



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-08901
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel

For Applicant: *Pro se*

October 9, 2009

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on February 1, 2008 (Government Exhibit 1). On February 3, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant 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 President Bush on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant submitted an Answer to the SOR on March 18, 2009, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on April 15, 2009. I received the case assignment on April 16, 2009. DOHA issued notices of hearing on April 22, 2009, and June 2, 2009. I convened the hearing as scheduled on June 15, 2009. The Government offered Government Exhibits 1 through

8, which were received without objection. Applicant testified on his own behalf, and submitted Applicant's Exhibits A through D, which were received without objection. The Applicant requested the record to remain open for a period for the presentation of additional documentary evidence. He submitted Applicant's Exhibit E on June 26, 2009, and it was admitted without objection. DOHA received the transcript of the hearing on June 23, 2009. The record closed on June 26, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

The Applicant is 55 and married. He is employed by a defense contractor, and seeks to retain a security clearance previously granted in connection with his employment in the defense industry.

Guideline F, Financial Considerations

The Government alleges that the Applicant is ineligible for clearance because he is financially overextended and therefore at risk of having to engage in illegal acts to generate funds. The Applicant admits subparagraphs 1.a., 1.b., 1.c., 1.i., 1.o., 1.p., 1.q., 1.r., 1.s., 1.t., 1.u., and 1.v. Those admissions are hereby deemed findings of fact. He denied subparagraphs 1.d., 1.e., 1.f., 1.g., 1.h., 1.j., 1.k., 1.l., 1.m., 1.n., and 1.w. All of the debts are supported by credit reports submitted by the Government or by the Applicant. (Government Exhibits 2, 3, 4, 5 at 9-19, and 6.)

The Applicant submitted that his financial problems began in 2000, when his wife fell seriously ill with what was eventually diagnosed as diabetes and Hepatitis C. In addition to her illness, and the medical bills, the Applicant moved several times in the following years in order for his wife to obtain medical care, or for her to be closer to their children. Each of these moves cost money and, for several months in 2004, he was paying the mortgage on a house in one state while also paying rent on a house in a second state. In addition, at one time or another in the last few years, all three of the Applicant's daughters and their children have lived with him and his wife. This is because of various family issues. (Transcript at 31-33, 63-65.)

The Applicant submitted documentary evidence showing that he has paid debts that were not alleged in the SOR, but were of concern to the Government. In addition, he recently paid a debt to a credit card company through payroll deduction, giving him more money to pay other debts. (Transcript at 34-35; Government Exhibit 5 at 6-7; Applicant's Exhibits A, B, and E at 2.)

The Applicant also stated that he had not paid anything off on his debts since the middle of 2008. (Transcript at 71.) In addition, he stated several times that he does not understand his true debt situation, and has to do more research with his creditors. (Transcript at 52, 60-61, 71-72.) More specifically, the Applicant discussed his difficulty

with determining what he owes in connection with his wife's medical bills. (Transcript at 35-37.)

1.a. The Applicant admits that he filed a petition under Chapter 7 of the Bankruptcy Code in 1997. He received a discharge of all of his dischargeable debts in September 1997. He testified that this bankruptcy was the result of an ongoing conflict with an automobile company. (Transcript at 41-42; Government Exhibit 7.)

1.b. The Applicant admits that a judgment was entered against him in 2006 for the amount of \$2,323.24 plus fees. This was in relation to an apartment the Applicant rented at that time. The Applicant alleges that the plaintiff's lawyer said that the judgment would be resolved using the Applicant's security deposit. The Applicant and the law firm have been in written communication. The law firm states that, after applying the Applicant's security deposit, he still owes \$1,595.03. The Applicant has made no payments on this debt, and has no current plans to make payments on this debt. (Transcript at 43-49; Applicant's Exhibit E at 4, 7.)

1.c. The Applicant admits that he is indebted to a collection agency for a medical debt in the amount of \$60. He testified that he was uncertain as to the nature of this debt and whether it has been paid. The Applicant has made no payments on this debt, and has no current plans to make payments on this debt. (Transcript at 50-51.)

1.d. The Applicant denied that he owes a bank \$972. He states that he does not know whether the account is his or not. A credit bureau report submitted by the Applicant shows that he has disputed this account information. (Transcript at 51-53; Government Exhibit 5 at 10.) Based on the state of the record, this allegation is found for the Applicant.

1.e. The Applicant denies that he owes a second bank \$2,154. He testified that his understanding was that he had paid that debt off. However, he also stated he did not understand the nature of the debt. The Applicant's credit bureau report does not show that he has disputed this debt. (Transcript at 53-54; Government Exhibit 5 at 10.)

1.f. The Applicant denies that he owes a third bank \$1,520. He testified that he never had an account with that bank. The Applicant's credit bureau report does not show that he has disputed this debt. (Transcript at 54-55; Government Exhibit 5 at 10.)

1.g. The Applicant denies that he owes a collection agency \$195 for a medical bill. The Applicant testified about this debt, "I need to pursue that and see what that is." The Applicant's credit bureau report does not show that he has disputed this debt. (Transcript at 55-56; Government Exhibit 5 at 11.)

1.h. The Applicant denies that he owes a second collection agency \$1,329 for a towing service. He testified, "I don't know what it is or where it came from." The Applicant's credit bureau report does not show that he has disputed this debt. (Transcript at 56; Government Exhibit 5 at 11.)

1.i. The Applicant admitted that he owed an automobile credit company \$6,998 for a past due debt. He testified that the vehicle had been repossessed by the dealer. The most recent credit bureau report show that there is currently no deficiency on this debt. Based on the available record, this allegation is found for the Applicant. (Transcript at 38-41; Government Exhibits 5 at 11-12, and 6 at 3.)

1.j. The Applicant denies that he owes a third collection agency \$106 for a mobile telephone bill. He testified that he never had a phone from this company. The Applicant's credit bureau report does not show that he has disputed this debt. (Transcript at 56-57; Government Exhibit 5 at 12.)

1.k. The Applicant denied that he owed a utility \$1,030 for a past due account. However, he testified that he is currently making payments on the arrearage. The Government's most recent credit bureau report confirms that he is making payments on this debt. (Transcript at 57-58; Government Exhibit 6 at 3.) This allegation is found for the Applicant.

1.l. The Applicant denies that he owes a fourth collection agency \$134 for a second utility bill. He testified, "I paid that off I thought." He has done nothing to investigate the status of this debt. The Applicant's credit bureau report does not show that he has disputed this debt. (Transcript at 58; Government Exhibit 5 at 14.)

1.m. and 1.n. The Applicant denies that he owes a second mobile telephone company \$264 and \$149 for two past due bills. He testified that he had paid off this creditor. He has done nothing to investigate the status of these debts. The Applicant's credit bureau report does not show that he has disputed either of these debts. (Transcript at 59; Government Exhibit 5 at 14.)

1.o., 1.p., 1.q., 1.r., and 1.s. The Applicant admitted that he owed a fifth collection agency \$929 in total for nine hospital bills.¹ The Applicant testified that he was not sure which of these bills were still owing and which had been paid off. The available credit reports do not show that he has disputed any of these debts. (Transcript at 59; Government Exhibit 4 at 14-16, 5 at 12-13, and 6 at 1-2.)

1.t. The Applicant admitted that he owed a sixth collection agency \$65 for a hospital bill. The Applicant testified that he was not sure which of his medical bills were still owing and which had been paid off, including this one. The available credit reports do not show that he has disputed this debt. (Transcript at 59-60; Government Exhibit 4 at 10.)

1.u. and 1.v. The Applicant admitted that he owed a seventh collection agency \$338 in total for two hospital bills. The Applicant testified that he was not sure which of these bills were still owing and which had been paid off. The available credit reports do not show that he has disputed either of these debts. (Transcript at 59-60; Government Exhibit 4 at 12-13.)

¹The monetary total in SOR allegation 1.s. is made up of five separate bills.

1.w. The Applicant denies that he owes a store \$344 for a credit card bill. Concerning this debt he testified that he did not know what the debt was for and would have to look into it. He has done nothing to investigate the status of this debt. The Government's most recent credit bureau report does not show that he has disputed this debt. (Transcript at 60; Government Exhibit 6 at 2.)

