



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



In the matter of:)
)
) ISCR Case No. 08-11258
)
Applicant for Security Clearance)

Appearances

For Government: Gregg A. Cervi, Esq., Department Counsel
For Applicant: *Pro se*

July 13, 2011

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 December 21, 2010, 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 adjudicative guidelines (AG) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on February 15, 2011, and requested a hearing before an administrative judge. The case was assigned to me on March 18, 2011. DOHA issued a notice of hearing on April 4, 2011, scheduling the hearing for May 5, 2011. On April 28, 2011, Department Counsel contacted me, indicating that Applicant

may want a continuance. Applicant, Department Counsel, and I had a telephone conference the same day. Applicant stated that he would like additional time to work on his finances. I indicated that I would not grant a continuance over the phone, but I would give him at least 45 days after the hearing to submit additional documentary evidence. I indicated that he could renew his request for a continuance at his hearing. The hearing convened on May 5, 2011. Applicant did not seek a continuance, and he indicated that with the additional 45 days to present evidence, he was prepared to proceed.

The Government offered Exhibits (GE) 1 through 12, which were admitted without objection. Applicant testified and submitted Exhibits (AE) A through L, which were admitted without objection. The record was held open until July 5, 2011, for Applicant to submit additional information. On June 27, 2011, Applicant requested that the record remain open until the end of July 2011. That request was denied. The e-mail correspondence regarding Applicant's request for additional time is marked Hearing Exhibit (HE) I. Applicant timely submitted documents that were marked AE M through Y and admitted without objection. DOHA received the hearing transcript (Tr.) on May 18, 2011.

Findings of Fact

Applicant is a 27-year-old employee of a defense contractor. He seeks to retain a security clearance he has held since 2006. He has a bachelor's degree and a master's degree. He has never been married and has no children.¹

In 2003, when he was 19 years old and in college, Applicant and his father decided to enter the real estate business. His father is an attorney. Their plan was to buy "intercity" houses in their individual names, renovate the properties together, and then quickly sell or "flip" the properties. Between 2003 and 2005, Applicant bought nine houses, all financed through first and second mortgages. His father also bought a number of properties. Applicant and his father had a joint line of credit that they used to fund the renovation of the properties. Applicant quickly learned that he was unable to sell the properties at a profit, and he started renting the properties. He had problems with the properties and his renters, and he was unable to maintain the mortgage payments. He stopped paying the mortgages in about 2007. Further attempts to sell or "short sale" the properties were unsuccessful. His nine properties were all foreclosed upon. His father experienced similar problems with his properties. His father filed bankruptcy in 2008, and his debts were discharged the same year.²

Applicant wrote a statement for his security clearance in October 2007. He explained his foreclosures and wrote that he planned to address his debts through bankruptcy. He submitted a questionnaire for national security positions (SF 86) in

¹ Tr. at 21, 25, 117, 159; GE 1; AE B, N.

² Tr. at 27-46, 54-56, 115, 128-130; Applicant's response to SOR; GE 1, 5, 7, 8; AE D, E, H.

January 2008. He listed the foreclosure of his properties and his delinquent debts. He wrote that he would “be filing for bankruptcy within the month.”³

Applicant was interviewed for his background investigation in April 2008. He told the investigator that he had not filed bankruptcy because his attorney advised him to wait until he had filed his tax return for tax year 2005. He stated that he planned to file bankruptcy in May 2008. In addition to his mortgages, he admitted that he owed \$81,000 to his and his father’s line of credit (SOR ¶ 1.a-\$82,254) and about \$3,000 to a credit card company (SOR ¶ 1.c-\$2,604). He told the investigator that his attorney advised him to stop making purchases with the card and to stop making payments on the card, as the card balance would be included in his bankruptcy.⁴

Applicant was interviewed again in October 2008. He stated that he had to file his state and federal tax returns for 2005 before he could file bankruptcy. He stated that he planned to file bankruptcy in December 2008.⁵

Applicant responded to DOHA interrogatories in February 2009. He stated that he had not yet filed bankruptcy because he was waiting for information from the Internal Revenue Service (IRS) regarding IRS forms 1099-C (Cancellation of Debt). He responded to additional DOHA interrogatories in June 2009. He stated that he received his 1099-Cs from the IRS for tax year 2007, but the documents from tax year 2008 would not be available until June 2009. He anticipated filing bankruptcy in July 2009.⁶

Applicant responded to another set of DOHA interrogatories in October 2009, in which he wrote:

Bankruptcy has yet to be filed. Upon receipt of my 2008 tax refunds, I once again find myself with too much money to file – at least if I did file, I would lose some of my cash. Note that since [approximate amount of cash] on hand is nowhere near enough to pay off my debts, I am not considering that. Bankruptcy is still in my plans. However, upon advice from my attorney, I paid off my student loans reducing my assets by [about] \$6,500.⁷

Applicant wrote that his “bankruptcy was postponed for 90 days to avoid having [his] student loan payoff count toward [his] assets.” He anticipated filing bankruptcy in January 2010, or shortly thereafter.⁸

³ GE 1, 7.

⁴ GE 5.

⁵ *Id.*

⁶ GE 4, 6.

⁷ GE 3.

⁸ *Id.*

Applicant responded to the last set of DOHA interrogatories in July 2010. He wrote that he had not yet filed bankruptcy because he realized he might not owe any taxes on the mortgage debts forgiven by the mortgage holders. He wrote that he should know which path he would need to take in “another couple months.”⁹

Applicant received the SOR on January 10, 2011, and he responded to it on February 15, 2011. He indicated that he was still working his tax debts and 1099-C. He stated that he intended to hire an accountant to amend his previous tax returns to address his debt forgiveness and to file his 2010 tax returns. He also stated that his eventual plan was to hire “an attorney to determine the grand total of outstanding debts and to file bankruptcy.”

Applicant testified that his actions up through the hearing were based upon the advice of his attorneys. He followed his attorneys’ advice, and his actions were by design to place him in the best position financially after he declared bankruptcy. He maximized the amount contributed to his 401(k) and IRA retirement accounts, as those accounts are not affected by bankruptcy. He stated that he had about \$100,000 in his 401(k), \$25,000 in his IRA, and about \$12,000 in the bank. He also paid his student loans because they are not dischargeable in bankruptcy, and he expedited his car loan payments because he is able to keep the car in a bankruptcy.¹⁰

As of the hearing date, Applicant had not filed bankruptcy nor paid any of his delinquent debts. He admitted that he incurred all the debts alleged in the SOR. He stated that banks and mortgage companies accept the risk that people will not pay their loan and set the interest rates accordingly. He also noted that the companies holding the first mortgages received the properties back and were able to write off the deficiencies, thereby earning a tax benefit. He argued that made them “whole,” and “[t]hey should be okay with that.” He listed five proposals on how he could address his finances, and he stated that he would take action on one of them in the near future.¹¹

Applicant indicated post-hearing that he has decided not to file bankruptcy, and that he would pay his delinquent debts. His father had his debts discharged in bankruptcy, so Applicant is solely liable for their joint \$82,254 line of credit alleged in SOR ¶ 1.a. That account was not secured by any properties. Applicant did not pay the debt. He stated the debt is “closed” because the bank issued a 1099-C, cancelling the debt in 2010. He testified that it takes about a year to obtain a copy of the 1099-C from the IRS, and it was not available yet. He stated the bank told him that they mailed him a copy of the 1099-C in January 2011. He stated that the letter was probably in a large stack of unopened mail that he had not gone through. Applicant did not submit a copy of a 1099-C for this debt in his post-hearing submission.¹²

⁹ GE 2.

¹⁰ Tr. at 60-63, 70-72, 99-103.

¹¹ Tr. at 40, 59, 65, 123, 136-154; Applicant’s response to SOR.

¹² Tr. at 54-59, 64, 152-153; AE C, N.

SOR ¶ 1.b alleges a delinquent \$2,940 mortgage account. Applicant stated that he established a payment plan with the company collecting the debt. He paid \$122 on June 30, 2011. He stated that was his first monthly payment, and that the “debt will be gone in less than one year.”¹³

Applicant owed \$2,604 to a credit card company, as alleged in SOR ¶ 1.c. This debt is unrelated to Applicant’s real estate ventures. Applicant stated that he used the credit card “to buy groceries, gas, entertainment, etc.” The debt became delinquent in 2007, when Applicant’s attorney advised him that he should not use the card and that he should not pay the debt because “the balance will be eliminated by the bankruptcy.” Applicant settled the debt for \$651 on May 24, 2011.¹⁴

SOR ¶¶ 1.d, 1.e, and 1.f allege delinquent mortgage accounts of \$70,350, \$62,902, and \$13,341 owed to the same financial institution. The financial institution issued 1099-Cs in 2008 cancelling the debts alleged in SOR ¶¶ 1.d and 1.e. Applicant stated the financial institution is willing to settle the \$13,341 debt for a lump-sum payment of \$8,000, but it is unwilling to accept installment payments. Applicant stated that he was “uncomfortable taking money from [his] retirement account or borrowing money with a credit card to pay debts. So [he] is saving for a few more months, and then [he] will pay this off.”¹⁵

In June 2011, Applicant paid the \$519 delinquent utility debt alleged in SOR ¶ 1.g. This debt was from one of Applicant’s rental properties.¹⁶

Applicant is convinced that he has taken the correct steps to address his financial problems. He does not live a lavish lifestyle, and he is committed to saving for his retirement.¹⁷

Applicant’s performance evaluations reflect superior job performance and show that Applicant is a valued and trusted employee. He has received a number of awards and accolades for his work. Letters on Applicant’s behalf attest to his responsibility, independence, ethics, leadership, trustworthiness, work ethic, honesty, loyalty, patriotism, dedication, and integrity. The authors are aware of Applicant’s financial situation and recommend him for a security clearance.¹⁸

¹³ AE N, Q.

