



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



In the matter of:)	
)	
)	ISCR Case No. 08-09366
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: Pro Se

March 30, 2009

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted a security clearance application, Standard Form 86, on May 13, 2008. On December 5, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations, for Applicant. 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 January 2, 2009, Applicant answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on January 23, 2009. On February 6, 2009, a Notice of Hearing was issued, scheduling the hearing for February 26, 2009. The case was heard on that date. The Government offered three exhibits which were admitted as Government Exhibits (Gov) 1 – 3. Applicant testified and offered one exhibit which was admitted as Applicant Exhibit (AE) A. The record was held open until March 12, 2009, to allow Applicant to submit additional documents. No

additional documents were submitted. The transcript was received on March 10, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, Applicant denies the allegation in SOR ¶¶ 1.a. He admits the allegations in SOR ¶¶ 1.b – 1.f.

Applicant is a 36-year-old field engineer employed with a Department of Defense contractor seeking a security clearance. He has worked for his company since May 2008. From August 1991 to November 2000, he served on active duty with the United States Air Force. He separated at the rank of E-5 with an honorable discharge. He held a security clearance from 1993 to 2006. He is married. He has two children from his second marriage, a daughter age 9, and a son age 8. His wife has four children. Two adult sons, a daughter, age 19 and a son, age 8. (Tr at 4-5, 14, 16-17; Gov 1.)

On May 13, 2008, Applicant completed an electronic questionnaire for investigations processing (e-QIP), in order to apply for a security clearance. (Gov 1.) A subsequent background investigation revealed that Applicant had six delinquent accounts, an approximate total balance of \$43,811. The delinquent accounts included: a \$163 medical debt placed for collection (SOR ¶ 1.a: Gov 2 at 1); a \$11,935 personal loan from a credit union that was charged off in September 2006 (SOR ¶ 1.b: Gov 2 at 1; Gov 3 at 8, 10); a \$10,477 delinquent credit card account that was charged off in September 2006 (SOR ¶ 1.c: Gov 2 at 1; Gov 3 at 5); a \$4,105 personal loan from a credit union that was charged off in October 2006 (SOR ¶ 1.d: Gov 2 at 1; Gov 3 at 10); a \$6,715 spousal support account that was placed for collection. (SOR ¶ 1.e: Gov 2 at 2; Gov 3 at 4); and a \$10,416 personal loan with a bank that was charged off in July 2006 (SOR ¶ 1.f: Gov 3 at 10).

When he separated from the military, Applicant obtained a well paying job at an overseas location. He was able to meet all of his expenses. In November 2004, his wife at the time left Applicant and his children after encountering some legal trouble. She moved back to the United States. She has not seen the children since. (Tr at 13, 16, 19-20, 32)

In May 2006, Applicant decided to leave his overseas job and move back to the United States. His children were being educated in the foreign country's educational system. He believed his children were not getting a proper education because they were not being taught to read and write English. (Tr at 34-36) Applicant met his current wife while overseas. Applicant admits that part of his decision to move back to the United States was to be near and eventually marry his current wife. Upon moving back the United States, Applicant and his children moved in with his current wife. She is an active duty E-6 in the United States Navy. His divorce from his second wife was final in April 2007. He married his current wife in June 2007. (Tr at 17, 33 – 34, 39)

Applicant's financial problems began after he moved back to the United States. He was unemployed between May 2006 and July 2007. He found employment in July 2007, but was laid off after six months in February 2008. He was unemployed for three months until he was hired in his current position in May 2008. (Tr at 36-38; Gov 1)

In his answer the SOR, Applicant indicates that both of his parents suffered from acute life threatening illnesses during the year he returned from the United States. It is not clear whether this impacted his financial situation. Applicant did not testify about his parents' illnesses at hearing.

When Applicant's second wife moved back to the United States, she obtained a spousal support agreement in the local jurisdiction where she resides. Applicant was ordered to pay \$500 a month spousal support until the divorce was final. Applicant owes approximately \$6,515 in arrearages. He made his first payment on December 5, 2008. He intends to send monthly payments until the debt is resolved. The record was held open, in part, to allow Applicant submit proof of additional monthly payments. (Tr at 21-22, 49-50) At the close of the record nothing was submitted.

With respect to the medical debt is SOR ¶ 1.a, Applicant denies knowledge of this debt. It is a \$163 medical debt which he believes his wife's military health insurance should have paid. He tried to locate the medical facility where this debt was incurred but has not been able to contact them. (Tr at 23-26)

The debts alleged in SOR ¶¶ 1.b -1.f remain outstanding. In May 2008, he entered into an agreement with a company who agreed to resolve and/or settle his debts for him. He paid the company a couple thousand dollars up front and \$375 monthly. In February 2009, he terminated the agreement because they took his money but were not paying on his delinquent accounts. The record was held open to allow Applicant to provide a copy of the agreement he made with the company and documentation of the payments made to the company. (Tr at 26-29) At the close of the record nothing was submitted.

