



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



In the matter of:)
)
) ISCR Case No. 08-09888
)
)
Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro Se*

October 22, 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 May 11, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concerns under Guidelines 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 the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on June 19, 2009, and requested a hearing before an administrative judge. The case was assigned to me on August 5, 2009. DOHA issued a Notice of Hearing on August 6, 2009. I convened the hearing as scheduled on September 22, 2009. The government offered Exhibits (GE) 1 through 13.

Applicant did not object and they were admitted. Applicant testified and offered Exhibits (AE) A through D, which were admitted without objection. The record was held open to allow Applicant to submit additional documents, which he did. They were marked as AE E through Q. The government had no objections, the documents were admitted, and the record closed.¹ DOHA received the transcript of the hearing (Tr.) on September 29, 2009.

Findings of Fact

Applicant admitted all of the allegations in the SOR except ¶¶ 1.d and 1.r. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 44 years old and works as a technician for a federal contractor. He married in 1987, and has a daughter who is 20 years old. He divorced in 1992, and paid child support until his daughter turned 18 years old. He remarried in 1994, and has a son and two stepsons, who are 15, 20 and 21 years old. They all live at home. The oldest son works and contributes \$100 a month to the household. The 20-year-old son goes to school part-time and does not contribute to the household expenses. Applicant's wife recently attended school for approximately 18 months and is a medical assistant. She took out student loans to finance her education and owes approximately \$11,000. She is required to begin paying the loan six months after completion of her schooling. She began employment in September 2009.²

Applicant was employed steadily for 21 years and from 1997 to March 2004, with the same employer. He was unemployed from approximately March 2004 to August 2004, and from August 2006 to October 2006. He changed jobs several times from August 2004 to the present, and was unemployed for short periods of time while transitioning.³

The debts alleged in the SOR are for a repossessed car, medical bills, credit cards, utilities, cable service, video store rentals, and charges to his bank. Two of the medical debts are now judgments. Applicant has approximately \$16,470 in delinquent debts that are alleged. He admitted all the delinquent debts alleged except the two alleged in SOR ¶¶ 1.d (\$213) and 1.r (\$194).⁴ He has not made payments to any of his creditors.⁵

¹ HE I.

² Tr. 40-48, 57-60.

³ Tr. 16, 33-40.

⁴ GE 9, 10.

⁵ Tr. 79-88.

Applicant completed his security clearance application (SCA) in June 2008. He was interviewed by an investigator from the Office of Personnel Management (OPM) in August 2008. At his interview he discussed his financial issues and acknowledged most of his delinquent debts. He admitted that he had been struggling financially, but since being employed with his new employer, he earned enough so that he could begin paying his past debts. He met with a debt consolidation company and, at the time of his interview, hoped to work out a payment plan within 60 days. He later decided that he could accomplish the same thing that the debt consolidation company offered, and he would not have to pay their fees.⁶

Applicant wrote letters to many of the creditors in October 2008, acknowledging his delinquent debts and offering to settle the debts for specified amounts over a period of time or in a lump sum. He requested they report the account as "paid as agreed, closed by consumer." He determined the terms of the payments. He advised them he would not send any money to them until he heard back from them agreeing to his offer. After he heard back, he would pay within 20 days, in accordance with the terms he set out. He did not contact any of the creditors by phone. He did not make any good-faith payments to any of his creditors.⁷

In August 2009, Applicant sent the same letters again to many of his creditors offering to settle his delinquent debts under the same conditions, for a specified amount over time or in a lump sum. He did not follow-up on any of his letters by phone or otherwise.⁸

Applicant stated he disputed the debts in SOR 1.d, 1.j and 1.k. He stated he believed the debts in SOR 1.j and 1.k are for the same debt. The evidence offered by the government show two different account numbers. Applicant did not provide any substantiation to support that the accounts are the same. He did not telephone the company to determine if the debts are for the same account. He sent a letter disputing the two debts, but also offered to settle the debts. The debt in 1.d is for telephone services. He stated he contacted the creditor who stated the company had no record of the debt. He stated he sent the same dispute letter to the credit bureau that he sent to the creditor.⁹

Applicant had debts discharged under Chapter 7 bankruptcy in 1999. He and his first wife were going through a divorce and custody/child support issues. They had

⁶ Tr. 71-72; GE 2.

⁷ Tr. 63-64, 66-68, 92-99; Answer to SOR; AE A-O. Some of the documents do not have a signature.

⁸ Tr. 66-68; 92-99; AE A-O. Some of the documents are undated and others have original signatures. Applicant stated that he signed the letters and sent them to the creditors and then signed the copies that were provided at his hearing.

