



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 08-09918 |
| SSN: |) | |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

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

August 17, 2009

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on March 26, 2008. On April 10, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concern 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.

On May 18, 2009, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on June 9, 2009. The case was assigned to me on June 11, 2009. On June 18, 2009, a Notice of Hearing was issued, scheduling the hearing for July 14, 2009. The case was heard on that date. The Government offered five exhibits which were admitted as Government Exhibits (Gov) 1 – 5. The Applicant testified and offered five exhibits which were admitted without objection as Applicant Exhibits (AE) A-E. The record was held open until July

28, 2009, to allow Applicant to submit additional documents. He timely submitted a 42-page document that was admitted as AE F. Department Counsel's response to AE F is marked as Hearing Exhibit (HE) I. Applicant submitted a 10-page document that was admitted as AE G. Department Counsel's response to AE G is marked as HE II. The transcript was received on July 30, 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 admitted all of the SOR allegations.

Applicant is a 53-year-old vice president of operations with a Department of Defense contractor seeking to maintain his security clearance. He has been employed with this company since June 2009. Prior to accepting this position, he worked for 12 years as a senior program manager for another defense contractor. From October 1977 to January 1, 1998, he served on active duty in the United States Air Force. He retired as a Lieutenant Colonel. He has held a security clearance for over 30 years with no security violations. He has been married three times. He and his second wife had four children, ages 24, 23, 22 and 19. They separated in March 2003 and were divorced in March 2006. He remarried in June 2008. (Tr at 4-7, 33-34, 56; Gov 1; AE A)

On March 26, 2008, Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) in order to apply for a security clearance. A subsequent background investigation revealed that Applicant has financial issues. The SOR alleges 12 delinquent accounts totaling approximately \$59,078. Of that amount, \$34,054 is related to a second mortgage on a home that was foreclosed, and \$15,038 is the amount owed after Applicant's ex-wife surrendered her car to the dealer during the divorce.

Applicant had financial problems during the end of his second marriage. His divorce decree indicates Applicant and his second wife owed federal income taxes for tax years 2002 and 2003 as well as state income taxes for tax year 2001. The total amount owed was \$8,600. Applicant has paid the back taxes. (AE F at 2) The back taxes owed are not alleged in the SOR but are relevant with regard to Applicant's financial history.

In his response to the SOR, Applicant stated that at the time of his separation from his second wife, they owned two properties in two different states. At the time of separation, all bills and home loan mortgage payments were current. In 2004 per court order, he began paying \$5,382 per month total in spousal support (\$2,951) and child support (\$2,431). The temporary support order held him responsible for one of the mortgage payments in the amount of \$1,528, a \$377 debt, and his \$687 truck payment. His wife was responsible for the remaining bills, which amounted to \$4,177. His wife stopped making payments on the bills in 2005 when she decided to move to another

state where her childhood home was located. Ultimately, both homes owned by Applicant and his second wife went to foreclosure. (Answer to SOR)

In late 2005, Applicant and his second wife reached a court settlement. The judge recommended both Applicant and his wife file for bankruptcy. His second wife filed for Chapter 7 bankruptcy during the same timeframe of the divorce. The divorce decree mentions that Applicant intended to file for bankruptcy as well due to the substantial debts of the marriage. (See AE F)

Applicant's divorce was final in March 2006 and the temporary support order became final. Applicant was ordered by the court to continue to pay \$2,951 in monthly spousal support and \$2,431 in monthly child support. Spousal support payments end on June 18, 2010. The child support payment remains the same until Applicant's youngest child reaches age 21 or June 29, 2011. (Gov 2 at 4; AE F at 16-21) He also agreed to be responsible for a \$1,528 mortgage payment, a \$377 second mortgage payment and a \$687 payment for his truck. He agreed to let his daughter use a car which is titled in his name. He agreed to make the \$425 monthly car payments until she turns 21. (AE F at 5-6, 20-21)

Although not legally required to pay under the terms of the divorce agreement, Applicant gives his daughter \$200 a month to help with her student loan payments. He paid his daughter's monthly rent, \$435 a month, when she was in college. He pays his 19-year-old son's truck payment which is \$440 a month. The court-ordered monthly support obligations as well as the additional voluntary payments to his children made it difficult for him to meet his monthly expenses. (Tr at 29-30, 32, 35; Gov 2 at 2)

Applicant filed for Chapter 7 bankruptcy on October 5, 2007. He listed total assets of \$372,200. He listed total liabilities of \$414,913. His non-priority unsecured debt totaled \$88,913. Most of the unsecured debts were credit cards (19 credit card accounts). His gross monthly income was listed as \$14,059.21. His net monthly income was \$10,005. His annual income was listed as \$168,710.52. On January 10, 2008, the bankruptcy court dismissed the case for abuse because Applicant earned too much income to meet the threshold of filing for Chapter 7 bankruptcy. (Gov 5) A recent change in the bankruptcy law made it more restrictive to file under Chapter 7 bankruptcy at the time Applicant filed.

