



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



In the matter of:)	
)	
)	ISCR Case No. 08-09013
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Candace Garcia, Esquire, Department Counsel
For Applicant: *Pro se*

May 17, 2010

Decision

RIVERA, Juan J., Administrative Judge:

Applicant lacks a track record of financial responsibility. He failed to mitigate financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On May 12, 2009, Applicant submitted a security clearance application. On September 30, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as revised; and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The SOR alleges security concerns under Guideline F (Financial Considerations). The SOR detailed reasons why DOHA could not make the preliminary

affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted or denied.

Applicant's undated response to the SOR allegations was received by DOHA on October 7, 2009. He requested a hearing before an administrative judge. The case was assigned to me on December 16, 2009. DOHA issued the notice of hearing on January 22, 2010, convening a hearing on February 4, 2010. The hearing was convened as scheduled. The Government offered Government Exhibits (GE) 1 through 9, which were admitted without objections. Applicant testified and submitted Applicant Exhibits (AE) 1 through 7, which were admitted without objection. AE 7 was received post-hearing. DOHA received the transcript of the hearing (Tr.) on February 16, 2010.

Findings of Fact

Applicant admitted 23 of the 24 SOR allegations. He denied the allegation in SOR ¶ 1.a. His admissions are incorporated herein as findings of fact. After a thorough review of the evidence of record, and having considered Applicant's demeanor and testimony, I make the following additional findings of fact.

Applicant is a 42-year-old network systems administrator employed by a defense contractor. He finished high school in 1986, and is currently attending college. He expects to receive his bachelor's degree in computer science in April 2010. Applicant married his wife in February 1990, and they have two children.

Between 1990 and 1997, his wife was employed full-time and she contributed to the household financial situation. In 1997, his wife was unemployed for a period because of complications with the delivery of one of their children. In 1997, Applicant filed for bankruptcy protection and all of his unsecured financial obligations were discharged. (Tr. 80-82)

Applicant filed his first security clearance application in May 2009. In it, he disclosed having numerous delinquent debts. His background investigation addressed his financial problems. The SOR alleges 24 delinquent debts totaling approximately \$65,000. He attributed his financial problems to periods of unemployment, underemployment, and his separation from his wife from 2004 until 2007. Because of his reduced income and the separation from his wife, he was not making sufficient money to pay for his day-to-day financial obligations and his delinquent debts.

Applicant's employment history shows he was fully employed with diverse employers from January 1993 until 2006. He was unemployed from September 2006 until March 2007. He had a temporary job from March 2007 until December 2007. In December 2007, he was hired full-time by his current employer, a government contractor. Additionally, Applicant has held a part-time job as a fitness instructor from July 2000 to present.

Applicant separated from his wife in June 2004. He did not pay child support because he was not allowed access to his children. In 2005, his wife secured court-ordered child support for \$1,500 a month, including arrearages. During his 2006 periods of unemployment, Applicant sought relief from the \$1,500 court-ordered child support, but the court denied relief. Because of the court-ordered child support and his periods of unemployment, he was not able to pay his truck note and returned it to the dealership. He had purchased the truck new in 2002. He also was evicted from his apartment in 2006. He moved in with his mother to save money and to be able to pay his child support obligation.

Applicant and his wife reconciled in February 2007. His wife worked from January to September 2008, and they were able to do better with their financial problems for some time. However, she has been unemployed since. Applicant's personal financial statement shows he was making approximately \$3,800 a month, including \$600 he makes on his part-time job. His monthly living expenses add up to \$3,000. They have approximately \$535 in monthly disposable income.

As of his hearing date, Applicant had made payment arrangements to satisfy the following debts:

1. SOR ¶ 1.a. The total debt owed is \$37,362. The creditor filed suit against him, they settled the debt in 2009, and he made sporadic payments in October 2009 (\$250), December 2009 (\$500), and February 2010 (\$250) (AE 7).

2. SOR ¶ 1.i. Applicant owes approximately \$15,000 to the IRS for overdue income taxes. He established an installment agreement in 2007, and has been paying approximately \$125 a month since through a wage garnishment (AE 7).

3. He owes \$2,000 on back taxes to a state and claimed he settled the debt and was paying \$100 monthly. AE 1 shows he has a payment agreement with the state and that he issued a bad check to cover this debt. He has not been able to make consistent payments, but intends to pay the debt as soon as his financial situation stabilizes.

4. SOR ¶ 1.l alleged a \$605 debt to a collection agency. AE 2 shows he has a payment agreement with the creditor to pay \$50 monthly. The evidence does not show when he established the payment agreement, whether he has been making consistent monthly payments, or if he is current with his payment agreement.

5. AE 3 shows Applicant has a payment agreement with the creditor in SOR ¶ 1.n. The evidence does not show when he established the payment agreement, whether he has been making consistent monthly payments, or if he is current with his payment agreement.

6. Applicant also claimed he settled and was paying on the debts alleged in SOR ¶¶ 1.k and 1.v. SOR ¶ 1.k alleged a \$4,157 debt to another state for overdue income taxes. He claimed he made a payment agreement to pay \$193 a month for 24 months.

He has not been able to make consistent payments, but intends to pay the debt as soon as his financial situation stabilizes. He presented no documentary evidence to support his claims.

Applicant testified he has not contacted, made payment arrangements, or made any other attempts to resolve any of the remaining alleged SOR debts because he does not have the financial means to resolve the debts. Based on Applicant's credit reports, his testimony, and his statements, I find that Applicant is responsible for all the delinquent debts alleged in the SOR. His liabilities total approximately \$65,000. These debts are not resolved.

Applicant testified he and his wife have a budget and they try to follow it. His plan is to pay some of the large debts first and then address the other smaller debts. He underwent financial counseling approximately 10 years ago when he filed for bankruptcy protection. He has not received financial counseling recently. He is against contracting for the services of a debt management company because he does not have the money to pay for their services. He believes he can handle his financial situation on his own. He presented no evidence of any prior financial counseling, participation in consumer debt consolidation programs, or that he was following a budget. It appears he has made payment arrangements only after legal action was initiated against him.

Applicant was forthcoming about his past and present financial situation. He highlighted his good performance for his employer and that he is considered a valued employee. There is no evidence that Applicant has compromised or caused others to compromise classified information.

Applicant expressed remorse for his financial problems and averred he has always intended to pay his delinquent debts. He promised to make satisfactory payment arrangements with all of his creditors sometime in the future.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required 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 controlling 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.

In the decision-making process, the Government has the initial burden of establishing controverted facts alleged in the SOR by “substantial evidence.”¹ Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to applicant to produce evidence “to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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* Executive Order 12968 (Aug. 2, 1995), Section 3.

Analysis

Guideline F, Financial Considerations

Under Guideline F, the security concern is that 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

¹ See Directive ¶ E3.1.14. “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. AG ¶ 18.

Applicant's debts were discharged through bankruptcy in 1997.² The SOR alleged 24 delinquent debts. Applicant and his spouse are responsible for all of the alleged delinquent debts, many of which have been delinquent for many years. Their total liability is approximately \$65,000 in unresolved SOR debt. AG ¶ 19(a): inability or unwillingness to satisfy debts; and AG ¶ 19(c): a history of not meeting financial obligations, apply.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

(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;

(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; and

(f) the affluence resulted from a legal source of income.

Applicant presented documentary evidence to show that he has settled and made some payments on six of the alleged debts. However, it appears he has made payment arrangements only after legal action was initiated against him. He also established some circumstances beyond his control, which contributed to his inability to

² The SOR did not allege that Applicant failed to disclose these debts under Guideline F or E. As such, this information cannot be used to deny Applicant's security clearance. Notwithstanding, I may consider any behavior not alleged in the SOR to: assess his credibility; evaluate his evidence of extenuation, mitigation, or changed circumstances; assess his possible rehabilitation; determine the applicability of the AGs; and conduct the whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006).

pay his debts, i.e., his and his wife's periods of unemployment and underemployment, and their four-year separation. I find AG ¶ 20(b) partially applies, but does not fully mitigate the financial concerns. Applicant's evidence is not sufficient to show he acted responsibly under the circumstances.

The evidence shows Applicant and his wife do not have a track record of financial responsibility. He presented little evidence of debt payments, contacts with creditors, or negotiations to resolve his SOR debts. Considering the evidence as a whole, his financial problems are not under control. Applicant receives credit for contacting some of his creditors and establishing payment plans. However, his evidence does not show he has been paying consistently on his payment plans except when his pay is garnished. It is too soon to determine whether he has a viable plan to resolve his financial predicament or that he will be able to avoid similar financial problems in the future.

AG ¶¶ 20(a), (c), (d), (e), and (f) do not apply because Applicant's financial problems are not yet under control, and he did not participate in recent financial counseling. He also failed to show he made good-faith efforts to resolve his debts, because it appears he has made payment arrangements only after legal action was initiated against him. His actions cast doubt on his current reliability, trustworthiness, and judgment. Despite partial applicability of AG ¶ 20(b), financial considerations concerns are not mitigated. Applicant has not demonstrated his financial responsibility by taking sufficient timely actions to resolve his 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 the 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.

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. AG ¶ 2(c).

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Applicant is a mature man and a good worker. He has continued his education with a view to improve his financial situation. He has worked well for his employer. There is no evidence he has ever compromised or caused others to compromise classified information. These factors show some responsibility, good judgment, and mitigation. Applicant also established some circumstances beyond his control, which contributed to his inability to pay his debts. His current financial problems primarily seem to be the result of his separation from his wife.

Notwithstanding, Applicant's evidence is not sufficient to show he acted responsibly under the circumstances. He and his wife have been together since 2007 and he has been fully employed since December 2007. Applicant should have been more diligent and made greater efforts sooner to resolve his delinquent debts. His documented steps are simply inadequate to fully mitigate financial considerations concerns.

Applicant has made payment arrangements when he has been legally forced to do so. His favorable information fails to show financial responsibility and good judgment. He has made little effort to resolve his financial obligations. He presented little documentary evidence of debt payments or contacts with creditors to resolve his debts. His financial problems are not under control. It is too soon to determine whether he can establish a viable financial plan to resolve his current problems and whether he has learned to avoid similar financial problems in the future.

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.x:	Against Applicant

Conclusion

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

JUAN J. RIVERA
Administrative Judge