



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



In the matter of:)	
)	
)	ISCR Case No. 08-10011
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

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

August 24, 2009

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on June 11, 2008. On January 27, 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 March 2, 2009, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on March 17, 2009. The case was assigned to me on March 20, 2009. Scheduling the hearing was delayed because Applicant was on temporary duty out of the area until May 2009. On June 22, 2009, a Notice of Hearing was issued, scheduling the hearing for July 15, 2009. The case was heard on that date. The Government offered four exhibits which were admitted as Government Exhibits (Gov) 1 – 4. The Applicant testified and offered four

exhibits which were admitted without objection as Applicant Exhibits (AE) A - D. The record was held open until July 28, 2009, to allow Applicant to submit additional documents. He requested an extension until August 5, 2009. His request was granted. He timely submitted a 14-page document that was admitted as AE E. Department Counsel's response to AE E is marked as Hearing Exhibit (HE) I. The transcript was received on July 22, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Amendment to SOR

The Government moved to amend the SOR to conform with the evidence provided by Applicant during the hearing under ¶ E3.1.17 to add the following paragraph:

1.11 You are indebted to the federal government in the approximate amount of \$17,000 for back taxes owed for tax year 2003.

Applicant had no objection to the amendment. The motion to amend the SOR was granted. Applicant was permitted to submit additional documentation that was relevant to this allegation after the hearing. (Tr at 50 – 56)

Findings of Fact

In his Answer to the SOR, Applicant denied the allegations in SOR ¶¶ 1.h, 1.t, 1.u, 1.x, 1.y, and 1.ff. He admits the remaining SOR allegations.

Applicant is a 38-year-old test support specialist employed by a Department of Defense contractor seeking a security clearance. He has been employed with this company since September 2007. From September 1989 to September 1995, he served on active duty in the United States Army. He was an air traffic controller. He separated as an E-4 with an honorable discharge. His DD FORM 214 indicates the reason for separation was due to a reduction in force. He held a security clearance while in the military. He is divorced and has three children, two sons, ages 13 and 14, and a daughter, age 12. (Tr at 5-7, 24-25, Gov 1; AE E at 15)

On June 11, 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 alleged 37 delinquent accounts totaling approximately \$25,328. Of the 37 debts, 27 debts are medical debts. (SOR ¶¶ 1.c, 1.d, 1.f – 1.o, 1.u, 1.ww – 1.ee, 1.gg – 1.kk) The medical debts total \$10,516. The consumer debts total \$14,812. (SOR ¶¶ 1.a, 1.b, 1.e, 1.p – 1.t, 1.v, and 1.ff) Approximately \$12,200 of the consumer debt relates to an automobile repossession. (SOR ¶ 1.b) During the hearing, Applicant revealed that he owes the Internal Revenue Service approximately \$17,000 for tax year 2003. (Tr at 50-51)

Applicant states that his financial problems are the result of his divorce in 1999. His child support is \$900 a month. His priority is his monthly child support payment. He was not paid well enough in some of his previous jobs to pay his debts as well as child support. As a result, some debts have not been paid over the years. The medical debts are the result of Applicant having no health insurance for several years after separating from the military. Applicant injured his knee in August 2000, requiring numerous visits to doctors over the years. He describes his medical condition as inflammation of the knee joints. He recently received a diagnosis of gout. (Tr at 16-18, 44, 57; Answer to SOR)

Applicant's current job provides health insurance. Applicant believes his current job gives him an opportunity to earn a good living. He is working towards resolving his debts. In early 2003, he went to consumer credit counseling after his truck was repossessed. He did not enter into a repayment plan because he was unable to make payments. He consulted consumer credit counseling again in September 2008, but did not enter into a repayment plan at that time either. In early July 2009, he consulted a bankruptcy attorney about filing for bankruptcy under Chapter 13. He has not formally filed bankruptcy out of concern it would be detrimental to his case. He paid some of the smaller debts. His plan is to take care of the debts under \$400 and then file for bankruptcy under Chapter 13. (Tr at 18-19, 43-48; AE E at 2)

The current status of the delinquent accounts are:

SOR ¶ 1.a, \$71 account placed for collection in December 2005. Paid on February 19, 2009. (Tr at 16, 33; AE A at 1; Gov 2 at 7; Gov 3 at 2)

SOR ¶ 1.b, \$12,220 debt owed after Applicant's truck was repossessed in 2003. Applicant is trying to find out what collection agency currently owns the loan. Debt remains unresolved. (Tr at 34-35; Gov 2 at 6; Gov 3 at 2)

SOR ¶ 1.c, \$220 medical account placed for collection in February 2005. Debt remains unresolved. (Gov 2 at 12; Gov 3 at 2)

SOR ¶ 1.d, \$460 medical account placed for collection in August 2008. Debt remains unresolved. (Gov 3 at 2)

SOR ¶ 1.e, \$238 utility account placed for collection in June 2008. Debt remains unresolved. (Gov 3 at 2)

SOR ¶ 1.f, \$303 medical account placed for collection in June 2007. Debt remains unresolved. (Gov 2 at 10; Gov 3 at 2)

SOR ¶ 1.g, \$51 medical account placed for collection in January 2007. Debt remains unresolved. (Gov 3 at 2)

SOR ¶ 1.h, \$34 medical account placed for collection in October 2005. Paid on February 20, 2009. (AE A at 2; Gov 2 at 8; Gov 3 at 2)

SOR ¶ 1.i, \$1,321 medical account placed for collection in June 2005. Debt remains unresolved. (Gov 2 at 4; Gov 3 at 2)

SOR ¶ 1.j, \$163 medical account placed for collection in April 2004. Debt remains unresolved. (Gov 2 at 14; Gov 3 at 2)

SOR ¶ 1.k, \$69 medical account placed for collection in April 2002. Debt remains unresolved. (Gov 3 at 2)

SOR ¶ 1.l, \$376 medical account placed for collection in June 2005. Debt remains unresolved. (Gov 3 at 2)

SOR ¶ 1.m, \$69 medical account placed for collection in April 2007. Debt remains unresolved. (Gov 2 at 6)

SOR ¶ 1.n, \$426 medical account placed for collection in February 2005. Debt remains unresolved. (Gov 2 at 11; Gov 3 at 2)

SOR ¶ 1.o, \$241 medical account placed for collection in April 2004. Debt remains unresolved. (Gov 2 at 10; Gov 3 at 2)

SOR ¶ 1.p, \$70 returned check placed for collection in April 2006. Debt remains unresolved. (Gov 3 at 2)

SOR ¶ 1.q, \$1,458 delinquent credit card account placed for collection in February 2002. Debt remains unresolved. (Gov 2 at 13; Gov 3 at 3)

SOR ¶ 1.r, \$40 returned check that was charged off in April 2006. Debt remains unresolved. (Gov 2 at 6; Gov 3 at 3)

SOR ¶ 1.s, \$82 delinquent cell phone account placed for collection in June 2005. Debt remains unresolved. (Gov 2 at 5; Gov 3 at 3)

SOR ¶ 1.t, \$425 judgment filed against Applicant on behalf of an advanced cash business in January 2006. Debt resolved. (Tr at 36; Gov 2 at 3; AE E at 14)

SOR ¶ 1.u, \$918 judgment entered against Applicant in December 2006 on behalf of an orthopedic medical practice. Applicant claims account in good standing. Insufficient evidence to conclude debt is resolved. Post-hearing statement appears to list a balance of \$2,312. (Tr at 36-37; Gov 2 at 4; AE E at 13)

SOR ¶ 1.v, \$73 utility account placed for collection in November 2001. Debt paid February 20, 2009. (Gov 2 at 5; AE B at 2)

SOR ¶ 1.w, \$404 medical account placed for collection in April 2007. Debt remains unresolved. (Gov 2 at 6)

SOR ¶ 1.x, \$33 medical account placed for collection in June 2007. Debt resolved on February 20, 2009. (Gov 2 at 8; AE A at 2)

SOR ¶ 1.y, \$33 medical account placed for collection in June 2007. Debt resolved on February 20, 2009. (Gov 2 at 8; AE A at 2)

SOR ¶ 1.z, \$108 medical account placed for collection in April 2006. Debt remains unresolved. (Gov 2 at 9)

SOR ¶ 1.aa, \$150 medical account placed for collection in August 2006. Debt remains unresolved. (Gov 2 at 9)

SOR ¶ 1.bb, \$124 medical debt placed for collection in December 2006. Debt remains unresolved. (Gov 2 at 9)

SOR ¶ 1.cc, \$1,157 medical debt placed for collection in December 2006. Debt remains unresolved. (Gov 2 at 10)

SOR ¶ 1.dd, \$175 medical account placed for collection in December 2006. Debt remains unresolved. (Gov 2 at 10)

SOR ¶ 1.ee, \$1,067 medical account placed for collection in November 2001. Debt remains unresolved. (Gov 2 at 11)

SOR ¶ 1.ff, \$135 checking account fee placed for collection in June 2008. Debt remains unresolved. (Gov 2 at 14; Gov 3 at 3)

SOR ¶ 1.gg, \$117 medical account placed for collection in September 2002. Debt remains unresolved. (Gov 2 at 15)

SOR ¶ 1.hh, \$99 medical account placed for collection in June 2004. Debt remains unresolved. (Gov 2 at 15)

SOR ¶ 1.ii, \$845 medical account placed for collection in May 2003. Debt remains unresolved. (Gov 2 at 15)

SOR ¶ 1.jj, \$1,433 medical account placed for collection in September 2004. Debt remains unresolved. (Gov 2 at 16)

SOR ¶ 1.kk, \$120 medical account placed for collection in May 2003. Debt remains unresolved. (Gov 2 at 16)

Applicant provided receipts indicating he paid several bills. It is unclear whether these receipts paid debts alleged in the SOR or other bills. (See AE A at 3-4; AE B at 1, 3)

During the hearing, Applicant was asked whether he owed any back taxes to the state or federal government. He admitted that he owes the Internal Revenue Service approximately \$17,000 for tax year 2003. He was an independent owner/operator during that year. He did not file federal taxes for tax year 2003. The Internal Revenue Service first contacted Applicant in January 2009 about this debt. Applicant recently retained a law firm to represent him in this matter. He intends to submit an offer in compromise. No formal offer in compromise had been submitted prior to the hearing. (Tr at 50 – 56; AE D) The status of the tax debt at the close of the record is unresolved.

Applicant's pay varies based on the amount of overtime he earns each pay period. His net bi-weekly pay for the pay period ending on May 29, 2009, was \$1,193.81. His net bi-weekly pay for the pay period ending on May 15, 2009, was \$1,269.15. His net bi-weekly pay for the pay period ending on May 1, 2009, was \$1,363.42. (AE C) His child support is automatically deducted from his pay check. He is paid every two weeks. After expenses, Applicant has approximately \$200 left over each month. He was going to submit a budget after the hearing. A budget was not submitted in his post-hearing submissions. (Tr at 49, 58)

Applicant does not believe he is a security risk. He has been promoted twice over the past six months. (Tr at 19-20) He received top ratings in a performance appraisal covering the period of January 1, 2008, to December 31, 2008. (AE E at 6-12) He received a certificate of appreciation on March 27, 2008. (AE E at 3)

Applicant's girlfriend testified on his behalf. She and Applicant have dated for three years. Applicant is a wonderful father and tries very hard to provide for his children. He is working hard to get his debt under control. She works for the same directorate as Applicant but not directly with him. She states that Applicant is well respected by the command. (Tr at 60-62)

The commander of the directorate where Applicant works wrote a letter on Applicant's behalf. He indicates Applicant has worked in his command for over a year. He has only positive things to say about Applicant's work ethic, trustworthiness, and character. (AE E at 4) Applicant's supervisor, a senior program officer, states Applicant is an indispensable asset. He is always willing to take on additional tasks or assignments. Applicant's attention to detail, exemplary dedication to duty and mission accomplishment, and untiring work ethic have paid huge dividends to both the organization and the customers. (AE E At 5)

During his active duty Army service, Applicant was awarded the Army Achievement Medal, the Army Good Conduct Medal, the National Defense Service Medal, the Southwest Asia Service Medal (3rd Award), the Army Service Ribbon, the Overseas Service Ribbon, the Kuwait Liberation Medal, the Expert Marksmanship

Qualification Badge With Grenade Bar, and the Sharpshooter Marksmanship Qualification Badge M-16. (AE E at 15)

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); and FC DC ¶19(c) (a history of not meeting financial obligations) apply to Applicant's case. Applicant encountered financial difficulties since 1999 as a result of his divorce and separation from active duty in the United States Army. The SOR alleged 37 delinquent accounts with an approximate total balance of \$25,328. Applicant also owes the Internal Revenue Service approximately \$17,000 for unpaid taxes for tax year 2003.

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. Most of Applicant's delinquent accounts remain unresolved. While Applicant resolved several of his delinquent accounts and is in the early stages of anticipating bankruptcy, it will take some time to resolve his financial problems. Applicant has a significant number of delinquent accounts. Of the 37 debts alleged in the SOR, 20 are under \$200 which indicates a lack of attention to finances rather than an inability to pay. Applicant's financial issues raise 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. However, Applicant has been divorced for over 10 years. While he has a large child support payment, it does not explain all of his delinquent accounts. After separating from active duty, Applicant found employment but the employers did not provide health insurance. It is noted that 27 of the 37 debts alleged in the SOR are medical accounts. The total amount of the medical debt is \$10,516. The total amount of the consumer debt is \$14,812. Of that amount \$12,220 relates to a truck repossession in 2003. Applicant does not appear to be spending extravagantly. However, he has numerous delinquent accounts with small balances and a substantial tax debt. He did not take action towards resolving his remaining delinquent accounts and his tax debt until recently. I cannot conclude that he has 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 consulted with consumer credit counseling on two occasions but never entered into a repayment plan. He recently consulted a bankruptcy attorney about filing for bankruptcy under Chapter 13 and a tax attorney about submitting an offer in compromise related to the tax debt. However, the documents provided at hearing indicate that the consultations are in the preliminary stages. Applicant is still in the midst of his financial problems.

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.a, 1.h, 1.t, 1.v, 1.x, and 1.y. However, the remaining debts are unresolved. Applicant has had no contact for several years with many of his creditors including the Internal Revenue Service. He just recently started to look at options for resolving his \$17,000 tax debt as well as a potential bankruptcy filing. 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. While Applicant disputes the debt alleged in SOR ¶ 1.ff, he provided no evidence that he formally disputed the debt. He has not demonstrated that there is a reasonable basis to dispute the legitimacy of the debt.

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 active duty service in the United States Army and the highly favorable recommendations of his current employer. I considered that his divorce in 1999 caused financial problems. However, the divorce occurred ten years ago and much of the debt was incurred after the divorce. I considered that Applicant is current on his child support obligations. I considered he incurred medical debt because he had no health insurance. While Applicant is highly regarded by his employer, his financial situation remains in question. It is premature to conclude Applicant met 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:	Against 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
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant

Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	Against Applicant
Subparagraph 1.s:	Against Applicant
Subparagraph 1.t:	For Applicant
Subparagraph 1.u:	Against Applicant
Subparagraph 1.v:	For Applicant
Subparagraph 1.w:	Against Applicant
Subparagraph 1.x:	For Applicant
Subparagraph 1.y:	For Applicant
Subparagraph 1.z:	Against Applicant
Subparagraph 1.aa:	Against Applicant
Subparagraph 1.bb:	Against Applicant
Subparagraph 1.cc:	Against Applicant
Subparagraph 1.dd:	Against Applicant
Subparagraph 1.ee:	Against Applicant
Subparagraph 1.ff:	Against Applicant
Subparagraph 1.gg:	Against Applicant
Subparagraph 1.hh:	Against Applicant
Subparagraph 1.ii:	Against Applicant
Subparagraph 1.jj:	Against Applicant
Subparagraph 1.kk:	Against Applicant
Subparagraph 1.ll:	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 interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

ERIN C. HOGAN
Administrative Judge