



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



In the matter of:)
)
) ISCR Case No. 08-08860
)
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro Se*

December 7, 2009

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline F, Financial Considerations. Applicant’s eligibility for a security clearance is denied.

On July 23, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline F. 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 answered the SOR in writing on August 24, 2009, and requested a hearing before an administrative judge. The case was assigned to me on September 25, 2009. DOHA issued a Notice of Hearing on September 29, 2009. I convened the hearing as scheduled on November 5, 2009. The government offered Exhibits (GE) 1

through 10. Applicant did not object and they were admitted into evidence. Applicant testified and offered Exhibits (AE) A and B. They were admitted into evidence without objection. The record was held open until November 12, 2009, to allow Applicant to submit additional documents, which he did. They were marked as AE C through I. The government had no objections and the documents were admitted into evidence and the record closed.¹ DOHA received the transcript of the hearing (Tr.) on November 12, 2009.

Findings of Fact

After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 48 years old. He was an officer in the Navy and retired in 2003, as a commander, after twenty years of service. He has a bachelors and a master's degree. He works as a financial analyst. He married in 1987 and divorced in 2007. He has two children ages 21 and 12 from his marriage. He remarried in 2008. His wife has six grown children; the youngest is 18 years old. For a time, one of his wife's daughters and her three children lived with them. They moved out in June 2009.²

Applicant and his first wife separated in April 2001. He paid spousal and child support during their separation. They had a protracted child custody battle. After expensive litigation, Applicant received joint custody of his children. His ex-wife was given 30% of his retirement pay.³

Applicant was unemployed for two months after he retired from the Navy. He was also unemployed from October 2005 to January 2006 and again from October 2006 to December 2006.⁴

Applicant had financial problems in the 1990s, and filed for Chapter 7 bankruptcy in 1999. He believes he had approximately \$110,000 in delinquent debt discharged. The debts discharged related to a foreclosed house, repossessed vehicle, credit card debts, and other debts. He was in the Navy at that time and his wife was not working outside their home.⁵

He was financially secure for about a year and stated his then ex-wife would make charges on their credit cards. He was aware she was making these charges. Since then, he consistently has had delinquent debts, but has paid some of his debts.

¹ Hearing Exhibit I is Department Counsel's response to Applicant's additional exhibits.

² Tr. 20-24, 31, 34.

³ Tr. 25-26, 40-46.

⁴ Tr. 37-39.

⁵ Tr. 102-106.

From 2000 to 2009, he occasionally asked some individuals for assistance with his finances, but did not seek any formal financial counseling or assistance.⁶

In March 2009, Applicant contracted with a credit counseling program (CCP). The program researches and disputes those debts Applicant disputes. Applicant and the CCP have been contacting his creditors seeking validation of his debts. He has had some of the alleged debts removed from his credit bureau report (CBR). He is still in the process of disputing other debts. At the hearing, he anticipated the validation process would be completed sometime in November 2009, and he will begin to make payments sometime in December 2009 or January 2010.⁷

Applicant denies the debt in SOR ¶ 1.a (\$217) and believes he paid all of his accounts with this creditor. He is validating the debt and will pay it if it is determined that he owes the debt. The debt is unresolved.⁸

Applicant denies the debt in SOR ¶ 1.b (\$942) because he currently has an account with this creditor and does not believe he would be able to have service with them if he had a delinquent balance. The debt is being verified through the CCP and is unresolved.⁹

Applicant admitted he had cable service with the creditor in SOR ¶ 1.c (\$414), but terminated it due to poor service. He admitted he terminated his contract early. The debt is unresolved.¹⁰

The debts in SOR ¶¶ 1.d (\$208), 1.e (\$55), 1.f (\$207), 1.g (\$134), 1.h (\$208), 1.v (\$402) and 1.x (\$116) are medical debts that Applicant believes should be covered by TRICARE, his military medical insurance. He is working with the insurance company to resolve them. The debts are pending review by TRICARE. At least one debt is more than three years old. The debts are unresolved.¹¹

The judgment in SOR ¶ 1.i (\$9,876) is for legal services. On February 4, 2009, Applicant made a payment of \$250.¹² On February 19, 2009, he made a payment of \$250.¹³ Applicant stated he has been making regular payments on the debt since March

⁶ Tr. 104-108.

⁷ Tr. 17, 110-114; Answer to SOR.

⁸ Tr. 117-119; Answer to SOR.

⁹ Tr. 119-121.

¹⁰ Tr. 121-124.

¹¹ Tr. 124-131, 170, 174; Answer to SOR, Exhibit 9.

¹² AE C page 7.

¹³ AE C page 6.