Applicant has not filed his federal income taxes since 2005. He claims he has not filed because he is not familiar with the exact forms he needs. He believes he filed his federal income tax returns for 2005. He has not filed federal income tax returns for tax years 2006 and 2007. He does not believe he owes any taxes. He anticipates refunds. He has not contacted the Internal Revenue Service. (Tr at 44-46) Applicant's income tax issues were not discovered until the hearing. Although not alleged in the SOR, Applicant's income tax issues are considered for determining whether or not any of the financial considerations mitigating conditions apply. (See ISCR App. Bd. Dec. 00-0633, Oct. 24, 2003, at 3-4)

Applicant intends to pay all of his debts. He has not attended financial counseling. He does not maintain a monthly budget. He is apprehensive about seeking the assistance of another debt solution company as a result of his recent experience. (Tr at 40-41, 50)

Applicant and his wife live in different cities. She lives near the military installation where she is assigned on active duty. He lives in the area where he works. All of the children live with his wife. His wife is on terminal leave. Approximately 28 days after the hearing, she will separate from active duty. She and the children will move to where Applicant resides. She is interviewing for jobs in the area where Applicant resides but has received no firm employment offers as of the date of the hearing. (Tr at 17-18)

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 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.

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 disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition (FC DC) ¶19(a) (an inability or unwillingness to satisfy debts); and FC DC ¶19(c), (a history of not meeting financial obligations) apply to Applicant’s case. Since 2006, Applicant accumulated approximately \$43,811 in delinquent debt.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Financial Considerations Mitigating Condition (FC MC) ¶ 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) is not applicable. Applicant continues to have financial problems. Although he made one payment towards his past due spousal support payments, he provided no evidence that he is maintaining his monthly payment even though the record was held open to allow him to do so. The majority of his delinquent accounts remain unresolved. In addition, it was discovered at hearing that Applicant has not filed income tax returns for 2006 and 2007. He may owe income taxes for tax year 2005. This raises further questions about his judgment and reliability.

FC MC ¶ 20(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) partially applies. Applicant’s November 2004 marital separation and divorce in April 2007, have had some impact on his financial situation. However, his decision to leave a well-paying job overseas prior to securing employment in the United States had the most adverse impact on Applicant’s

financial situation. After his move, he was unemployed for over 14 months. Better planning could have prevented this issue. Applicant testified that he was taken advantage of by an unscrupulous debt resolution agency. However, I cannot consider this fully without some corroborating evidence. The record was held open to allow Applicant to submit additional evidence, including a copy of the agreement he entered into with the debt resolution company, and verification of the payments made to the company. Nothing was submitted. Most of Applicant's financial situation was the result of poor planning on his part as opposed to circumstances that were beyond his control. For these reasons, FC MC ¶ 20(b) is given less weight. He has no plan in place to resolve his delinquent accounts. It was also discovered at hearing that Applicant has significant tax problems. His financial problems have been aggravated as a result of poor planning and neglect. I cannot conclude Applicant acted responsibly under the circumstances.

FC MC ¶ 20(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) does not apply. While Applicant consulted a debt resolution company and entered into an agreement, he has not attended any formal financial counseling. Financial counseling would assist Applicant in controlling his finances. Although he made one payment towards one of his debts, it is unlikely that his financial problems will be resolved in the near future due to the extent of the delinquent debt.

FC MC ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. One payment towards one of the debts does not indicate a good-faith effort to repay overdue creditors. While Applicant claims he had entered into a contract with an unscrupulous debt resolution company, he provided no evidence to corroborate his story even though he was given the opportunity to do so. Although Applicant promises to pay all of his debts off in the future, a promise to pay in the future does not mitigate the concerns under financial considerations.

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) 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 common sense 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. I considered Applicant's nine years of honorable service in the United States Air Force. I considered his marital issues over the past five years. I considered his periods of unemployment. However, Applicant has not demonstrated that he has taken sufficient action to resolve his delinquent accounts. The government expects persons who are entrusted to access to classified information to fulfill their responsibilities as United States citizens. One of the more important responsibilities is to file and pay taxes in a timely manner. It was discovered at hearing that Applicant has federal tax issues for tax years 2005, 2006 and 2007. Concerns remain under financial considerations because of Applicant's failure to uphold his duty to file and pay federal income taxes as well as his unresolved financial problems. A security risk remains because of Applicant's history of financial irresponsibility and the lack of action taken towards resolving his delinquent accounts. He has not met his burden to mitigate the concerns raised under 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	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.

ERIN C. HOGAN
Administrative Judge