



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



In the matter of:)
)
) ISCR Case No. 08-10439
)
)
Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

June 3, 2010

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government's security concerns under Guideline F, Financial Considerations. Applicant's eligibility for a security clearance is denied.

On December 23, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to 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 adjudicative guidelines (AG), effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on January 15, 2010, and elected to have his case decided on the written record. Department Counsel submitted the Government's File of Relevant Material (FORM) on March 4, 2010. The FORM was

mailed to Applicant, who received it on March 10, 2010. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant provided additional information. The case was assigned to me on April 30, 2010.

Findings of Fact

In Applicant's answer to the SOR, he admitted ¶¶ 1.b, 1.c, 1.d, and 1.j, and denied the remaining allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 55 years old. He served in the Air Force Reserves from 1985 to 1989, and was honorably discharged. He is married and his children are grown. He earned a bachelor's degree in 1977 and obtained a computer programming certificate.

Applicant experienced periods of unemployment from: October 2007 to November 2007 and May 2008 to June 2008. He has been employed with his current employer since June 2008.

Applicant provided proof of satisfaction of the judgments listed in SOR ¶¶ 1.a and 1.u. These judgments were owed to a former landlord. Applicant withheld rent when he had a dispute with the landlord. Applicant stated that he satisfied all of the judgments to this landlord that are listed in SOR ¶¶ 1.k, 1.y, and 1.z. He did not provide documentary proof that these remaining judgments were satisfied.

The judgment in SOR ¶ 1.b (\$2,874) was based on an unpaid credit card debt. The judgment was obtained in 2005. Applicant closed the account and believed the interest being charged was "obscene" so he did not pay it. Applicant provided a document to show he was offered a settlement amount of \$1,116. He did not provide proof that he accepted the offer and is making the required payments.¹

Applicant admitted owing the tax lien debt in SOR ¶ 1.c (\$1,008) entered against him in 2008. He acknowledged he would pay it, but needed to investigate it and make arrangements. He did not provide any other information about what actions he has taken to pay or resolve the debt.²

The debt in SOR ¶ 1.d (\$438) is a television account. Applicant acknowledged the account in his response to interrogatories dated June 8, 2009, and stated he would attempt to settle the account. He indicated he was required to return the cable boxes and had not. No other information was provided regarding this debt.³

¹ Response to FORM.

² Item 5.

³ *Id.*

Applicant did not recognize the debt in SOR ¶ 1.e (\$123), but stated he would pay it if it was legitimate. He did not provide any further information on action he took to dispute or resolve the debt.⁴

Applicant disputes the debt in SOR ¶ 1.f (\$372). He stated he never had an account with the creditor. He indicated that he would investigate the debt, but needed time to determine its validity. He believed the debt might be related to identity theft. He did not provide further information regarding his actions to dispute, resolve, or determine if the debt was due to identity theft.⁵

Applicant indicated in his response to interrogatories, that he was attempting to contact the creditor for the debt in SOR ¶ 1.g (\$1,338) and would attempt to negotiate a settlement. He did not provide other information regarding what actions he took to resolve or pay the debt.⁶

Applicant denied the debt in SOR ¶ 1.h (\$460). The debt is listed on two credit reports.⁷ Applicant did not provide documentary proof to show what actions he has taken to dispute the debt.

The debt in SOR ¶ 1.i (\$17,659) is for a car loan Applicant cosigned for his son. His son acknowledged he defaulted on the loan because he lost his job and intends to pay the debt when he resumes employment. Because both Applicant and his son are cosignatories on the loan, both are responsible for it. Neither has paid the debt and it remains unresolved.⁸

In Applicant's interview with an investigator from the Office of Personnel Management on August 12, 2008, he indicated that he had contacted the creditor for the car loan debt in SOR ¶ 1.j (\$16,312) and he was making payments. He had fallen behind in his payments. He was then in an accident with the car and it was totaled. His insurance did not cover the loss. He indicated he agreed to pay \$215 a month until the debt was paid. He did not provide any documentary proof that he is paying the debt.⁹

The debt in SOR ¶ 1.l (\$254) was a telephone account. Applicant indicated in his response to interrogatories that he was attempting to negotiate a settlement with the creditor. He also indicated he was contacting the credit bureau. He believed the balance

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Item 6, 7.

⁸ Item 5; Response to FORM.

⁹ *Id.*

should be around \$100. He did not provide documentary proof of his actions or payments.¹⁰

The debt in SOR ¶ 1.m (\$1,560) is for a school Applicant attended for three months before terminating the course because he got a job. He indicated that in April 2008, he made an agreement with the creditor to pay 15% of his pay to satisfy the debt. He indicated that he made three payments. He did not provide proof he made any payments or that the debt is resolved.¹¹

The debt in SOR ¶ 1.n (\$1,366) is owed for parking tickets. Applicant indicated he paid \$300 for parking fines. He believes the remaining fines are owed by his brother and his son. His brother purchased the vehicle for which the tickets were issued and his son used the vehicle. Applicant indicated he would resolve the issue. He indicated he was entering into a payment arrangement with the creditor and was to begin receiving monthly bills in July 2009. Applicant did not provide proof of the agreements or of any payments made. There was no documentary evidence provided to substantiate Applicant's position that he was not responsible for the remaining debt.¹²

The debts in SOR ¶¶ 1.o and 1.q (\$715 and \$338) were for car insurance. Applicant had two-year contracts with the companies and cancelled them early. He indicated he was negotiating settlements. He did not provide documents to show he has resolved the debts.¹³

The debts in SOR ¶¶ 1.p and 1.r (\$420 and \$145) are payday loans. Applicant indicated that the debt in SOR ¶ 1.p was dismissed due to a class action lawsuit against the creditor. Applicant did not provide documentary proof of his position. He did not provide proof he has disputed the debt with the credit bureau. Regarding the debt in SOR ¶ 1.r, he indicated the creditor is no longer in business. He stated he was disputing this debt with the credit bureau, but did not provide documentary proof.¹⁴

Applicant disputed the judgment in SOR ¶ 1.s (\$527). He acknowledged he had a dispute with the creditor and they went to small claims court. He indicated he paid the creditor and she agreed to remove the judgment from the record. He sent the creditor a letter requesting that she remove the judgment. No additional documents were provided to show the judgment was satisfied.¹⁵

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

The creditor for the judgment in SOR ¶ 1.t (\$2,461) offered to settle the account for 50% of the balance. Applicant is waiting for paperwork. The debt remains unresolved.¹⁶

Applicant is unaware of the basis for the judgment that was entered against him in 1989 and listed in SOR ¶ 1.v (\$20,000). On March 22, 2010, he wrote a letter on to the creditor, but the letter was returned, undelivered. He indicated he is attempting to contact the attorney who handled the case. He believes the debt could be due to identity theft. Applicant did not provide any other information showing his actions to dispute or resolve the debt.¹⁷

The debt listed in SOR ¶ 1.w (\$145) is owed to a probation department. Applicant indicated he has never been in jail, but his oldest son is incarcerated. He has not provided information to show he has disputed the debt or contacted the creditor to resolve it.¹⁸

The debt in SOR ¶ 1.x (\$1,684) is owed to a city housing authority. Applicant believes this debt is an error. He indicated that he contacted the creditor and is waiting for someone to contact him. No other information was provided as to what action Applicant has taken to resolve or dispute the debt.¹⁹

Applicant indicated in his response to interrogatories that he needed time to resolve his debts. He stated he had no idea about many of his debts until his clearance investigation. He believes many of the debts are in error or inaccurate. He has been poor all of his life and has never been arrested. He has been working since he was 15 years old. He believes he is a man of character and integrity. He has never succumbed to making money illegally.²⁰

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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, these guidelines are applied in conjunction with the

¹⁶ *Id.*

¹⁷ Items 5, 9, 10.

¹⁸ Items 5, 11.

¹⁹ Items 5, 12.

²⁰ Response to FORM.

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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion for 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 that an applicant may deliberately or inadvertently fail to 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 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. I have considered the following two under AG ¶ 19:

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

Applicant has 24 delinquent debts and judgments totaling approximately \$72,732. Except for SOR ¶¶ 1.a and 1.u, the debts are unpaid and unresolved. Applicant has been aware of the security concerns regarding his delinquent debts since August 2008, when he was interviewed by the OPM investigator. I find both disqualifying conditions have been raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under AG ¶ 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;
- (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 proved that he satisfied the judgments in SOR ¶¶ 1.a and 1.u. He did not prove that he paid or resolved any of the remaining delinquent debts or judgments. He was offered a settlement agreement for the judgment in SOR ¶ 1.b, but did not provide proof that he accepted the agreement and is making payments. He disputes many of

the debts, but failed to substantiate his disputes and provide proof of any actions he may have taken. He indicated that he needed time to investigate certain debts. He was interviewed about his delinquent debts in August 2008. He was on notice in June 2009, through his interrogatories, of the specific debts he needed to address. He was again made aware in December 2009 of the financial considerations security concerns through the SOR. Applicant's behavior is recent and the delinquent debts and judgments remain an ongoing and unresolved concern. I find mitigating condition AG ¶ 20(a) does not apply. There is some evidence that Applicant experienced short periods of unemployment. However, he failed to provide enough information to determine the level of impact his short unemployment periods had on his ability to pay his bills. Those periods of unemployment were beyond his control, but insufficient evidence was provided to conclude he acted responsibly under the circumstances. I find AG ¶ 20(b) only partially applies. There is no evidence Applicant sought advice from a financial advisor. There is no clear evidence that Applicant's financial problems are being resolved or under control. He did not provide evidence that he has made a good-faith effort to pay the majority of his delinquent debts and judgments, or attempt to resolve them. Applicant satisfied two judgments. He indicated other judgments were paid, but did not provide proof. I find AG ¶¶ 20(c) and 20(d) do not apply. Throughout, he claimed, without corroboration that he disputed many of the delinquent debts and judgments, but failed to provide documentation verifying the disputes or actions he was taking to resolve them. I find AG ¶ 20 (e) does not apply.

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 served in the military reserves. I have considered he experienced periods of unemployment. In August 2008, the Government made him aware of the security concerns related to his delinquent

debts. In December 2009, DOHA issued a SOR listing the specific debts of concern. He subsequently provided documentation that he satisfied two judgments and has a settlement offer from one creditor. However, he did not provide documentation to show he paid any of the remaining delinquent debts. He did not provide information that he sought credit counseling or established a repayment plan or settlement agreement with any of the other creditors. He disputed some debts, but did not provide sufficient evidence to show any actions he may have taken to address the disputed debts. Despite having notice of the concerns for more than a year, he failed to provide sufficient evidence to mitigate the security concerns, indicating a lack of reliability and good judgment. Overall the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, 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
Subparagraphs 1.b-1.t:	Against Applicant
Subparagraph 1.u:	For Applicant
Subparagraphs 1.v-1.z:	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.

Carol G. Ricciardello
Administrative Judge