After the Chapter 7 bankruptcy was dismissed, Applicant's bankruptcy attorney advised him to wait for the creditors to contact him and he could deal with them on an individual basis. (Tr at 28)

In his written closing statement provided during the hearing, Applicant stated that his priorities since his separation and divorce from his second wife has been the well-being of his children. From August 2005 to July 2007, he paid an additional \$650 a month to pay for his daughter's room and board at college. He admits this priority has delayed his financial recovery. He comments: "If asked why I would risk my livelihood,

my response is that I don't want my children starting out life with a huge debt from a college loan note." (AE E)

The current status of the delinquent accounts are:

SOR ¶ 1.b, \$118 medical account placed for collection in July 2007. Paid as of April 2009. (Tr at 39; AE G at 3; Gov 4 at 3)

SOR ¶ 1.c, \$260 medical account placed for collection in January 2008. Paid as of July 22, 2009. (Tr at 39; AE G at 5; Gov 3 at 1)

SOR ¶ 1.d, \$336 medical account placed for collection in November 2006. Applicant claims paid. No proof submitted at the close of the record. (Tr at 40, Gov 2 at 6; Gov 3 at 1; Gov 4 at 3; AE B)

SOR ¶ 1.e, \$1,195 credit card account that was charged off in December 2003. The account has not been resolved. Applicant has not contacted the company for several years. (Tr at 41-42; Gov 2 at 6; Gov 3 at 1-2; Gov 4 at 4; AE B; AE G at 2)

SOR ¶ 1.f, \$1,561 department store credit card account that was charged off in August 2004. Applicant claims the account was paid. After the hearing, he provided a letter, dated July 27, 2009, indicating he formally disputed the account with the credit reporting agencies. (Tr at 44; Gov 2 at 6; Gov 3 at 2; Gov 4 at 8, 15; AE G at 6)

SOR ¶ 1.g, \$2,611 credit card account that was charged off in November 2003. Applicant has made no efforts to pay this account because it is charged off. He has not contacted the company in years. Debt unresolved. (Tr at 42-43; Gov 2 at 6; Gov 3 at 2; AE B; AE G at 2)

SOR ¶ 1.h, \$15,038 amount owed after ex-wife's automobile repossessed during the divorce. Date of last action on the account was November 2002. Applicant settled for \$4,537. Debt paid with a credit card. (Tr at 44-45; Gov 3 at 3; Gov 4 at 13, 15; AE B; AE G at 8-9)

SOR ¶ 1.i, \$1,952 account that was charged off in March 2003. Applicant claims this account successfully disputed with credit reporting agencies. No proof submitted at the close of the record. (Tr at 46; Gov 2 at 6; Gov 3 at 3; Gov 4 at 5; AE B; AE G at 2)

SOR ¶ 1.j, \$34,054 second mortgage, home foreclosure that was charged off in April 2005. Applicant claims the home was foreclosed and resold. At the hearing, he was not aware if he owed any money on the second mortgage as a result of the sale. After the hearing, Applicant contacted his attorney. His attorney told him that the state law where the home was located indicates that all debts are cleared upon repossession. His attorney is contacting the company who owned the second mortgage to obtain a letter that the company will not pursue further actions against Applicant. (Tr at 47; Gov 3 at 3; Gov 4 at 7, 15; AE B; AE G at 2)

SOR ¶ 1.k, \$368 cable bill placed for collection in April 2005. Debt was resolved. (Tr at 49; Gov 2 at 7; Gov 4 at 14; AE D)

SOR ¶ 1.l, \$348 account placed for collection in June 2007. Applicant claims the debt was paid. No receipt was provided. Post hearing submission indicates he is in the process of removing the entry from his credit report. (Tr at 49; Gov 2 at 7; Gov 4 at 15; AE G at 2)

SOR ¶ 1.m, \$1,237 account placed for collection in May 2005. Applicant intends to dispute this account. On July 27, 2009, he formally disputed the account with the credit reporting agencies. (Tr at 49; Gov 2 at 7; Gov 4 at 16; AE B; AE G at 10)

In response to interrogatories, Applicant provided a copy of monthly budget dated February 3, 2009. He listed his net monthly salary as \$7,303.05. His Air Force monthly retirement income is \$3,503. His total net monthly income is \$10,806. His current wife's net monthly income is \$2,549. Their total net monthly income is \$13,355. Their monthly expenses total \$11,435.47. After expenses, they have approximately \$1,920 left over each month for discretionary spending. (Gov 2 at 5) During the hearing, Applicant indicated that his income has decreased about a \$1,000 each month with his new job. (Tr at 50)

In February 2009, Applicant and his current wife purchased a home. Applicant was unable to qualify for a mortgage because of his poor credit history. He borrowed approximately \$170,000 from a personal friend and business associate in order to purchase the home. (Tr at 54)

During the hearing, Applicant provided a chronology of his 30-year history of holding a security clearance. The chronology includes his Air Force career and his career as a defense contractor. (AE A)

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.

