



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



In the matter of:)
)
) ISCR Case No. 08-10218
)
)
Applicant for Security Clearance)

Appearances

For Government: Robert E. Coacher, Esquire, Department Counsel

For Applicant: *Pro Se*

January 14, 2010

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, and the whole person analysis. His eligibility for a security clearance is denied.

Applicant executed and signed a security clearance application (SF-86) on April 23, 2008. On April 30, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing 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 May 26, 2009, Applicant answered the SOR in writing. On August 14, 2009, he filed a second answer to the SOR and requested a hearing before an administrative judge. His request for a hearing was dated August 11, 2009. The case was assigned to me on October 2, 2009. I convened a hearing on November 4, 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 no witnesses. He introduced five exhibits, which were identified and marked as Applicant's Ex. A through Ex. E. All of Applicant's exhibits were admitted without objection. DOHA received the transcript (Tr.) of the hearing on November 13, 2009.

Findings of Fact

The SOR contains 13 allegations of disqualifying conduct under AG F, Financial Considerations (SOR ¶¶ 1.a. through 1.m.). In both of his Answers to the SOR, Applicant admitted all 13 allegations. The government conceded that the debt alleged at SOR ¶ 1.c. was a duplicate of the debt alleged at SOR ¶ 1.k. The government also conceded that the debt alleged at SOR ¶ 1.f. was factually the same debt that was alleged at SOR ¶ 1.j., thereby rendering SOR ¶ 1.j. superfluous. Applicant's admissions of the debts identified at SOR ¶¶ 1.a., 1.b., 1.d. through 1.l., and 1.k. through 1.m. are admitted herein as findings of fact. (Tr. 10-11.)

Applicant is 41 years old. For approximately 1½ years, he has been employed as a security guard by a government contractor. He is a high school graduate. He has pursued higher education and vocational training. He has taken courses to prepare himself to work as a truck driver, massage therapist, locksmith, and personal trainer. He holds a state license in massage therapy. (Ex. 1; Tr. 31-32, 58, 64-70.)

Applicant has 16 years and five months of active duty military service and over 22 years of total military service. He currently serves in a National Guard unit. Applicant was first awarded a security clearance during his military service in 1993. He has not held a security clearance since 2000. (Ex. 1; Tr. 30-31, 77-78.)

Applicant married in 1998, and he and his wife divorced in 2000. He has no biological children. Applicant currently lives with a woman who has three children, and he shares in the support of the household and the children. One of the children is a minor child and two of the children are young adults. (Ex. 1; Tr. 50-52, 58-59.)

Applicant has a history of financial problems. In about 2003, he signed a lease on an apartment for a woman with whom he had a relationship. The woman failed to pay the required rent on the apartment, and Applicant was responsible for the rent arrearages. Applicant was unable to pay the delinquent rent and his other debts, and in

September 2003, he filed for chapter 7 bankruptcy. His delinquent consumer debts were discharged by the bankruptcy court in January 2004. Applicant's 2003 bankruptcy was alleged at SOR ¶ 1.a. (Ex. 2 at 9-10; Tr. 35-36.)

In 2006, Applicant also helped the same woman by co-signing her contract to purchase an automobile. When the relationship ended and Applicant moved out of the apartment they shared, Applicant continued to send her money to use for her car payments. However, she failed to make the payments, the automobile was repossessed, the account was placed for collection, and the creditor turned to Applicant for payment of a debt of approximately \$5,667. Applicant acknowledged responsibility for the debt. He said he had made some payments on the debt, but he had no documentation to corroborate the payments. This debt is alleged at SOR ¶ 1.b., and it remains unsatisfied. (Ex. 2 at 15-16; Ex. 4 at 1; Ex. 5 at 11; Tr. 37-40.)

Applicant purchased an automobile, and in 2006, the vehicle was repossessed when Applicant became delinquent in his payments. The creditor sold the account. A successor creditor contacted Applicant on October 16, 2009, identified the amount Applicant owed as \$11,471, and offered to settle the debt for \$2,868, provided that Applicant accepted the settlement offer by November 20, 2009. At his hearing, Applicant said he did not have enough money to pay the offered settlement, and he planned to contact the creditor to ask for an extension of time so that he could pay the debt in the future. This debt was alleged at SOR ¶ 1.d., and it remains unsatisfied. (Ex. 2 at 3, 15; Ex.4; Ex. 5; Ex. D; Tr. 40-42.)

The SOR alleged at ¶ 1.e. that Applicant owed a creditor \$528 on an account that was charged-off. Applicant admitted the debt. He stated that the debt alleged at SOR ¶ 1.e. was a federal tax debt that was paid with a tax refund from a later tax year. To corroborate his assertion, he presented a document from the U.S. Department of the Treasury, dated May 29, 2009, stating that Applicant's federal tax refund of \$877 had been intercepted and paid to satisfy a defaulted student loan debt. Applicant's documentation did not corroborate his assertion. (Ex. 4; Ex. 5; Ex. C; Tr. 42-43.)

The SOR alleged at ¶ 1.f. that Applicant owed a state student loan association \$7,150 on a collection account that had not been paid as of March 31, 2009. Applicant admitted the debt and presented a copy of a recent pay stub showing that a student loan creditor was garnishing \$210 from his wages every two weeks to satisfy the delinquency. He estimated that the garnishment, which was involuntary, began in October 2009. He did not know the identity of the student loan agency that had initiated the garnishment. (Ex. B; Tr. 29-33, 43-44, 50.)

The SOR alleged at ¶ 1.g. that Applicant owed a creditor \$472 on a delinquent account that had not been satisfied as of March 31, 2009. Applicant acknowledged the debt and further identified it as a cell phone bill. Applicant was not sure that he had opened the account; however, he acknowledged that the debt had not been satisfied. (Ex. 4; Ex. 5; Tr. 44-46.)

The SOR alleged at ¶ 1.h. that Applicant owed a creditor \$103 on a collection account that had not been satisfied as of March 31, 2009. Applicant admitted the debt and explained that it was incurred when he enrolled at a school to study massage therapy, attended classes for two weeks, and then dropped out after determining that he did not need to continue to attend the school. He surmised that the \$103 was an administration fee charged by the school. He stated that he had not paid the fee but intended to do so in the future. (Ex. 4; E. 5; Tr. 47-48.)

The SOR alleged at ¶ 1.i. that Applicant owed a state student loan agency approximately \$535 on a delinquent debt that had been placed for collection and had not been paid as of May 29, 2008. While Applicant admitted the debt, he wondered how he had acquired it when he was attending school under the G I Bill. He also wondered if he was the victim of identity theft. (Ex. 5; Tr. 47-48.)

The SOR alleged that Applicant was responsible for student loan delinquencies alleged at ¶¶ 1.k., 1.l., and 1.m. These three debts totaled approximately \$7,474. Applicant admitted the debts but did not know how he acquired them, even though they were listed separately on his credit report of May 29, 2008, as was the student loan delinquency alleged at SOR ¶ 1.f. He did not believe that the student loans alleged at ¶¶ 1.k., 1.l., and 1.m. duplicated the student loan delinquency alleged at SOR ¶ 1.f. Applicant's Ex. E listed his student loan history and identified \$2,773 in subsidized loans and \$3,649 in unsubsidized loans. Applicant failed to establish that the debts alleged at SOR ¶¶ 1.k., 1.l., and 1.m. were not his. (Ex. 5; Ex. E at 5; Tr. 48-50.)

Applicant's most recent pay stub shows a net monthly salary of \$2,375. He and his girlfriend pay \$1,315 a month for rent. They usually divide the rent payment, but because Applicant's girlfriend was out of work for four months recently, he paid the entire rent during those months. At the time of his hearing, Applicant's girlfriend had acquired employment and was able to pay her share of the monthly rent. (Ex. B; Tr. 53-54.)

On the personal financial statement he provided in response to DOHA interrogatories in March 2009, Applicant identified fixed monthly expenses of \$1,447. He also reported that he paid \$288 each month on three debts. Additionally, Applicant tries to send \$100 to his mother and \$100 to his grandmother each month. Applicant's monthly fixed expenses, his monthly debt payments, and his payments to his mother and grandmother leave him with a net monthly remainder of \$440. (Tr. 50-54.)

Applicant was interviewed about his financial delinquencies by an authorized investigator on July 25, 2008. He told the investigator that he planned to dispute those debts he could not recognize, and he said he planned to set up payment plans to resolve accounts he knew were his. He stated that he intended to satisfy all of his delinquent debts. Applicant reported that he had consumer credit counseling at an unspecified time in the past. While Applicant provided a form letter showing that he was working with a credit education service to dispute some of the debts listed on his credit reports, he failed to identify with specificity any debts that he had disputed. In the future,

he plans to attend school on the GI Bill and use his stipend to pay some of his delinquent debts. (Ex. A; Ex. 2 at 16; Tr. 55-58.)

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 in 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 date at least to his bankruptcy in 2003. In 2004, his consumer debts were discharged by the bankruptcy court. Soon thereafter, he acquired additional delinquent debt when his automobile and his girlfriend’s automobile were repossessed and he was responsible for paying deficiencies resulting from the sale of the vehicles by the creditors. These debts remain unresolved.

Applicant also incurred student loan debt, which he has not repaid voluntarily. One of his federal tax refunds was intercepted by the Treasury Department to satisfy a delinquent student loan debt. Recently, his wages were involuntarily garnished to satisfy another delinquent student loan debt. Applicant has few resources available to him to pay his financial delinquencies at this time. He hopes to pay his creditors in the future, but his current financial situation casts doubt on his ability to plan realistically for the future.

Applicant stated he received financial counseling at some unspecified time in the past, but he did not seem to benefit from it. His financial problems, which began in the past, remain unresolved, even though he told an authorized investigator in July 2008 that he intended to dispute or resolve all of his existing debts. He has not made good faith efforts to repay overdue creditors or otherwise resolve his debts. While he admitted his financial delinquencies, it was not clear that he understood his financial problems or how to resolve them. He lacks a clear and realistic plan to systematically resolve his substantial delinquent debt and prepare for future contingencies. I conclude that none of the 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 41 years. He has served his country in the U.S. military for 22 years. He has sought to improve his life through education.

However, his financial problems date to at least 2003, when he was granted a discharge in bankruptcy and thereby acquired a fresh start in his financial life. Unfortunately, he made choices that impaired his financial stability again. His lack of attention to his financial delinquencies and his failure to resolve them, even after stating that he would do so, continues to raise security concerns about his judgment and potential financial vulnerability.

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. Accordingly, I conclude, after a careful review of the facts of his case, the Financial Considerations adjudicative guideline, and the whole person analysis, that 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. - 1.b.:	Against Applicant
Subparagraph 1.c.:	For Applicant
Subparagraphs 1.e. - 1.i.:	Against Applicant
Subparagraph 1.j.:	For Applicant
Subparagraphs 1.k. - 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 interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Joan Caton Anthony
Administrative Judge