Mitigation

Applicant's Exhibits C and D are professional references from co-workers. Both of the correspondents state that the Applicant is a conscientious and reliable person. They recommend him for a position of trust.

Policies

Security clearance decisions are not made in a vacuum. 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 to be considered as appropriate 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 over-arching 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. In addition, the administrative judge may also rely on his own common sense, as well as his knowledge of the law, human nature, and the ways of the world, in making a reasoned 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. Security clearance 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.

Finally, as emphasized by President Eisenhower in Section 7 of Executive Order 10865, "Any determination under this order . . . shall be a determination 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. The Applicant, as shown by the evidence and his own admissions, has over \$9,900 in past due debts, all of which have been due and owing for several years. The 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. Under AG ¶ 20(a), the disqualifying condition may be mitigated where "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." Applicant's financial difficulties arose primarily between about 2000 and 2005. However, he does not have a reasonable plan to pay the past due indebtedness. I have considered the fact that the Applicant has paid several of his debts. That being said, the evidence shows he has done nothing in the past year to resolve any of his remaining past due

debts. An earnest desire to pay debts is not a reasonable substitute for action. It is the Applicant's burden to submit evidence showing that his financial situation has improved. He has not done so. This mitigating condition is not applicable to this case.

AG ¶ 20(b) states that the disqualifying conditions may be mitigated where "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., . . . unexpected medical emergency. . .), and the individual acted responsibly under the circumstances." The Applicant had to make some hard decisions because of his wife's illness. That certainly exacerbated his financial situation. However, the fact remains he has done little, if anything, to resolve the vast majority of his debts, including filing disputes with the credit reporting agencies. With the available record, I cannot find, under these particular facts, that the Applicant has acted responsibly under the circumstances.

The Applicant has barely initiated a good-faith effort to pay off his creditors. As stated under Findings of Fact, above, subparagraphs 1.d, 1.i., and 1.k. are found for the Applicant. There is no track record of his making payments for a consistent period of time. Accordingly, AG ¶ 20(d) is not applicable. Finally, he is \$9,900 in debt without a reasonable plan to resolve any of it. Accordingly, I cannot find that "there are clear indications that the problem is being resolved or is under control," as required by AG ¶ 20(c).

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. 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. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a) in making this decision:

- (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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The Applicant is a respected person who is under financial strain, and has been for several years. The medical condition of his wife, and his payment of some of his bills, has been considered. However, taking all of the evidence into account, he has not made a sufficient showing that his debt situation is under control. Under AG ¶ 2(a)(3), the Applicant's conduct is recent. Based

on the state of the record, I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, at the present time, I also find that there is the potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)), and that there is a strong likelihood of recurrence (AG ¶ 2(a)(9)).

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 the Applicant has not mitigated the security concerns arising from his financial situation at this time. He is not currently eligible for a security clearance.

On balance, it is concluded that the Applicant has not successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

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 THE APPLICANT
Subparagraphs 1.a.:	Against the Applicant
Subparagraphs 1.b.:	Against the Applicant
Subparagraphs 1.c.:	Against the Applicant
Subparagraphs 1.d.:	For the Applicant
Subparagraphs 1.e.:	Against the Applicant
Subparagraphs 1.f.:	Against the Applicant
Subparagraphs 1.g.:	Against the Applicant
Subparagraphs 1.h.:	Against the Applicant
Subparagraphs 1.i.:	For the Applicant
Subparagraphs 1.j.:	Against the Applicant
Subparagraphs 1.k.:	For the Applicant
Subparagraphs 1.l.:	Against the Applicant
Subparagraphs 1.m.:	Against the Applicant
Subparagraphs 1.n.:	Against the Applicant
Subparagraphs 1.o.:	Against the Applicant
Subparagraphs 1.p.:	Against the Applicant
Subparagraphs 1.q.:	Against the Applicant
Subparagraphs 1.r.:	Against the Applicant
Subparagraphs 1.s.:	Against the Applicant
Subparagraphs 1.t.:	Against the Applicant
Subparagraphs 1.u.:	Against the Applicant
Subparagraphs 1.v.:	Against the Applicant
Subparagraphs 1.w.:	Against the 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.

WILFORD H. ROSS
Administrative Judge