



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



In the matter of:)	
)	
)	ISCR Case No. 08-09899
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Tom Coale, Esq., Department Counsel
For Applicant: *Pro Se*

August 24, 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 March 18, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing 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 responded in writing to the SOR in an undated answer received on April 6, 2009, and requested a hearing before an administrative judge. The case was assigned to me on July 13, 2009. DOHA issued a Notice of Hearing on July 14, 2009. I convened the hearing as scheduled on August 6, 2009. The Government offered

Exhibits (GE) 1 through 8. Applicant did not object and they were admitted. The Government also offered a demonstrative exhibit that was marked as HE I. Applicant testified and offered Exhibits (AE) A through I, which were admitted without objection. The record was held open until August 13, 2009, to allow Applicant an opportunity to provide additional exhibits, which he did, and they were marked as AE J through U. The Government did not object and they were admitted.¹ DOHA received the transcript of the hearing (Tr.) on August 11, 2009.

Findings of Fact

Applicant admitted all of the allegations in the SOR, except ¶ 1.b. His admissions are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 53 years old and has worked for different federal contractors since 1994. He has two associate's degrees. He married in 1981 and has two grown children, one of whom resides with him. His wife earns approximately \$100 a month.²

Applicant purchased a home in 1997. He used credit cards and loans to furnish the home. He made minimum payments on the credit cards. He realized that by making only the minimum payments the debt would be very difficult to pay off with the additional interest accruing. He was also paying for a leased car at the time. He returned the car and filed for bankruptcy. He initially filed under Chapter 13 to keep from losing his house. He had difficulty maintaining the payments under the Chapter 13 and it was converted to a Chapter 7 bankruptcy. Applicant had approximately \$35,000 in debt discharged in bankruptcy. The mortgage company worked with Applicant to "short sale" his residence. It was sold and Applicant believes there was approximately a \$25,000 loss that the bank agreed to write off. The bankruptcy discharge and the short sale of his house were completed in 2001.³

In 2004, Applicant purchased a home for approximately \$225,000.⁴ In 2006, Applicant bought two residential rental properties for \$80,000 each, with no down payment. He was not hesitant to purchase the property because he viewed the investment as a way to earn extra income. He did not have the properties inspected and

¹ Department Counsel's memorandum in response to the additional exhibits is HE II. In AE J, Applicant requested an unspecified extension in time. His request was denied. HE III.

² Tr. 35-41.

³ Tr. 29-33, 41-59; GE 6; AE A. Applicant provided a document that shows his attorney was later disbarred for misconduct. Applicant alleges that his attorney, without his permission, later changed his bankruptcy filing to a Chapter 13 and forged his name. Applicant's mortgage counselor arranged for the filing to be dropped. The attorney's actions ultimately did not have a bearing on Applicant's bankruptcy. This information pertains to SOR ¶ 1.b.

⁴ Tr. 56-59.

later realized it would take a lot of money to get the properties up to standards so he could rent them. He stated:

The property wasn't beat up at the time, it just had—the person who sold the house basically had covered up a lot of things. He put new carpet in and he painted to make the place look good when you came in. But I had plumbing problems, I had electrical problems, I had problems with the structures of the house. I had, you know, problems that you wouldn't necessarily see just walking in the door.⁵

His monthly mortgage payment on the two properties was \$1,300. He estimated that he spent approximately \$16,000 within the first three months to rehabilitate the properties. He charged the expenses to credit cards. He eventually rented both properties, but had difficulty with the tenants. In 2007, one tenant broke the lease and had damaged the property. The other tenant rented for a year, but then left and also damaged the property. Applicant estimated that it cost him another \$15,000 to repair both properties. He again charged the expenses to credit cards. He fell behind in paying his credit cards. One property remained vacant for more than a year. He stopped making his mortgage payments on one of the properties in February 2008 and on the other in October 2008. The properties were foreclosed in February 2009. He testified that he does not owe any remainder on the foreclosed property. The credit report shows one of the properties has a zero balance and the other states the "foreclosure process started." Applicant did not provide documented proof that he does not owe anything on the property in the process of foreclosure.⁶

In October 2007, Applicant contacted a debt elimination company. He deposits \$700 a month into an account. From that account the company automatically withdraws \$325 a month in fees for 15-months. The remaining \$375 is placed in a savings account that Applicant is free to access as he desires. When he accumulates enough money in his savings account, he contacts the company and requests them to negotiate a settlement for one of his debts. He testified that he has completed paying the 15-month fee, so all the money now goes to settle his debts.⁷

Applicant's debts consist of two foreclosure properties (\$69,585 and \$71,391, (see above), credit cards, and personal loans. He stated that beginning in 2004 he had approximately 18 credit cards.⁸ He stated he used these credit cards to maintain his

⁵ Tr. 63-64.