2009. He made three payments that month of \$250 each.¹⁴ He made one payment in April 2009 of \$250.¹⁵ He stated he made other payments of \$250, until September 2009. He then reduced the payment amount to \$125, in October 2009. He stated he had an agreement with the creditor to reduce his payments to \$125 a month, and the creditor agreed to waive the interest charges. The documents Applicant provided show that on October 31, 2009, he owed \$12,712.55. Of that amount \$4,139 was for interest.¹⁶ On May 26, 2009, Applicant made a payment of \$500.¹⁷ On September 4, 2009, he made a payment of \$125.¹⁸ On November 5, 2009, he made a payment of \$125.¹⁹ He provided an email dated July 14, 2009, from the creditor that stated: "Upon payment of your full principal due, I'll write off the interest."²⁰ There is no mention of an acceptable payment amount, and the agreement to write off the interest is contingent upon him paying off the \$8,573 principal balance.²¹

The debt in SOR ¶ 1.j (\$34) is paid.²² The debt in SOR ¶ 1.k (\$6,388) is for a vacation package Applicant purchased in 2005 while he was separated from his first wife. He signed the contract, and later when he married his second wife, she was not happy with the plan. The debt has been deleted from his CBR.²³

The debt in SOR ¶ 1.l (\$897) was a credit card debt from 2004 or 2005. He disputed the account and it was deleted from his credit report.²⁴

The debt in SOR ¶ 1.m (\$229) is a cable services debt. He disputed the debt and it was removed from his CBR.²⁵

¹⁴ Answer to SOR, Exhibit 13.

¹⁵ *Id.*

¹⁶ AE C page 2.

¹⁷ AE C page 3.

¹⁸ AE C page 5.

¹⁹ Answer to SOR, Exhibit 13.

²⁰ AE C page 8.

²¹ Tr. 131-137.

²² AE H and I.

²³ Tr.137-148, 155; AE A.

²⁴ Tr. 148-151, 156.

²⁵ Tr. 151-156; AE A.

The debt in SOR ¶ 1.o (\$465) is for television services. He admitted he had services with the company in 2003 and again in 2008, but canceled the service. The debt is not resolved.²⁶

The judgment in SOR ¶ 1.p (\$1,240) is unpaid. Applicant was unable to pay the debt due to other debts he incurred from his divorce. He admitted that he is now able to pay it, but has not.²⁷

Applicant does not recognize the debts in SOR ¶ 1.q (\$807) and ¶ 1.r (\$636). The debts are being verified by CCP. They are unresolved.²⁸

The judgment in SOR ¶ 1.s (\$4,650) is for a debt that was awarded to his ex-wife in their divorce. He has satisfied his portion of the debt, and she remains responsible for the remainder.²⁹

The debt in SOR ¶ 1.t (\$1,345) is to a phone company. Applicant admitted he had the service in 2000 to 2001, and he is attempting to verify if it is a valid account or one that his ex-wife was responsible for. He has not resolved the debt.³⁰

The debt in SOR ¶ 1.u (\$1,412) is for a health club membership. Applicant admitted he contracted for the services in 2005 to 2006. He stated he canceled the membership. He does not deny the debt, but stated he is negotiating a settlement agreement.³¹

The debt in SOR ¶ 1.w (\$472) is for utility services from the city where Applicant used to live. He stated he paid the debt, but provided no documentation to prove it.³²

Applicant believes the debt in SOR ¶ 1.y (\$807) is the same as in ¶ 1.q. It is for the same amount. The names of the debts are very similar and it is likely a duplicate debt.³³

The debt in SOR ¶ 1.z (\$866) is for utility services. Applicant denies this debt and says he paid it. He provided documentation from the creditor showing he originally owed

²⁶ Tr. 156-158.

²⁷ Tr.158-161.

²⁸ Tr. 161-163.

²⁹ Tr. 163-164;Answer Exhibit 2.

³⁰ Tr. 164-166.

³¹ Tr. 166-170.

³² Tr. 171-174.

³³ Tr. 174-176.

\$1,424.83 and he made \$140 monthly payments from November 2008, until the balance was satisfied in April 2009. The debt is paid.³⁴

The judgment in SOR ¶ 1.aa (\$905) is for a vehicle. Applicant disputes the debt and says he made the last payment on the debt and it is paid in full. Applicant provided a document showing a zero balance on the account.³⁵

Applicant attributes his financial problems to his custody battle and divorce. He has paid four lawyers in different states. He estimated he spent about \$25,000 in legal fees. He has about \$26,000 in delinquent debts. He does not have a budget. He admitted he does not know where all of his money goes. He has not made payments on many of his debts because they are being researched and verified through CCP.³⁶