¹⁴ Tr. at 158; GE 1; AE N, Q.

¹⁵ Tr. at 78-85; AE C, N.

¹⁶ Tr. at 85-88, 158-159; AE N, P.

¹⁷ Tr. at 104, 109; AE N.

¹⁸ AE H, I, O, R-X.

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 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 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.

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 to obtain 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 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 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 to pay some of his financial obligations and unwilling to pay others. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

While a college student, Applicant invested heavily in the real estate market, purchasing nine properties. He quickly realized that he was unable to flip the properties, and he decided to rent them. He attributed his financial problems to the downturn in the real estate market and tenants who did not pay the rent. Those events were outside Applicant's control. His decision to invest in the real estate market was completely within his control. AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. All nine properties were foreclosed upon. In 2007, Applicant stated that he planned to file bankruptcy. Following legal advice, Applicant took actions to ensure that he would be in the best possible economic position once he filed bankruptcy. To that end, he stopped paying debts that were unrelated to his mortgages; he maximized his retirement accounts; and he accelerated his student loans and car payments. He did not file bankruptcy and paid none of the debts by his hearing date. I find that Applicant did not act responsibly under the circumstances. AG ¶ 20(b) is not applicable.

In October 2007, Applicant stated that he planned to address his debts through bankruptcy. In January 2008, he wrote that he would "be filing for bankruptcy within the month." In April 2008, he stated he planned to file bankruptcy in May 2008. In October 2008, he stated that he had to file his state and federal tax returns for 2005 before he could file bankruptcy, and that he planned to file bankruptcy in December 2008. In February 2009, he stated that he was waiting for information from the IRS and that he anticipated filing bankruptcy in July 2009. In October 2009, he wrote that he had "too much money to file – at least if [he] did file, [he] would lose some of [his] cash." He anticipated filing bankruptcy in January 2010, or shortly thereafter. In July 2010, he wrote that he had not yet filed bankruptcy because he realized he might not owe any taxes on the mortgage debts forgiven by the mortgage holders, and he should know which path he would need to take in "another couple months." In February 2011, he indicated that he was still working his tax debts and 1099-C. He stated that his eventual plan was to hire "an attorney to determine the grand total of outstanding debts and to file bankruptcy."

Applicant had taken no action by his hearing date, but he stated that he planned to take one of five options. He testified that he had about \$125,000 in retirement accounts and about \$12,000 in the bank. He indicated post-hearing that he has decided not to file bankruptcy, and that he would pay his delinquent debts. He paid a total of about \$1,292 to pay one debt, settle another debt, and make the first payment on a third debt. I find those payments are insufficient to constitute a good-faith effort to pay his debts.¹⁹ Applicant received 1099-Cs on several of his debts. A creditor's cancellation of

¹⁹ The Appeal Board addressed debt settlement in ISCR Case No. 08-12184 at 5 (App. Bd. Jan. 7, 2010):

Applicant's attempts to settle outstanding debts at a reduced amount speaks directly to an evaluation of the good faith nature of Applicant's effort to reduce indebtedness responsibly, given the record evidence of the fact that she had funds available to fully satisfy these debts, and the fact that Applicant's attempts to settle the debts for a lesser amount resulted in their going unpaid.

a debt does not equate to a good-faith effort on Applicant's part to pay or otherwise resolve his debts.²⁰ AG ¶ 20(d) is not applicable.

Applicant received legal advice on how to handle his debts. The first part of AG ¶ 20(c) is applicable. He paid or settled the debts alleged in SOR ¶¶ 1.c and 1.g. The second part of AG ¶ 20(c) is applicable to those debts. It also has some applicability to the debts that have been cancelled.

A security clearance adjudication is not a debt collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

What is missing here is a track record of financial responsibility, in other words, significant actions to implement his plan. I find that Applicant's finances are not yet under control. His financial issues are recent and ongoing. I am unable to determine that they are unlikely to recur. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable. I find that financial concerns remain despite the presence of some mitigation.

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

²⁰ The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [good-faith mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [good-faith mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001)).

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 Applicant's favorable character evidence. He has known since 2007 that his finances have been a concern to the Department of Defense. As of the hearing date, he had paid nothing toward his delinquent debts. He paid a total of about \$1,292 after the hearing. Applicant's failure to act responsibly toward his legal obligations, particularly those that were not secured by properties, raises significant unresolved doubts about his judgment, reliability, and trustworthiness.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. 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
Subparagraphs 1.a-1.b:	Against Applicant
Subparagraphs 1.c-1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge