



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



In the matter of:)
)
) ISCR Case No. 08-09616
)
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: *Pro Se*

April 29, 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 December 15, 2008, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. 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.

In an undated answer to the SOR that was received on January 22, 2009, Applicant elected to have his case decided on the written record. Department Counsel

submitted the government's file of relevant material (FORM) on February 23, 2009. The FORM was received by Applicant on March 2, 2009. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the FORM and submitted additional material on March 26, 2009. Department Counsel did not object to the additional material and it was admitted. The case was assigned to me on April 22, 2009.

Findings of Fact

Applicant admitted all of the allegations in the SOR except 1.q. The Government moved to strike allegations 1.n, 1.o, and 1.p, as being duplicates of 1.c and 1.d. After a thorough and careful review of the pleadings, exhibits, and other evidence submitted, I make the following findings of fact.

Applicant is a 33-year-old employee of a defense contractor. He married in 1997 and divorced in 2002. He remarried in 2005. He has two children, ages 11 and 10, and two stepchildren, ages 15 and 12.

Applicant has more than \$19,000 in delinquent debts. In his response to the FORM he stated that his financial problems were the result of low paying jobs, lay-offs, and an injury. He also stated that during "this time" he was a single father trying to get by. Applicant did not provide detailed information as to the specifics of his financial situation during the "time frame." He also did not provide any information about the specifics of an injury or its impact on his financial situation.

Applicant explained he was working one full-time and one part-time job during a period of time and then just one full-time job. He did not explain why he no longer worked the part-time job. He stated his wife was going to school and the plan was that when she graduated and got a job she would help with the finances. She could not find a job in her field. Applicant failed to provide the time frame that she went to school. He failed to provide information as to whether his wife got a job in another field. He failed to provide information as to what responsible actions he was taking regarding his finances during this time. He did state he contacted some creditors to make payment arrangements, but was unable to keep up with the payments. He did not explain which creditors he contacted and what specific payments he made towards his debts.

In his response to the FORM Applicant stated he recently paid off some of his debts and made arrangements with others. He failed to explain why he waited until March 2009 to take any action on debts that had been delinquent for many years. He explained he received money from family to resolve some of his debts. No information was provided as to whether this money was a gift or a loan that is to be repaid.

Applicant admitted he owed all of the debts in the SOR except the debt in 1.q (\$130) that he disputes. In his response to the FORM he stated this debt was to his chiropractor with whom he had worked out a plan with whereby he would receive the chiropractor's services and as payment Applicant would clean and detail the

chiropractor's cars. He provided a copy of a letter he sent to the creditor on March 16, 2009, disputing the account and a witness statement verifying the arrangement. The last activity reported on this account on Applicant's credit bureau report (CBR) is April 2004. It does not appear any other action was taken to resolve the account.¹

Applicant provided a document verifying that the judgment in SOR ¶ 1.l (\$1,167) was paid on March 13, 2009. The date of the judgment was November 2007.

The debts in SOR ¶¶ 1.a, 1.b, 1.c, and 1.d (\$86, \$45, \$414, and \$402, respectively) are medical debts. Applicant's stated in his response that he received money from his family to pay these debts. The debts in SOR ¶¶ 1.c and 1.d have been delinquent since 2003. The debt in ¶1.a has been delinquent since 2005 and the debt in ¶1.b has been delinquent since 2006.²

Applicant provided a credit card receipt for \$3,506 paid to the collection company listed in SOR ¶¶ 1.a, 1.b, 1.c, 1.d, 1.l, 1.r, 1.s, and 1.t. (These debts total \$3,542.) It is unclear if Applicant used this credit card to pay all of these debts. He did not provide information as to the payment status of this credit card debt. He stated in his answer that he paid all of these debts to this collection company from money he received from a family member. He provided receipts that the debt in SOR ¶1.l is paid and four medical debts totaling \$1,558 are paid; all as of March 13, 2009.³

Applicant owes approximately \$15,456 in delinquent student loans that he took out in 1997, 1998 and 1999. The credit reports list the last activity on any of the accounts was in 2002. Applicant failed to provide any information for why he failed to make payments on his student loans in the past seven years. He stated in his answer to the FORM that he enrolled in a student loan rehabilitation program to bring his loans out of default and into good standing. He provided an unsigned one page document detailing the rehabilitation agreement. He did not provide any proof he has started to make payments into the program.

The debt in SOR 1.m (\$95) is to a video rental store. Applicant stated in the FORM that he contacted the creditor and could not reach an agreement on monthly payments. He does not have the money to pay the debt in full, but plans on sending the creditor \$25 a month. He did not provide proof he has begun paying the creditor. The debt has been delinquent since 2004.

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition

¹ Response to FORM; GE 3 and 5 at page 12.

² GE 5, 6 and 7.

³ Response to FORM.

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. 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

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 them under AG ¶19 especially the following:

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

Applicant has delinquent debts dating back to at least 2002. He made some payments to resolve some of his debts in the past few weeks, but still owes a substantial amount of money. I find both disqualifying conditions apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions. I especially considered the following 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 provided proof that some of his delinquent debts were paid in March 2009. It is unclear if he used a credit card to pay these debts and what the status of the credit card debt is. He stated he received money from a family member to pay some debts, but it is unknown if that money is a loan to be repaid. Applicant still has debts that have not been resolved and therefore mitigating condition (a) is not applicable.

There is some information that the conditions that resulted in the Applicant's financial problems were beyond his control due to a divorce and injury. However, Applicant failed to provide sufficient information regarding the specifics of what happened and how he acted responsibly under the circumstances. Based on the facts included in the FORM I am unable to apply mitigating condition (b).

There was no evidence in the FORM that Applicant received financial counseling. There is some evidence that Applicant is getting his finances under control, but without specific information about his current financial situation I can not apply mitigating condition (c).

Applicant has had debts that have been delinquent for many years. It appears he did not take any action on resolving these debts until his security clearance became an issue. He provided some proof he paid some of his debts in March 2009. These are debts that have been delinquent for years. He stated he has entered a rehabilitation program to pay his delinquent student loans, but did not provide a signed agreement or proof he has made any payments. I find under the circumstances mitigating condition (d) partially applies. I am concerned that the debts Applicant has paid have been by credit card and from money received from a family member. It is unclear if he has incurred new debts to pay the old ones.

Applicant disputes one debt stating he had an agreement to provide work for services to his chiropractor. Applicant provided a letter he wrote to dispute the debt on March 18, 2009. The debt has been delinquent since April 2004. No other information was provided. I find mitigating condition (e) applies to that debt.

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 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's delinquent debts were years old before he paid some of them. He did not take action on them until his security clearance was an issue. It is unclear if he has incurred new debts to pay his old debts and if he has the financial means to pay the new debts. He stated he entered a rehabilitation program to repay his student loans, but did not provide proof that he signed the agreement or has made any payments on it. Without a substantial period of consistent payments toward this large debt it is too early to determine that Applicant is committed to staying financially solvent and consistently pay his bills on time. I do not have any evidence of Applicant's financial status and his current ability to pay his bills. He provided very little information about why he failed to make payments on his student loans for seven years. Overall the record evidence leaves me with serious 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 from 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.d:	For Applicant
Subparagraphs 1.e-1.k:	Against Applicant
Subparagraphs 1.l:	For Applicant
Subparagraph 1.m:	Against Applicant
Subparagraphs 1.n-1.t:	For 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.

Carol G. Ricciardello
Administrative Judge