Applicant owes \$1,400 for his 2008 state income taxes. He stated he did not have the money to pay his taxes on time. He explained he was unable to pay his taxes because his wages were garnished beginning in May 2009 until September 2009, in the amount of \$1,600 a month, for a debt due to a car repossession. The car was repossessed in June 2007. This was a car that was jointly owned by Applicant and his ex-wife. Through their divorce settlement, he was allocated to pay \$12,000 on the debt. The balance on his share of the debt is about \$4,000. Applicant stated he has a new agreement with the creditor to pay \$143 a month on the debt. He did not provide proof of the agreement. He intends to begin making the new payment in November 2009.³⁷

Applicant presently earns about \$7,712 monthly net salary,³⁸ including his military pension. Prior to his current job he was earning \$6,774 monthly net salary.³⁹ His wife earns about \$600 a month. He paid child support until the final custody issue was resolved. No child support is authorized in the current order. He sends his younger son a modest allowance and pays for the son's cell phone. He was paying his older son's car insurance (\$135 a month) until last month. He provides no other support to him. He often pays for his grandchildren's medical care and other incidentals. He contributes two percent of his income to a retirement plan. He does not have any money in a savings account and has enough money in his checking account to cover his monthly expenses. Applicant acknowledges he should have money remaining from his monthly salary after paying his expenses, but does not know where the remainder is spent. Applicant noted

³⁴ Tr. 176-177; AE D, E, F.

³⁵ Tr. 177-179; AE G.

³⁶ Tr. 185-188. Answer to SOR.

³⁷ Tr. 81-94; I will not consider these items for disqualifying purposes, but will consider them when analyzing the whole-person and Applicant's total financial situation.

³⁸ Tr. 47-55. This equates to \$92,544 annually.

³⁹ This equates to \$81,288 annually.

in a written statement that he attended a debt consolidation and reduction seminar in March 2009.⁴⁰

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, 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.

⁴⁰ Tr. 45-82, 94-101.

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. I have considered all of the disqualifying conditions under AG ¶ 19 and especially considered:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Appellant has a significant history of not meeting his financial obligations. He filed for bankruptcy in 1999 and had approximately \$110,000 in delinquent debts discharged. Approximately one year later, he was again experiencing financial problems. He has many debts that remain unpaid or unresolved. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under 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;
- (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; and

(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's behavior is recent because he has many delinquent debts that remain unpaid. Based on Applicant's long history of financial problems, I cannot find that the circumstances are unlikely to recur. I find mitigating condition (a) does not apply.

Applicant had approximately \$110,000 discharged in bankruptcy in 1999. This occurred prior to the child custody issues that he stated adversely impacted his finances. His delinquent debts at that time were for credit cards, a repossessed car, and a foreclosed house. A year later, Applicant was again having financial problems. These problems were later exacerbated by a child custody dispute and the legal fees associated with it. For mitigating condition (b) to apply, Applicant must show that the conditions that caused his financial problems were beyond his control and he acted responsibly under the circumstances. Although the legal fees associated with the child custody dispute were beyond his control, there is not enough evidence to conclude he acted responsibly under the circumstances. Applicant continued to accumulate a significant number of delinquent debts, including judgments. He does not have a clear understanding of where he spends his money each month. He stated he is verifying the debts, but has not yet resolved them. He has paid a few of the debts alleged. However, regarding the remaining delinquent debts, he did not provide an explanation or substantiate the basis of the disputes, other than to repeatedly state he was verifying them. He attended financial counseling in March 2009, but does not have a budget or a credible plan for how he will repay the debts if they are verified. He has not received financial counseling. Applicant has been aware of his financial problems for some time and has only recently made an effort to address them. Applicant has not made a good-faith effort to pay his creditors. He is working with CCP, but at this juncture, it is too early to conclude that Applicant will develop a viable repayment plan and show that he is making consistent payments towards resolving all of his delinquent debts. Therefore, I cannot find there are clear indications the problem is being resolved. I find mitigating conditions (c), (d), and (e) do not apply.

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 served his country in the Navy for twenty years. He experienced a child custody dispute and incurred significant legal fees related to it. Applicant has a long history of not paying his debts. He had approximately \$110,000 discharged in bankruptcy in 1999. A year later, he was again experiencing financial problems. His wages are being garnished for a repossessed car. He still owes his state taxes for 2008. He does not have a budget and has not received financial counseling. He stated he is verifying delinquent debts, but he does not appear to have a clear understanding of his finances. He does not know which creditors he owes and he has not formulated a plan for repaying them. Applicant earns a reasonable salary, yet he does not know where he spends his money. At this juncture, I find that Applicant has not mitigated the security concerns related to his finances. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the guideline for 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, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.h:	Against Applicant
Subparagraphs 1.i-1.m	For Applicant
Subparagraphs 1.n-1.r:	Against Applicant
Subparagraph 1.s:	For Applicant
Subparagraphs 1.t-1.x:	Against Applicant
Subparagraphs 1.y-1.aa:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge