the impact of the failure on his finances. Additionally, he failed to establish how his finances were impacted by his separation.

AG ¶ 20(c) does not apply because Applicant has not received financial counseling, nor is there an indication his financial problems are under control.

AG ¶ 20(d), a good-faith effort to repay creditors, applies to two debts he paid (SOR ¶ 1.a and ¶ 1.f). This good-faith effort also applies to the jewelry account listed in SOR ¶ 1.i, which is included in the debt repayment agreement. However, Applicant failed to document that the four other SOR debts he asserts are part of the debt agreement are included in that agreement. There is no documentation establishing that the four creditors listed in the SOR are part of the debt repayment agreement.

Additionally, Applicant has failed to establish that any of his creditors have received payment under this debt repayment agreement. He entered into this agreement and paid the company more than \$700. However, there is no showing that any creditor received payment pursuant to the agreement. Nor has Applicant established he is still making payments to the plan. Other than the three debts previously addressed, Applicant has not established he has paid, is making payments on, or is no longer liable on the remaining 11 debts.

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 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.

Because Applicant chose to have this matter handled administratively, I am unable to evaluate his demeanor or form a positive determination as to his truthfulness. From the record, I am unable to find Applicant was sincere, open, and honest.

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 available in the record of this case. Applicant is 40 years old and should be sufficiently mature to make prudent decisions about his finances. Applicant has numerous debts and has only paid two. He gave up ownership in the home and asserts

his ex-wife is responsible for the mortgages on that property. The first and second mortgages are more than \$17,000 past due. His mortgage lender is not bound by the arrangement between Applicant and his ex-wife.

Overall, the record evidence leaves me 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, Financial Considerations: AGAINST APPLICANT

Subparagraph 1.a:	For Applicant
Subparagraph 1.b—1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g and 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j—1.n:	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.

CLAUDE R. HEINY II
Administrative Judge