



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



In the matter of:)
)
) ISCR Case No. 08-10219
)
)
Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank, Jr., Esq., Department Counsel
For Applicant: *Pro Se*

October 15, 2009

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated Financial Considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On May 11, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 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 (DoD) for SORs issued after September 1, 2006.

Applicant answered the SOR on June 11, 2009, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on July

24, 2009. DOHA issued a notice of hearing on August 3, 2009, scheduling the hearing for August 19, 2009. The case was reassigned to me on August 12, 2009. The hearing was convened as scheduled. The government offered Exhibits (GE) 1 through 4, which were received without objection. Applicant testified on his own behalf and submitted Exhibits (AE) A through D, which were received without objection. The record was held open for Applicant to submit additional information. Applicant submitted six pages of documents, which were marked AE E through I and admitted without objection. Department Counsel's memorandum is marked Hearing Exhibit (HE) I. DOHA received the transcript of the hearing (Tr.) on September 8, 2009.

Procedural Rulings

I advised Applicant of his right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing. Applicant affirmatively waived his right to 15 days notice.

Findings of Fact

Applicant is a 41-year-old employee of a defense contractor. He has worked for his current employer since May 2008. He is a graduate of a bible college and is an ordained minister. He was married from 1988 until his divorce in 2007. He married again in 2007. He has three children, ages 19, 17, and 7. He also has a 16-year-old stepchild.¹

Applicant worked for an automotive company in a different state than his current residence from 1988 to 2008. He was also serving as a pastor at a church. His first wife handled their finances during his marriage. After they separated in January 2007, he discovered that they had extensive debt. The court held Applicant responsible for all their debt. He was also ordered to pay \$1,285 per month in child support. Applicant indicated that he was unable to maintain his child support, mortgage, and make the payments on their accumulated debts. The automotive company notified Applicant that his job was being eliminated. The company provided him with a severance package. Applicant indicated that he did not recall the amount of the package, but it came to "about \$50,000 after taxes and everything else." Applicant stated that some of the money went to dental work for the children, child support, and other expenses. Applicant's current job pays about \$2,500 less per month than his job at the automotive company.²

The SOR alleges 14 delinquent debts totaling about \$68,391. The debts were listed on credit reports obtained on July 12, 2008 and April 29, 2009. Applicant admitted to the debts alleged in SOR ¶¶ 1.a, 1.c, 1.f, 1.g, 1.i, 1.j, 1.m, and 1.n. He denied owing the remaining debts. The total amount owed on the eight debts that Applicant admitted owing is about \$53,502. He also admitted to SOR ¶ 1.o, which alleged that his personal

¹ Tr. at 17, 48-49; Applicant's response to SOR; GE 1; AE B-D.

² Tr. at 17-20, 36-38; Applicant's response to SOR; GE 1, 2.

financial statement, executed on January 5, 2009, reflected a negative monthly net remainder.³

SOR ¶¶ 1.a and 1.b allege delinquent debts of \$327 and \$164 to the same utility company, as collected by two different collection companies. Applicant admitted owing the first debt and denied owing the second debt. There is insufficient evidence for a determination that these represent two distinct debts. When he responded to the SOR, Applicant stated that he sent the utility company a check for \$327. At his hearing, Applicant admitted that he never sent the company a check. He stated that he made out a check to the utility company for \$327. When he called the company for an address, the company told him that the debt was transferred to a collection company.⁴

SOR ¶¶ 1.d and 1.e allege delinquent debts of \$4,707 and \$5,593 to the same collection company. Applicant denied owing the debts because he stated that he did not recognize the company. The debts are listed on the 2009 credit report but not the 2008 report. The credit report does not list the original creditor(s). The \$5,593 debt alleged in SOR ¶ 1.e appears to be the same debt alleged in SOR ¶ 1.m. There is insufficient evidence for a determination that the \$4,707 debt alleged in SOR ¶ 1.d represents a distinct debt not alleged in another SOR allegation.⁵

Applicant admitted owing the delinquent debt of \$1,058 owed to a collection company on behalf of an automobile tire company, as alleged in SOR ¶ 1.g. He entered a payment plan with the collection company in December 2008, in which he would settle the debt with six monthly payments of \$158. He made the first payment in January 2009. He thought he made a second payment, but apparently it was sent to his credit management company. He settled the debt through the credit management company on August 31, 2009.⁶

Applicant initially denied owing the delinquent debt of \$128 to a telecommunications company, as alleged in SOR ¶ 1.h. He contacted the collection company handling the debt after the hearing. He paid the debt with a \$134 payment on August 21, 2009.⁷

Applicant denied owing the \$1,262 delinquent debt alleged in SOR ¶ 1.k because he did not recognize the creditor. The SOR abbreviated the name of the creditor. When provided the complete name of the creditor, Applicant admitted he had a delinquent

³ Applicant's response to SOR; GE 3, 4.

⁴ Tr. at 29-33; Applicant's response to SOR. Applicant's inaccurate statement will not be used for disqualification purposes. It will be considered in assessing Applicant's credibility; in the application of mitigating conditions; and in evaluating the "whole person."

⁵ Tr. at 33-36; Applicant's response to SOR; GE 3, 4.

⁶ Tr. at 21-24; Applicant's response to SOR; GE 2; AE F-I.

⁷ Tr. at 38-40; Applicant's response to SOR; AE F.

account owed to the creditor. He listed the creditor under its full name when he submitted his Questionnaire for National Security Positions (SF 86) in July 2008.⁸

SOR ¶ 1.1 alleges a delinquent debt of \$3,035 owed to a financial institution. Applicant denied owing the debt because he did not recognize the company. The debt is listed on the 2008 credit report but not the 2009 report.⁹

Applicant admitted owing the remaining delinquent debts alleged in the SOR. He contracted with a credit management company to negotiate settlements on his behalf. He stopped being actively involved with the company because their monthly payment schedule was too high. He has not received formal financial counseling, but he has received advice from friends. A friend provided him with literature from a well-known financial and credit advisor. Applicant indicated that he plans on paying all his debts, but does not have the income to do so at this time. His friends have recommended that he file bankruptcy, but he does not believe that would be the morally right thing to do. He stated that he is saving \$20 from his paycheck every two weeks to pay his debts. He plans on following the financial expert's advice, which is to pay the smallest debt first and then move to the next debt. He has recently reconnected with the credit management company to negotiate settlements for his debts. Applicant's oldest child married in January 2009, which should eliminate child support for that child and lower his total child support payments. He is in the process of petitioning the court to lower his child support obligation. When that occurs, he will be able to put more funds toward his delinquent debts. He is in somewhat better financial shape than when he submitted his personal financial statement, but he admitted that his finances remain very tight.¹⁰

Applicant submitted letters from his supervisor and another pastor. The supervisor attested to his superior job performance, honesty, work ethic, dedication, and integrity. He recommended Applicant for a security clearance. The pastor has known Applicant his entire life. He stated Applicant is a man of character and integrity.¹¹

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 to be 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, administrative judges apply the guidelines in

⁸ Tr. at 40-41; Applicant's response to SOR; GE 1, 3, 4.

⁹ Tr. at 42-43; Applicant's response to SOR; GE 3, 4.

¹⁰ Tr. at 20-29, 42-50; Applicant's response to SOR; GE 3, 4.

¹¹ AE A, D.

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 the 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 adverse 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. Two are potentially applicable in this case:

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

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay his obligations for a period of time. The evidence is sufficient to raise the above disqualifying conditions.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the 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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (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.

Applicant has not resolved most of the debts alleged in the SOR. His financial issues are recent and ongoing. AG ¶ 20(a) is not applicable.

Applicant attributed his financial problems to his ex-wife's mismanagement of their finances, his separation and divorce, and the loss of his job at the automotive company. These all qualify as conditions that were outside his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant has made minimal payments on his delinquent debts. He

received a severance package from the automotive company. He stated that he did not recall the amount of the package, but it came to “about \$50,000 after taxes and everything else.” He did not fully explain what he did with that money. Without a better accounting of where those funds went, I am unable to make a finding that he acted responsibly under the circumstances. AG ¶ 20(b) is partially applicable.

Applicant has received some financial counseling, but there are not clear indications that his financial problems are being resolved or under control. AG ¶ 20(c) is partially applicable. He has paid several debts. AG ¶ 20(d) is applicable to those debts. Those payments do not support a finding that he made a good-faith effort to pay or resolve all his delinquent debts. AG ¶ 20(d) is not applicable to the unpaid debts.

Applicant denied owing the debts alleged in SOR ¶¶ 1.b, 1.d, 1.e, and 1.i. Three of the debts may be duplicates of other debts, and the fourth debt does not appear on the most recent credit report. AG ¶ 20(e) is applicable to those debts.

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 have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant is a 41-year-old employee of a defense contractor. He is also an ordained minister. He is highly regarded personally and professionally. Between his long hours at the automotive company and as a pastor, he placed his finances in the hands of his wife. She mismanaged their finances, which he did not completely discover until after their separation and divorce. The court ordered him to pay the marital debt and child support. He was unable to keep up the payments on his child support, mortgage, and other bills. He then lost his 20-year job at the automotive company because of downsizing. He

moved to another state and accepted a job making substantially less money. All these events contributed to his financial problems. The automotive company gave him a severance package that came to about \$50,000 after taxes. He stated that some of the money went to dental work for the children, child support, and other expenses, but did not provide any kind of breakdown as to how much was paid and to whom. He has made minimal payments on his debts. Without a better accounting of the \$50,000, I cannot find that he has acted responsibly under the circumstances. I am also troubled by his inaccurate statement in his response to the SOR that he sent a creditor a check for \$327, when he had not. Accounting for the paid and disputed debts, Applicant still owes more than \$53,000 in delinquent debt. He stated that he can only afford to use \$20 from his paycheck every two weeks for his delinquent debts. He remains financially overextended.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated Financial Considerations security concerns.

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:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraphs 1.d-1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraphs 1.g-1.h:	For Applicant
Subparagraphs 1.i-1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraphs 1.m-1.n:	Against Applicant
Subparagraph 1.o:	For 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.

Edward W. Loughran
Administrative Judge