⁹ Tr. 64-66, 68-71; GE 6 p. 9-10, GE 3 p. 2, GE 4 p.2, GE 5 p.2, GE 6 p.5; AE C, J.

accumulated between \$15,000 and \$17,000 of credit card debt that was delinquent and subsequently discharged.¹⁰

Applicant experienced some family issues that affected his finances. His mother-in-law had medical issues from 1995 to 1997, and he provided approximately \$800 to help her. In 2002 to 2003, she lived with his family and he incurred the extra household expenses for her stay. In 2005, he contributed another \$800 to help her. He also contributed about \$300 to \$400 to help his sister, whose husband was sick from 2003 to 2005. Applicant provided approximately \$300 to help his father who was in a nursing home. Applicant's father passed away in May 2009, and he incurred \$1,700 for his share of the funeral expenses. In August 2009, his grandmother passed away, and he contributed \$500 to the family to assist with her funeral.¹¹

Applicant has four judgment/liens against him that were not alleged.¹² One involves a disputed amount on a house Applicant used to live in. He stated his family moved out before the lease expired because of the living conditions. He stated his security deposit covered the amount owed.¹³ The next judgment/lien is for a medical debt that he does not recall.¹⁴ The third judgment/lien is from 1999, and Applicant is not sure what it was for. The final judgment/lien is for debt on property Applicant rented in 1998.¹⁵

Applicant stated he has a budget on an Excel spread sheet. He believes he has about \$400 to \$500 in his account left at the end of each month, after paying expenses. He stated he attempted to save his money, but had intervening family issues. He explained the reason he has not paid his debts is because he has been waiting for a response from his creditors. Prior to October 2008, he did not make an effort to resolve his delinquent debts. Applicant stated he knew he should have followed up on his debts with more than letters.¹⁶

¹⁰ Tr. 15, 88.

¹¹ Tr. 32-33, 54-57, 61-63, 102-105.

¹² GE 7, 8, 11, 12.

¹³ GE 7.

¹⁴ GE 8.

¹⁵ Tr. 108-115; GE 11, 12. Depending upon the exact date of the discharge and the date of the judgment, these two judgments/liens may have been included in the bankruptcy. I will not consider any judgments/liens or other delinquent debts not alleged in the SOR for disqualifying purposes. I will consider them when analyzing the "whole-person," Applicant's complete financial history, and ability to pay his debts.

¹⁶ Tr. 72-77.

Applicant presently has three credit cards that are over his credit limit. He makes a minimum payment on all three cards. He admitted he missed two payments on one card and one payment on another other card, but made a \$30 payment on each card recently.¹⁷

Applicant provided character letters that I have considered. A coworker believes Applicant to be a team player with high standards. His work performance exceeds the highest quality of workmanship. His character is considered unquestionable. Another coworker stated his team unity, work performance, and ethics cannot be questioned. He is considered honest. In addition, Applicant's stepson provided a letter expressing his admiration for him because of his unconditional love and financial support, even though he was not his biological son. He gives credit to Applicant for providing guidance so he could grow up to be a strong, educated person. He considers Applicant to be a blessing and is glad to have him as a father, friend, teacher, supplier, and mentor. I have also considered the letters in the record that compliment Applicant on his work performance.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 overarching 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is

¹⁷ Tr. 48-54.

¹⁸ AE P.

responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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 the disqualifying conditions under AG ¶ 19 and especially considered:

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

Appellant has a significant history of not meeting his financial obligations. He has many debts that remain unpaid. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions 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's behavior is recent because his delinquent debts remain unpaid. He did not take action to resolve these debts until his security clearance became an issue. I find mitigating condition (a) does not apply.

Applicant contributed financially to help his mother-in-law when she was ill and when family members passed away. His mother-in-law last needed assistance in 2005. He contributed for funeral expenses for family members in 2009. These were conditions that were beyond his control and raise the application of mitigating condition (b). In order for that mitigating condition to be fully applicable, Applicant must have acted responsibly under the circumstances. In this case, Applicant has been employed, except for short periods since 2004, when he was transitioning between jobs. He made no effort to resolve his delinquent debts until his security clearance became an issue. He sent letters to creditors, advising them of his terms. He has not made any payments to resolve his delinquent debts. I find mitigating condition (b) only partially applies.

There is no evidence Applicant has received financial counseling, although he testified that he does maintain a budget and considered consolidating his debts. Applicant's offer to settle his debts shows he made a nominal attempt to contact his creditors, after his security clearance became an issue. However, he has not made any payments toward resolving his delinquent debts. It is questionable whether a creditor

would agree to list the debt as “paid as agreed, closed by consumer” when it had been delinquent for years and they had yet to see a payment. Applicant does not have any payment plans in place to resolve his delinquent debts. They remain unpaid and unresolved. Applicant disputed certain debts, but did not provide evidence to substantiate he does not owe the debts. I do not find Applicant made a good-faith effort to resolve his delinquent debts, nor are there clear indications the problem is resolved. I find mitigating conditions (c), (d) and (e) do not apply.

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) 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.

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 was unemployed for six months in 2004. He has been employed since then except for short periods of time, when he transitioned to a new job. He provided some financial assistance to his mother-in-law and she lived with his family for a period of time. He recently experienced losses in his family and assisted with funeral expenses. Applicant had credit card debts discharged under Chapter 7 bankruptcy in 1999. He has judgments entered against him for delinquent debts. He has numerous other debts that he has not paid. He sent letters to creditors after his security clearance became an issue, but has not made any payments to resolve any of the debts. Some of the debts are for small amounts. He does not have any payment plans to resolve his delinquent debts. Although Applicant’s intervening family issues may have impacted his finances at different periods of time, he did not do anything to resolve the debts from 2005 to 2009, when those issues were not a factor. 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 Applicant failed to mitigate the security concerns arising under the guideline for 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.v:	Against Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge