



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



In the matter of:)	
)	
)	ISCR Case No. 08-10079
)	
Applicant for Security Clearance)	

Appearances

For Government: Candace Le'I, Esquire, Department Counsel

For Applicant: *Pro Se*

September 28, 2009

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the case file, pleadings, and exhibits, I conclude that Applicant failed to rebut or mitigate the Government's security concerns under Guideline F, Financial Considerations. His eligibility for a security clearance is denied.

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on August 17, 2007. On May 18, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the security concerns 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 June 9, 2009, Applicant answered the SOR in writing and requested a hearing before an administrative judge. The case was assigned to me on August 3,

2009. I convened a hearing on September 2, 2009, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses and introduced five exhibits, which were marked Ex. 1 through 5 and admitted to the record without objection. Applicant testified on his own behalf and called two witnesses. He introduced nine exhibits, which were identified and marked as Applicant's Ex. A through I. All of Applicant's exhibits were admitted without objection, with the exception of Ex. D. Department Counsel objected to the admission of Ex. D because it was an incomplete document. I noted Department Counsel's objection, and I also left the record open for one calendar week, until September 9, 2009, so that Applicant could provide a copy of the complete document for the record.

On September 9, 2009, Applicant timely filed five additional documents, including a complete copy of the document that had been identified at the hearing as Ex. D and admitted on the condition that he provide a complete copy of the document for the record. Without objection, Applicant's Ex. D was admitted to the record. Additionally, Applicant filed a request for the record to remain open to receive additional information from him and three additional documents, which I identified and marked as Ex. J, Ex. K, and Ex. L. Applicant's request that the record remain open was marked as Hearing Exhibit (HE) 1 and retained in the record. Ex. J, Ex. K, and Ex. L were admitted to the record without objection.

I granted Applicant's request, and the record was left open for an additional calendar week, until close of business September 16, 2009. Applicant timely filed two additional exhibits, which I identified and marked as Ex. M and Ex. N and admitted to the record without objection. DOHA received the transcript (Tr.) of the hearing on September 9, 2009.

Findings of Fact

The SOR contains three allegations of disqualifying conduct under AG F, Financial Considerations (SOR ¶¶ 1.a. through 1.c.). In his Answer to the SOR, Applicant admitted the three allegations but denied that they constituted disqualifying conditions under AG F. Applicant's admissions are admitted as findings of fact. (Answer to SOR; Tr. 66-67, 79-80.)

Applicant is 34 years old, married, and the father of four young children. From 1995 to 2002, he served on active duty in the military. Since 2002, he has been employed as a security officer by a government contractor. He seeks a security clearance. (Ex. 1; Tr. 63-64.)

Applicant's monthly take-home pay is approximately \$4,500. He also has a part-time job as a church organist, from which he earns about \$200 a month. His monthly fixed expenses are as follows: rent, \$1,200; groceries, \$400; clothing, \$150; utilities, \$200; automobile insurance and maintenance, \$470; car payment, \$650; miscellaneous, \$100. His monthly net remainder is approximately \$1,530. Applicant is

the sole support of his family. Since 2003, his wife has not been employed outside of the home. (Ex. 3 at 5; Ex. I; Tr. 86-89, 91-92.)

In January 2003, Applicant purchased a home for \$120,000. Applicant and his family lived in the home until about May 2005, when he purchased a second home for \$281,000 and moved his family into the second home. In June 2005, he rented his first home to a tenant. (Tr. 67-70.)

In January 2006, Applicant refinanced the mortgage on the second home. The refinance paid off the original mortgage on the home and resulted in a new first mortgage with the creditor identified at SOR ¶ 1.b. and a second mortgage with the creditor identified at SOR ¶ 1.a. After the refinance, Applicant's monthly payments were \$1,700 on the first mortgage and \$650 on the second mortgage. (Ex. 3 at 3; Tr. 67.)

Applicant was also responsible for paying the mortgage on his first home. He intended to use the rent he acquired from his tenant to pay the mortgage on the first house. Applicant's tenant, however, was, at times, late in paying her rent. She also failed on other occasions to pay her rent to Applicant. Applicant tried to cover the mortgages on both homes, but was unable to do so. He fell about six months behind in his mortgage payments on both homes. (Ex. 3 at 3; Tr. 69-71.)

Applicant took action to have the tenant evicted, and, in January 2007, she was evicted. Between January and April 2007, the property was vacant. In April 2007, Applicant sold the first home to an investor, who purchased the property for \$232,000. The investor paid the back rent that had been owed by the tenant and brought Applicant current on the mortgage. The investor now pays the mortgage on the property, which remains in Applicant's name until the property is sold. Applicant and the investor have an agreement that when the property is sold, Applicant will receive approximately \$57,000 of the sale proceeds. To date, the investor has been unable to sell the property, and he currently rents it to tenants. (Ex. 3 at 7-8; Ex. D; Ex. F; Tr. 73-77.)

Applicant continued to fall behind in his mortgage payments for his second home. In February 2008, he and his family moved out of the home. He tried to sell the home, but he was unable to do so. The property went into foreclosure and was sold at auction. After the foreclosure, Applicant owed \$59,708 to the holder of the second mortgage. This debt has not been satisfied and is alleged at SOR ¶ 1.a. After the foreclosure, Applicant also owed \$31,220 to the holder of the first mortgage. This debt has not been satisfied and is alleged at SOR ¶ 1.b. (Ex. H; Tr. 68, 79.)

In December 2008, the holder of the first mortgage contacted Applicant and offered to settle the \$31,220 debt for \$9,381. In order to qualify for the settlement, Applicant was required to pay the creditor \$50 a month from December 2008 through March of 2009. Applicant made one or two payments under the agreement but then failed to make the other required payments. He stated that he didn't get around to making the payments, but he stated that it was his intention to make such payments in the future. He provided documentation to show that he made one \$100 payment to the

creditor in August 2009. At his hearing, he stated that the creditor had agreed to accept payments on the debt of \$100 a month, and he stated he would provide a copy of that agreement as a post-hearing submission. Applicant failed to submit the documentation corroborating his agreement with the creditor to accept monthly payments of \$100 on the debt. Instead, he provided a settlement offer from the creditor, dated September 4, 2009, offering to settle the \$30,972 debt for approximately half of the balance, or \$15,486. (Ex. 2 at 2; Ex. A; Ex. L; Ex. N; Tr. 79-84.)

Applicant acknowledged that the \$59,708 debt to the holder of the second mortgage had not been satisfied. He acknowledged that, in January 2009, the creditor had offered him a loan modification agreement whereby he would make an initial payment of \$605 to the creditor and then would make \$310 monthly payments, beginning March 1, 2009. Applicant stated that he had not agreed to the loan modification offer but had, instead, made one payment of \$100 to the creditor in August 2009. He provided documentation to corroborate the \$100 payment. He stated that he intended to make payments of \$100 each month to the creditors identified at SOR ¶¶ 1.a. and 1.b. until he satisfied both debts. (Ex. 3 at 11; Ex. L; Tr. 84-86, 90-91.)

The SOR also alleged that Applicant owed a delinquent debt of \$168 to a creditor on a cable bill. (SOR ¶ 1.c.) Applicant paid the creditor \$163 on the debt, and he provided documentation establishing that \$163 had been paid from his checking account to the creditor. He did not provide documentation to establish that the creditor considered the \$163 as payment in full on the debt. (Ex. L; Tr. 93-94.)

At his hearing, Applicant reported that he was not current on his cable bill and he was one month late in paying his car note. He has not had credit counseling. He has considered filing for bankruptcy. (Ex. J; Ex. K; Tr. 84-86, 94-95.)

Applicant's father and a family friend appeared as witnesses on his behalf. His father praised Applicant as a very good son and a man of character, integrity, and faith. The family friend described the financial hardships that Applicant experienced with the downturn of the housing market. She stated that he had discussed filing for bankruptcy. (Tr. 40-43, 58-61.)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant Applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

When evaluating an applicant's suitability for a security clearance, an 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, the administrative judge applies these guidelines 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, 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 conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. Applicant accumulated substantial delinquent debt and was unable or unwilling to pay his creditors. This evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant's financial delinquencies. Unresolved financial delinquency might be mitigated if it "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." (AG ¶ 20(a)) Additionally, unresolved financial delinquency might be mitigated if "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." (AG ¶ 20(b)) Still other mitigating circumstances that might be applicable include evidence that "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" (AG ¶ 20(c)) or "the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." (AG ¶ 20(d)) Finally, if "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 options to resolve the issue," then AG ¶ 20(e) might apply.

Applicant's financial difficulties began in 2005 and 2006 when he was unable to sustain the financial responsibilities of owning two homes. He could not meet his mortgage payments on the two properties, and he was unable to sell them because of the downturn in the housing market. While Applicant was directly affected by the downturn in the real estate market and was subject to events beyond his control, he

also elected to purchase and pay for two properties on a single income. Some of his creditors sought to offer him settlements. However, Applicant failed to work with his creditors. He did not follow through on payment arrangements with his creditors, thereby demonstrating a failure to act responsibly under the circumstances.

Applicant's inability to pay his mortgages caused him to become financially overextended. While he has a modest monthly remainder, his delinquent debts total almost \$91,000, and he has few resources available to pay them at this time. He hopes to pay his creditors in the future, but he has difficulty meeting his basic expenses each month and has fallen behind in paying his cable bill and his car note, a situation which casts doubt on his ability to plan realistically for the future. He provided documentation to corroborate that he had paid \$163 on a delinquent cable bill, alleged at SOR ¶ 1.c. However, he failed to establish that he had acted responsibly in dealing with the financial delinquencies that grew out of his failure to pay his mortgages and resulted in the substantial debts alleged at SOR ¶¶ 1.a. and 1.b.

Applicant has not received financial counseling. While he admitted his financial delinquencies, it was not clear that he understood his financial problems or how to resolve them. He has no plan in place to systematically resolve his substantial delinquent debt and prepare for future contingencies. I conclude that while AG ¶ 20(b) applies in part to Applicant's case, none of the other Financial Considerations mitigating conditions applies to the facts of Applicant's case.

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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

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 is a mature adult of 34

years. He is appreciated by his family, friends, and community. He has been steadily employed for seven years since leaving military service.

Applicant's financial problems began almost five years ago. He has not pursued financial counseling. His lack of attention to his financial delinquencies continues to raise security concerns. Despite a steady income for several years, and a net remainder of approximately \$1,500 a month, he failed to budget his income to satisfy his delinquent financial obligations, raising concerns about his judgment and potential financial vulnerability.

However, Applicant's financial situation arises from unusual circumstances, and he may find it beneficial to seek professional financial counseling and legal advice about resolving his debts and acquiring financial stability in the near term. Applicant can reapply for a security clearance one year after the date that this decision becomes final. If he wishes, he can produce new evidence that addresses the Government's current security concerns at that time.

Overall, the record evidence leaves me with questions and doubts at the present time as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising from his financial delinquencies.

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. and 1.b.:	Against Applicant
Subparagraph 1.c.:	For Applicant

Conclusion

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

Joan Caton Anthony
Administrative Judge