



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



In the matter of:)	
)	
)	ISCR Case No. 08-10925
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

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

December 7, 2009

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant's eligibility for access to classified information is denied.

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on June 6, 2007, and resigned it on March 9, 2009. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F on May 29, 2009. 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.

Applicant acknowledged receipt of the SOR on June 4, 2009. He answered the SOR in writing on July 11, 2009, and requested a hearing before an administrative judge. DOHA received the request on July 13, 2009. Department Counsel was prepared

to proceed on August 31, 2009, and I received the case assignment on September 3, 2009. DOHA issued a notice of hearing on September 11, 2009, and I convened the hearing as scheduled on September 30, 2009. The government offered 14 exhibits (GE) 1 through 10, and 12 through 14, which were received and admitted into evidence without objection. Applicant and one witness testified on his behalf. He did not submit any exhibits at the hearing. DOHA received the transcript of the hearing (Tr.) on October 7, 2009. I held the record open until October 21, 2009, for Applicant to submit additional matters. He timely submitted four exhibits (AE) A through D,¹ which were received and admitted into evidence without objection. The record closed on October 21, 2009.

Procedural and Evidentiary Rulings

Notice

Applicant received the hearing notice on September 21, 2009. (Tr. 9.) 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 (Tr. 9.).

Evidentiary Rulings

Applicant objected to the admission of GE 11, a prior affidavit from Applicant, on the grounds of relevance. After hearing argument from both parties, I sustained Applicant objection in part. Most of the information in GE 11 did not relate to the issues raised in this case (Tr. 24-25). Thus, this information is inadmissible. I admitted the first six lines of Applicant's prior statement as it is information relevant to this case (Tr. 25).

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a through 1.h of the SOR, with explanations. He also provided additional information to support his request for eligibility for a security clearance.

Applicant, who is 54 years old, works as a senior project manager for a Department of Defense contractor. He retired from the United States military after 20 years of service, which included deployments to Iraq in the 1990-1991 war and Vietnam. He is a decorated veteran. He receives a military retirement benefit and a Veteran's Affairs disability benefit.²

Applicant completed an associate of arts degree in communications electronics. He also completed course work towards his bachelor's degree, but has not graduated. During his years in the military, Applicant held a security clearance without any violations of procedures for handling classified information. Applicant continued to hold

¹AE A (Budget, 1 page); AE B (Military retirement benefits, 3 pages); AE C (Earnings statements, 6 pages); AE D (E-mail communications, 7 pages).

²GE 1; AE B; Tr. 29-30.

a security clearance, at either a secret or top secret level, after his retirement. He has held a security clearance for the last 35 years without any violations of procedures for handling classified information.³

Applicant married his first wife in 1974 and they divorced in 1987. Applicant and his second wife married in 1987 and divorced in 2005. Applicant and his current wife married in 2008. Applicant has five daughters, whose ages range from 14 months to 35 years. His youngest daughter lives with him and his wife. He has four grandchildren.⁴

In 1988, Applicant and his second wife filed a Chapter 13 bankruptcy petition because of debt from his first marriage and loss of income when she was medically separated from the military because of a back injury. Applicant and his wife developed a repayment plan and complied with the terms of their wage earners plan under Chapter 13. The bankruptcy court discharged their debts on July 13, 1992.⁵

In 1999, Applicant and his second wife lived in a southern state and owned a house (first house). His employer offered him a promotion and a better job opportunity in another state. Applicant and his second wife decided to accept the promotion and move several hundred miles from their home. They also decided to rent, not sell their first house. They purchased another house (second house) in their new location. Some months after they moved, the property manager overseeing the rental of the first house called to advise that pipes had broken underneath the house and that water had damaged the tenants' personal property. Applicant obtained repair estimates for approximately \$15,000. He did not have the money to pay this repair expense and his insurance company declined to pay for the repairs. His tenants also declined to pay the rent. He attempted to pay two mortgages, but lacked the resources to do so.⁶

Because of the problems with his first house and the resulting strain on his household income, Applicant and his second wife filed a second Chapter 13 petition for bankruptcy on advice of counsel. They developed a repayment plan for their debts. Under their plan, they paid \$235 a month for 60 months. Shortly thereafter, Applicant's employer offered him a promotion. His new job required him to move overseas for two years. He and his second wife decided to accept the job offer and moved overseas. Applicant mailed his payments to the court from overseas. Overtime, he realized that his payments arrived late because the mailing time from overseas took between three and fourteen days. He requested to electronically mail his payment, but the court lacked the capacity to receive an electronic payment. Because his payments either did not arrive or were late, the court dismissed his Chapter 13 bankruptcy petition for nonpayment in 2003.⁷

³Tr. 30-31.

⁴GE 1; GE 2; Tr. 29.

⁵GE 8; GE 11; Tr. 32-33.

⁶GE 2; Tr. 33-34.

⁷GE 9; Tr. 35-43.

When Applicant and his family moved overseas in 2000, he listed his second house for sale. It sold very quickly and he does not have any residual financial problems related to this house. He still owned the first house.⁸

When Applicant and his family arrived overseas, they stayed in hotels until they found local housing. Applicant charged these expenses on his corporate credit card and submitted vouchers for these expenses every week. He received payment for the vouchers three to six weeks later. Not long after the family's arrival, one daughter underwent eye surgery in a local hospital to prevent blindness from a birth defect. The surgery cost approximately \$10,000. His medical insurance carrier through his military retirement refused to pay for this surgery at first. He used his voucher money to pay this bill. As a result, he did not pay his corporate credit card bill, which led to the suspension of this card. Applicant borrowed money from his father-in-law to pay this bill. He has repaid his father-in-law. His medical insurance carrier did pay the surgery expenses. Applicant's employer reported his 2000 bankruptcy filing and corporate credit card arrearage as an adverse action for security clearance purposes, and placed him one-year probation for financial responsibility.⁹

Applicant and his family returned to the United States in late 2002. He and his second wife filed a Chapter 7 petition for bankruptcy in August 2003, again on the advice of counsel. The court discharged their debts, including debts related to the first house, on November 20, 2003. Within a few months, he and his second wife separated.¹⁰

Applicant and his wife divorced in April 2005. Under the terms of their divorce agreement, he pays her \$1,500 a month in alimony for 10 years or until she remarries or co-habits. He also pays \$800 a month in child support. Initially, he paid child support for two daughters, but he now pays for only one daughter, who will turn 18 in April 2010. At this time, the child support will end.¹¹

After he and his second wife separated, he purchased a house (third house) for \$460,000. He rented rooms to help pay the costs of the house. His second wife moved back to her home state after their divorce. His two daughters, who had been living with him, joined their mother in the summer of 2005. In August 2005, a devastating hurricane struck the area where his second wife and daughters lived. He purchased plane tickets for his daughters, who left before the hurricane struck. His second wife stayed. After the hurricane passed, and at the urgent request of his daughters, he used \$7,000 of his savings to purchase supplies, such as food and clothing, for his second wife and her family that had been devastated by the hurricane. He drove to where she lived, left the

⁸Tr. 44, 98-99.

⁹GE 12; GE 13; GE 14; Tr. 58-61.

¹⁰GE 10; Tr. 42.

¹¹Applicant anticipates that his alimony payments may end soon, as he believes his former wife is co-habiting with someone. Litigation regarding this issue is pending. At the time of the hearing, he still paid her alimony.

supplies for her family, and drove her back to his home. She stayed with him. He helped her with relocation expenses, such as first month's rent and apartment deposit.¹²

With his daughters now living with him, plus his housemates and his second wife (for awhile), he felt his third house was too small. He listed his third house for sale. A purchaser offered a contract. Applicant then signed a contract on a larger house (fourth house), but did not put a contingency clause in his purchase contract. This house cost \$738,000. The purchase contract on the third house failed. Applicant tried to withdraw his purchase contract on the fourth house, but could not. He decided to proceed with the purchase, believing he could sell or rent the third house. He could not. By the summer of 2006, he defaulted on both mortgages, which totaled \$6,100 a month, as he did not have sufficient income to pay both mortgages. He chose not to stay in one house and pay its mortgage and let only one house go to foreclosure. With the real estate downturn beginning, he realized that the market value of both houses was declining seriously.¹³

The mortgage holder foreclosed on Applicant's third and fourth houses in 2007. He financed both houses with a primary and secondary mortgage. He believes that as a result of the foreclosure process, the primary mortgages have been resolved as the mortgagor took the property. The credit reports of record indicate that Applicant has the following outstanding mortgage debts: \$147,000, \$100,000 and \$403,000. The credit reports also reflect that he disputed the \$403,000 debt, which is not resolved. Applicant has not provided any information detailing the foreclosure proceedings and the actual results of the foreclosure proceedings. Such documentation would provide a clearer understanding of the actual debt owed. To his knowledge, these houses have never sold.¹⁴

Applicant hired a realtor, who specialized in short sales, to sell one of his homes in 2006. The realtor found a buyer. The mortgage company, however, refused to work with him on the sale. This sale never proceeded to conclusion. Applicant contacted the mortgage creditors in an attempt to reach a resolution on his debts, but has not been successful. Because his current job is temporary, he cannot commit to a repayment plan and has declined to provide a financial statement to the creditors. Applicant is not clear on how much he owes on the mortgages, but does not deny he owes this money.¹⁵

Applicant currently commutes between his home and work place. He lives several hundred miles from his job. He flies to his work location on Monday morning, stays in hotels during the week, and flies home on the weekend.

¹²GE 2; Tr. 46-48.

¹³GE 1; GE 2; Tr. 48-53, 109.

¹⁴GE 4; GE 5; GE 6; GE 7; Tr.44, 51-56.

¹⁵AE D; Tr. 51-55.

Applicant earns \$12,521 a month in gross income, and his net income is \$8,466 plus his monthly military retirement and disability benefit of \$1,400. Applicant's net pay increased in August 2009, when his employer stopped deducting state taxes, and again in September 2009, when his social security withholding ceased for the rest of 2009. Thus, his net income is higher through December 31, 2009. Applicant's monthly expenses total \$9,267, leaving approximately \$600 a month for debt payment. Applicant and his current wife pool their income and expenses. She manages their finances and he believes they are doing much better because of her fiscal management. His current wife returned to work from her maternity leave on November 1, 2009. Her income is estimated at \$75,000 a year or \$6,250 a month before deductions.¹⁶

Applicant owns the house in which his elderly mother lives. He pays \$455 a month on the mortgage on this property. His wife inherited 48 acres of land with a trailer when her father died. The land currently serves as collateral on a \$45,000 loan. Under the will of his wife's father, this land cannot be sold.¹⁷

In 2004, Applicant was denied a sensitive compartmented information (SCI) clearance because of his bankruptcy, but retained his top secret clearance.¹⁸

A friend and co-worker, who was the facility security officer, testified on behalf of Applicant. Applicant reported his problems with the two homes. In his capacity as the facility security officer, he reported this adverse action to the appropriate individuals. Applicant's clearance was not suspended or rescinded after the report was filed. He does not question Applicant's trustworthiness or loyalty. In his opinion, Applicant would die before he would give up secrets.¹⁹

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 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 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,

¹⁶AE A; AE B; AE C; Tr. 82-88.

¹⁷Tr. 81-82, 84.

¹⁸*Id.* 61.

¹⁹Tr. 67-74.

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. . . .” An 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 an 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 has a long history of debt problems. He resolved his debts through bankruptcy on two occasions, but he continued to incur delinquent debt, including significant mortgage debt. He has been unable to pay these obligations for a period of time. The 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. Under AG ¶ 20(a), mitigation may occur when “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.” Applicant’s debts have not occurred under unusual circumstances. He has a history of debt problems spanning 20 years. His current delinquent debts occurred three years ago, not a long time ago. Under the facts of this case, this mitigating condition is not applicable.

Under AG ¶ 20(b), it may be mitigating where “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.” Applicant’s divorce in 2005 and the water damage to his first house are unusual circumstances beyond his control. The water damage contributed to his financial problems in 2000, which were resolved through the discharge of his debts in 2003. His divorce has not raised any financial issues. Although his second wife lost everything in a devastating hurricane in 2005, an unusual situation, his current debts problems arose only indirectly from this event. His decision to help his second wife and her family is not only admirable, but did not create his current financial problem. Rather, his present financial difficulties occurred because he decided to purchase an expensive house before he sold the house in which he had lived for a year. Applicant made this decision, which was not beyond his control, without fully considering the ramifications. I find this potentially mitigating condition is not applicable.

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” is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant has not received financial counseling, and he has not resolved the delinquent debts listed in the SOR, either by payment or settlement. He is paying his current expenses. I conclude these potentially mitigating conditions do not apply.

Applicant challenged the validity of the \$403,000 debt with the credit reporting agencies. The creditor has not resolved this dispute. AG ¶ 20(e) applies to SOR allegation 1.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 an 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

The evidence in support of denying a security clearance to Applicant under the whole person concept is more substantial than the evidence in support of a granting his security clearance. In reaching this conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant's debt problems go back over 20 years. In 1988, he resolved his debt issues through a Chapter 13 bankruptcy, the wage earners plan. He complied with the repayment plan and the court discharged his debts in 1992. When he decided to rent his first house instead of selling it, his financial problems soon became out-of-control. The house developed serious problems requiring expensive repairs, which he could not afford. He filed bankruptcy again. He did not complete this repayment plan, in part, due to problems with the mail. When he learned that the mail was slow, he did not rethink his payment schedule to assure that his payments would be received by the court in a timely manner. His financial problems have continued throughout this decade. He does pay his current expenses, as his wife manages their income and payment of their current debts and expenses.

Applicant has been open and honest about his debt problems. Thus, there is little likelihood he can be coerced, exploited, or pressured to reveal government secrets because of his debts. However, he has not acted responsibly about his finances for many years. His employer placed him on one year of probation for financial irresponsibility in 2001. He was denied a SCI clearance because of his financial problems. Applicant has been on notice for some time that he needs to take responsibility for his finances and financial-decision making. When he decided to allow both houses he owned to go to foreclosure in 2006, he made a poor financial decision. From his testimony, I find that he made this decision because the property had declined

to a value significantly below his purchase price. Only recently has he begun to take some control over his finances. In reaching my decision, I considered the many years Applicant has held a security clearance without any violations. This factor by itself is not enough to overcome his many years of poor financial-decision making. Applicant has not mitigated the government's security concerns.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his 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:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	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.

MARY E. HENRY
Administrative Judge