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); FC DC ¶19(c) (a history of not meeting financial obligations); and FC DC ¶ 19(e) (consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis) apply to Applicant's case. Applicant encountered financial difficulties as early as 2001. He and his second wife owed state income taxes for 2001 and federal income taxes for tax years 2002 and 2003. The two homes they owned went to foreclosure at the time of the divorce. Schedule E of his bankruptcy listed \$88,913 in unsecured debts. While Applicant claims the debts were being paid prior to separating from his second wife, the amount of their unsecured debt indicates that they were spending beyond their means and headed towards financial issues regardless of whether they stayed together or separated. The SOR alleged 12 delinquent accounts, an approximate total balance of \$59,078.

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. (See ISCR Case No. 02-31154 at 5 (App. Bd. September 22, 2005)).

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) does not apply. Applicant has had financial problems for several years. He recently started to resolve several of his delinquent accounts. At the close of the record, he provided proof that four of the delinquent accounts were resolved. However, eight accounts remained unresolved at the close of the record. Applicant is still in the midst of his financial problems. Applicant's failure to address his financial issues raises questions about his reliability and good judgment.

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) applies, in part, due to Applicant's divorce which accelerated Applicant's financial problems. The second prong of this mitigating condition asks whether the individual acted responsibly under the circumstances. After Applicant's Chapter 7 bankruptcy was dismissed, he did nothing to resolve his delinquent accounts for years. Although, he claims that his attorney advised him to passively wait until the creditors contacted him, considering his extensive history of holding a security clearance, he should have recognized a potential security concern was raised pertaining to his finances. He had options. He could have filed for bankruptcy under Chapter 13. He could have consulted with a credit counseling agency

to establish a plan to resolve his debts. He chose to ignore his delinquent debt until he discovered that it may have an adverse effect on his security clearance.

Instead of resolving his delinquent financial obligations, he used the money that should have been applied towards his debts to pay his daughter's car payment and her rent while she was in college. He continues to pay her \$200 a month to apply towards her college loans. He pays his youngest son's car payment of \$440 a month. While it is understandable that Applicant wants to support to his children, it was poor judgment to do so at the expense of his other financial obligations. Cars are luxuries as opposed to necessities. I cannot conclude Applicant acted responsibly under the circumstances. For this reason, FC MC ¶ 20(b) is given less weight.

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. Applicant has not attended financial counseling. While Applicant resolved some accounts, the majority of the delinquent accounts remain unresolved.

FC MC ¶20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies with respect to the debts alleged in SOR ¶¶ 1.b, 1.c, 1.h, and 1.k. However, the remaining debts are unresolved. Applicant has had no contact for several years with many of his creditors. Eight of the accounts remain unresolved at the close of the record. Applicant took no steps to resolve many of the accounts until after he learned they would be a security issue. Overall, Applicant has not made a good-faith effort to resolve his delinquent accounts.

FC MC ¶20(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) does not apply. Although at the close of the record, Applicant provided evidence that he formally disputed the debts alleged in SOR ¶¶ 1.f, 1.i, 1.l, and 1.m, the status of Applicant's disputes are pending. It is premature to conclude there is a reasonable basis to dispute the legitimacy of the debts.

While Applicant encountered financial problems as a result of his divorce, he ignored his delinquent debts after his Chapter 7 bankruptcy was dismissed. He did not begin to resolve his delinquent accounts until recently. He had the income to resolve the delinquent debts but chose to provide extra support to his children. While one can understand a parent's desire to provide support to their children, it was irresponsible to ignore his other financial obligations. Most of the delinquent accounts remain unresolved. It is too soon to conclude that he has mitigated the concerns raised under Guideline F.

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. I considered Applicant's 20 years of honorable service as an Air Force officer. I considered his 12-year employment history with defense contractors. I considered his 30-year history of holding a security clearance. I considered the financial problems which occurred during his second marriage which were aggravated by his separation and divorce. I considered the large amount of court-ordered spousal and child support payments. However, having been entrusted with a security clearance for over 30 years, Applicant should have been aware that his financial situation would raise a security concern. His divorce was final in March 2006. He ignored his delinquent debts for years. He did not take steps to honor his financial obligations until recently. While there is some mitigation in this case, Applicant did not meet his ultimate burden of persuasion to obtain a favorable clearance decision. He did not 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: | For Applicant |
| Subparagraph 1.b: | For Applicant |
| Subparagraph 1.c: | Against Applicant |
| Subparagraph 1.d: | Against Applicant |
| Subparagraph 1.e: | Against Applicant |
| Subparagraph 1.f: | Against Applicant |
| Subparagraph 1.g: | Against Applicant |
| Subparagraph 1.h: | For Applicant |
| Subparagraph 1.i: | Against Applicant |

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|-------------------|-------------------|
| Subparagraph 1.j: | Against Applicant |
| Subparagraph 1.k: | For Applicant |
| Subparagraph 1.l: | Against Applicant |
| Subparagraph 1.m: | Against Applicant |

Conclusion

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

ERIN C. HOGAN
Administrative Judge