



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



In the matter of:)
)
) ISCR Case No. 08-09776
)
)
Applicant for Security Clearance)

Appearances

For Government: Fahryn Hoffman, Esquire, Department Counsel
For Applicant: *Pro Se*

July 13, 2009

Decision

RIVERA, Juan J., Administrative Judge:

Applicant has substantial debt. He is financially overextended and does not have the means to overcome his financial problems. He failed to mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On July 3, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On January 14, 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 and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive),

dated January 2, 1992, as modified and revised.¹ The SOR alleges a security concern 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, denied or revoked.

On February 5, 2009, Applicant responded to the SOR allegations, and requested a hearing before an administrative judge. The case was assigned to me on February 26, 2009. DOHA issued a notice of hearing on March 24, 2009. The hearing was convened as scheduled on April 14, 2009. The government offered Government Exhibits (GE) 1 through 4, which were admitted without objection (Tr. 23). Applicant testified on his own behalf, and submitted Applicant Exhibits (AE) 1 through 3, which were admitted without objection (Tr. 23). DOHA received the transcript of the hearing (Tr.) on April 22, 2009.

Findings of Fact

Applicant denied all the factual allegations in the SOR, except for SOR ¶ 1.c, which he admitted. His admission is incorporated herein as a finding 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 entrepreneur (franchise owner) seeking employment as a network engineer with a defense contractor. In June 1991, he completed an associate's degree in business administration. He received his bachelor's degree in finance in June 1994. He is currently enrolled in a master's degree program in service management of information systems. He needs to complete three additional courses to receive his master's degree (Tr. 6-7, e-QIP). He has no military service. Applicant has been married since 1998. He has three children of this marriage, ages 17, 10, and 6.

Applicant worked almost six years for a federal agency; initially as a "political stay-in-school student," and after graduating from college as a disaster assistance employee (Tr. 35). Between December 1997 and September 2005, he worked in the information technology (IT) field for various government contractors.

Applicant testified he never had any financial problems before September 2005 (Tr. 27-28). From 2001 to 2005, he earned approximately \$450,000 working for government contractors (Tr. 93). Both he and his wife were working full time in the IT business and they were doing well financially. Their children were in private schools.

¹ On Aug. 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guideline to all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated Jan. 1987, as amended, in which the SOR was issued on or after Sep. 1, 2006.

They bought a minivan in 1999, their residence in 2001, a Chevy Tahoe in 2004, a rental townhome in 2005, his business in 2006, and a used BMW in 2006 (Tr. 92).

Around September 2005, Applicant believed the IT business was going soft. His IT contract had ended, and he decided to use his savings to start his own business. He purchased a fire and water restoration company franchise and opened the business in November 2005. The business did well in 2006, and "pretty good" in 2007. His wife quit her IT job in November 2006, and ran the administrative part of the business. Applicant dedicated himself to the production and marketing aspects of his new business. By the end of 2007, his business was not doing well because of the world-wide downturn of the economy.

Applicant blames all of his current financial problems on his failing business. He and his wife used their line of credit accounts and credit cards to pay for their payroll and other business expenses, as well as for all of their family's day-to-day living expenses. Applicant strongly denied his financial problems were caused by any lavish or extravagant lifestyle (Tr. 29-31).

In May 2008, because of his business' financial downturn, Applicant sought employment with a government contractor. In July 2008, he submitted a security clearance application in which he disclosed having problems meeting his two mortgages and other financial obligations. His background investigation addressed his financial status and included the review of August and December 2008 credit bureau reports (CBRs), and Applicant's answers to a November 2008 DOHA interrogatory.

The SOR alleges six delinquent and/or charged off accounts, totaling approximately \$20,523, which have been delinquent for a number of years. Concerning the SOR allegations he explained that:

SOR ¶ 1.a (\$158) is a debt for wireless services from 2003-2004. Applicant claimed his wife had twice paid this debt. He presented no documentary evidence to support his claim. He paid the debt in April 2009 (Tr. 39, AE 1). Applicant explained he did not know this debt was indicated as delinquent until he was confronted with it by the background investigator in December 2008. Being so close to his security clearance hearing, he elected to pay the debt again instead of disputing it (Tr. 41).