⁶ Tr. 33-35, 55-70, 104-105; GE 3 at page 3; GE 4 at page 3.

⁷ Tr. 72-84, 105-107; GE 6.

⁸ Tr. 78 84, 100-104, 129-134. Applicant opened some accounts in his name, some in his wife's name and some jointly. He admitted his applications for some of the credit cards were declined. He also admitted he is the primary wage earner and it is from his income that the bills are paid. It appears that Applicant likely has more delinquent debts than are alleged because some of the credit cards are in his wife's name alone and she does not earn enough money to pay them. I will only consider the debts

investment property. The debt alleged in SOR 1.j (\$1,203) is for jewelry he purchased. He stated he purchased jewelry before he filed for bankruptcy and stopped making payment when he filed for bankruptcy in 2001. His credit report shows he opened this account in September 2005 and the last activity on the account was November 2007. I did not find him credible. He provided AE U to show there is an offer by the creditor to settle this account. However, it appears that the original creditor is different and this document does not support his position. He did not provide any documentation to show he accepted the offer on this debt and paid it.⁹

Applicant stated that he has paid six credit cards and still owes on three credit cards. He did not provide proof of payment or explain which credit cards were paid.¹⁰ He provided a spread sheet that lists 25 credit card and bank debts. Ten of the debts listed are for ten separate accounts with the same credit card company. He annotated some of the debts as having been paid or that he is paying, but did not provide any documented proof that the debts have been paid.¹¹ He also provided a spread sheet from his debt elimination company that lists 20 debts. On it there are handwritten annotations that are illegible.¹² He provided letters from creditors offering to settle his debts. He did not provide any proof that he agreed to the settlements and paid them.¹³ Based on the number of debts and the fact that many of the debts are to the same creditor, but for different accounts, it is unclear as to which debts the offers apply. He provided one settlement offer that notes he made a \$100 payment on May 22, 2009, on a credit card account that has a balance of \$8,096. He explained that the debt elimination company plan was not able to settle directly with the creditor, so he dealt with them and pays the creditor directly. He did not provide proof of any additional payments. He believed the total amount he owes on all of the debts is \$40,000.¹⁴

Applicant stated that AE I, a settlement offer, applies to SOR 1.o. He did not provide proof of payment. He was afforded additional time to provide a document to

alleged in the SOR for disqualifying purposes. I will consider all of the delinquent debts that are included in his documents, when analyzing Applicant's overall financial situation and when analyzing the whole person.

⁹ Tr. 79-83, 112-115; GE 2 at page 10.

¹⁰ Tr. 74-75.

¹¹ AE B.

¹² AE C.

¹³ AE D, E, F, H, I.

¹⁴ Tr. 76-90, 98-102; AE G. It is unclear if this debt is alleged in the SOR. Applicant could not provide details whether this account is included in the SOR. He has numerous accounts from the same creditor and explained he cannot tell which account this document applies.

show he accepted and paid the settlement. The additional document he provided, AE Q, is the same as AE I.¹⁵

Applicant stated AE D applies to one of his credit card accounts, but he does not know which one in the SOR. He stated he paid it on July 13, 2009, but did not provide supporting documents. He provided AE O, which is the same document as AE D.¹⁶

Applicant stated he settled a debt to a creditor in the SOR and the document in AE E is the settlement offer. There are two creditors with the same name listed in the SOR. It is unclear which debt he believes is paid. There is no proof of payment.¹⁷

Applicant stated that the document in AE F is for a debt in the SOR, but could not provide specific information as to which debt. It is a settlement offer on a credit card account. He also offered AE T which reflects a one-time payment of \$50 made in June 2009. It appears there is approximately a \$1,000 balance remaining.

Applicant did not provide any documents to support that any of his debts have been paid. There are other debts listed in the documents he provided that appear to be additional debts that were not alleged in the SOR. They could be the same debts as alleged in the SOR or they could be duplicate debts, or they could be additional debts. Applicant was unable to provide an explanation.

Applicant was provided additional time to submit documents to support his statements that he paid certain debts. AE K, L, M, N, P, R, and S are letters from creditors on accounts in his wife's name and are not debts alleged in the SOR. AE K, L, and M reflect that the accounts noted have been settled. AE N, O, and P are settlement offers, but there is no proof of payment. AE R is a settlement letter acknowledging a \$100 payment made on July 22, 2009, on an account with a balance of \$8,033 still owed. AE S is a settlement offer to his wife, dated October 23, 2008, accepting an agreement that Applicant would pay \$125 a month beginning in November 2008 on a debt with a balance of \$950. I have not considered these matters for disqualifying purposes, but have considered them when analyzing Applicant's credibility and overall financial health.

In December 2007, Applicant and his family took a one-week cruise to the Bahamas. He explained it was part of a package deal where they received the cruise for participating in a time-share informational package. He stated he paid about \$600 for the week and he was required to pay the airfare.¹⁸

¹⁵ Tr. 87-91.

¹⁶ Tr. 91-93.

¹⁷ Tr. 93-96.

¹⁸ Tr. 115-123; GE 6. Applicant initially could not remember the cruise and then remembered it being a different year. Department Counsel refreshed his memory with GE 6. It was then Applicant

Applicant stated he has approximately \$1,500 in his checking account and \$1,500 in his saving account. He does not have a separate savings account for his debt elimination plan. He has not participated in financial counseling.¹⁹

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 used 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 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

remembered the cruise was in December 2007. I found Applicant to be evasive and his testimony not credible.

¹⁹ Tr. 123-124.

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 and especially considered the following:

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

Applicant had \$35,000 in credit card and other debts discharged in bankruptcy in 2001. He again accumulated substantial credit card debts that he could not pay. He purchased two rental properties that he could not maintain and they were foreclosed. I find both disqualifying conditions have been raised.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and especially considering the following:

- (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 individual 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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's behavior is recent because he still owes the debts alleged. I find mitigating condition (a) does not apply. Applicant bought a house he could not afford and then attempted to furnish it by using credit cards and loans. He filed for Chapter 7 bankruptcy and had \$35,000 in debt discharged. The house was sold as a "short sale" and the bank wrote off the deficiency. He then bought two rental properties. He did not inspect the properties and later found they were in need of repair. He financed the repairs with credit cards. He had difficulty renting the property. When he did, one tenant broke the lease early and defaced the property. The other completed the term of the lease, but also defaced the property. Applicant again financed these repairs with credit cards. He subsequently could not find tenants and defaulted on the mortgages and the properties were foreclosed. On the credit report one property (SOR 1.I) shows a zero balance owed. I find this debt is resolved. Applicant made poor business decisions when he purchased property without having it inspected. He also took on a great deal of debt without having sufficient capital to pay for expected and unexpected repairs. He hoped to make money. He did not. Deciding to become a landlord, with all the responsibilities that go with it was within his control. As a landlord, having to perform repairs after tenants leave, or having tenants vacate early is somewhat expected when one acts in that capacity. However, to a certain extent these things were not within his control, but it should not have been totally unexpected. Therefore, I find mitigating condition (b) only partially applies.

It appears Applicant has set up a debt elimination plan. However, it also appears that he has more delinquent debt than is alleged in the SOR, because in addition to applying for credit cards in his own name, and jointly, his wife also obtained credit cards to finance the repairs on his rental property. He is the wage earner in the family and was expected to pay her credit cards too. He did not provide sufficient evidence to show he is addressing all of his delinquent debts. It appears he has approximately 20 to 25 different credit cards and loans. He does not know which ones have been paid and which he still owes. It is likely he has paid some of the credit cards completely. However, he does not have a firm grasp on all of his debts. I do not have confidence that his financial problems are being resolved or are under control. I find mitigating conditions (c) and (d) 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 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. Applicant overextended his finances when he bought a house he could not afford and then financed its furnishings with credit cards and loans. His house was sold and he had \$35,000 in delinquent debts discharged in bankruptcy in 2001. He repeated the same mistake several years later when he purchased two rental properties and financed the repairs through credit cards and loans. Applicant saw this as an opportunity to make money, but failed to consider the potential problems with owning rental property. The properties were foreclosed and he has approximately 20 to 25 credit cards and loans. He did not provide sufficient proof that he does not owe any amount on one of the foreclosed properties. Applicant may have paid some of the credit card debts, but he was unable to provide proof as to which ones were paid. Even if I considered the evidence in the light most favorable to Applicant and conclude he has paid some of his debts, it is not sufficient to conclude he has mitigated the security concern raised by his finances. Applicant has a history of running up debts and either having them discharged in bankruptcy, defaulting on them, or settling them for less than the amount actually owed. I also found that when questioned about other expenditures not related to the rental property, Applicant was evasive and not candid. 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 has 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.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraphs 1.m-1.q:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly not in 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