SOR ¶ 1.b (\$6,789) is a debt for a line of credit account Applicant's wife opened without his knowledge to pay for both their business and family's day-to-day expenses, including the payroll (Tr. 57-58). The debt is in collection by a collections' company. Applicant claimed he found out about it in November 2008. He recently paid \$2,213, and still owes around \$4,500. The creditor has agreed to settle the debt for \$2,250, provided Applicant pays the debt by the end of April 2009.

Applicant also owes approximately \$18,000 to a credit union (not alleged in the SOR) (Tr. 56). This debt was for a line of credit and credit card account Applicant's wife opened without his knowledge to pay for both their family's and business' day-to-day

expenses. In January 2009, Applicant asked the credit union to consolidate the line of credit and credit card account into one account (AE 1). He also proposed to settle the account for one-half of the remaining balance. As of his hearing date, he had not received an answer to his proposal (Tr. 59).

Applicant testified he is no longer using the line of credit and/or credit card to pay for their business' expenses. He reduced his overhead expenses by laying off most of his employees. He and his wife are now doing most of the business' work themselves.

SOR ¶ 1.c (\$613 past due on a \$55,828 second mortgage on his home). This account is delinquent. Applicant plans to address it in May 2009, after his daughter graduates from high school (Tr. 44). Applicant's three children were attending private schools. Because of his financial problems, he moved his middle child to a public school around September 2008, but allowed his older daughter and youngest child to stay in a private school so that they could graduate with their friends. He plans to use the private school tuition money (approximately \$1,000) to pay this debt (Tr. 44-47).

SOR ¶ 1.d (\$553 past due on a \$12,401 car note). Applicant paid \$1,400 to bring the account current. His total debt is now \$9,439 (AE 1). He owes \$568 for his April 2009 monthly payment. As of his hearing date, he did not have the money to make the payment. He expects to pay his monthly installment when he is paid for some of the work he has performed (Tr. 48-49).

SOR ¶ 1.e (\$12,338 past due on Applicant's \$359,000 first home mortgage). In January 2009, Applicant's mortgage was in foreclosure. In February 2009, Applicant paid \$24,936 to bring his mortgage out of foreclosure. He raised the money by withdrawing \$11,000 from his 401(k) retirement plan and \$14,000 he earned from his business (Tr. 95). As of his hearing date, Applicant was late on his March 2009 mortgage payment. He testified he will also miss his April and May payments because he does not have the income to pay his debts (Tr. 50-54).

SOR ¶ 1.f (\$72) this is a delinquent debt for medical services. He claimed he had paid this debt and denied it in the SOR. He paid it in February 2009, to another collection agency (Tr. 55).

Applicant presented evidence of his business' past earnings, the number of jobs/contracts performed, and the income he expects to receive when he collects on the completed jobs/contracts (approximately \$35,000) (Tr. 60, 76). His business income is inconsistent and he is having trouble collecting on his work.

In November 2008, Applicant was making around \$20,000 to \$25,000 a month from his business (GE 2). At his hearing, he testified he was making between \$10,000 and \$15,000 a month. He and his wife take no salary. All of the business income is used to pay for the day-to-day business and household expenses. Applicant's household expenses total approximately \$10,000 monthly (Tr. 75). His business expenses include

paying his franchise monthly charges, three loans, and vehicles' maintenance. He owes a total of approximately \$48,000 for his business franchise license and the three loans.

Additionally, Applicant owes approximately \$55,000 on a rental property (townhome) he purchased in 2005. The townhome mortgage payment is around \$600. Applicant rents the townhome for \$1,100. As of his hearing day, he was three or four months late on the townhome mortgage. To his knowledge, the mortgage is not under foreclosure. He is delinquent because he cannot afford the mortgage payments (Tr. 91). He also owes approximately \$9,000 for his 2004 truck. As of the hearing date, he was one month behind on his truck payment.

Applicant has had financial problems since late 2006. He has not been making enough money through his business to pay his bills and for his family's day-to-day living expenses (Tr. 98). He and his wife have changed their lifestyle to adjust to their financial problems (Tr. 66). They manage their business from their home. They are moving their children from private school to public schools. He reduced his overhead expenses by reducing his storage rental fees, and his cable, telephone, dry cleaning, and utility bills. He and his family no longer go out to eat, have movie nights, or take vacations. Applicant believes his business does not provide a steady, consistent income and he plans to sell it as soon as possible. He is looking for a stable job to be able to take care of his family.

To correct his financial situation, Applicant sought employment with a government contractor. He worked for the contractor from July 2007 to September 2009, and was making \$8,000 a month. With his contractor job income and the business income he was able to pay most of his bills. He was terminated from his contractor job, and has been unemployed since January 2009, because of the security concerns raised by his current financial situation (Tr. 97).

Applicant expressed sincere remorse for his financial problems. He was candid and forthcoming explaining the circumstances surrounding his financial problems. I believe he is well aware of what is required of him to show that he is reliable, trustworthy, and financially responsible. There is no evidence that Applicant ever compromised or caused others to compromise classified information.

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 controlling

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.

In the decision-making process, the Government has the initial burden of establishing controverted facts alleged in the SOR by “substantial evidence,”² demonstrating, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant’s access to classified information. 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.

² 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).

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

The SOR alleged six delinquent and/or charged off debts that have been delinquent for a number of years. Of the six delinquent debts alleged, Applicant paid SOR ¶¶ 1.a (\$158) and 1.f (\$72). He settled and is paying on SOR ¶ 1.b (\$6,789).

Applicant's three remaining debts are still delinquent. He has made partial payments, but he is still behind on one or more payments. He is delinquent on his \$55,828 second mortgage on his home (SOR ¶ 1.c). He is \$553 past due on his truck note of \$9,439 (SOR ¶ 1.d). He is also \$12,338 past due on his \$359,000 home first mortgage (SOR ¶ 1.e). Additionally, Applicant is delinquent and owes \$18,000 on a line of credit and credit card account.

Applicant does not have the financial means to pay his legal obligations, delinquent debts, and his day-to-day living expenses. 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 established that his financial problems resulted from circumstances beyond his control contributing to his inability to pay his debts, i.e., his business downturn. The record suggests Applicant had no financial problems prior to purchasing his business in 2005. He contacted some of his creditors to try to settle his debts. It does not seem he was living beyond his means, and he has made lifestyle changes to adapt to his financial problems. I find AG ¶ 20(b) applies, but does not fully mitigate the financial concerns. Applicant is financially overextended and his financial problems are not under control.

AG ¶¶ 20(a) and (c) do not apply because Applicant's financial problems are ongoing and his financial problems are not yet under control. He did show, however, that he made some good-faith efforts to resolve his debts. AG ¶ 20(d) applies. The remaining mitigating conditions do not apply.

Despite applicability of AG ¶¶ 20(b) and (d), financial considerations concerns are not mitigated. Applicant is financially overextended. He lacks the income to bring his debts to current status.

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. Applicant is a mature, well-educated man, and a good husband and father. He has successfully worked for a defense agency and defense contractors while attending college and thereafter. Applicant established circumstances beyond his control contributing to his inability to pay his debts. He has made some effort to resolve his financial problems.

Applicant held a security clearance for a short period of time. There is no evidence he has ever compromised classified information or committed any security violations. Applicant expressed sincere remorse for his financial mistakes and seems resolute in fixing his current financial problems. These factors show responsibility, good judgment, and mitigation.

On the other hand, Applicant became overextended by excessive spending. He took out a second mortgage and borrowed on a substantial line of credit. He purchased a townhome, and took out a substantial mortgage. His business failed to provide the expected level of income and his debts became delinquent. He still has a significant delinquent debt that he will not be able to bring under control in the near future. He brought his truck out of repossession by making a \$1,400 payment, but as of his hearing date he was again one month delinquent. He brought his residence out of foreclosure by making a \$25,000 payment on his first mortgage. However, as of his hearing date he was late on his March 2009 payment, and he will not be able to make any payments on this mortgage until May 2009. He was also delinquent on his home's second mortgage and on his rental property's mortgage.

Applicant's business is not providing sufficient income to keep his debts current. He does not have the financial means to resolve his financial problems. On balance, I conclude Applicant's favorable evidence is insufficient to mitigate the security concerns arising from his 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.b, & 1.f:	For Applicant
Subparagraphs 1.c, 1.d, & 1.e:	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 or continue eligibility for a security clearance for Applicant. Eligibility for a security clearance is denied.

JUAN J. RIVERA
Administrative Judge