



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 08-11471 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Fahryn E. Hoffman, Esquire, Department Counsel

For Applicant: *Pro Se*

January 26, 2010

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the case file, pleadings, and exhibits, I conclude that Applicant failed to rebut or mitigate the Government's security concerns under Guideline F, Financial Considerations, and the whole person analysis. His eligibility for a security clearance is denied.

Applicant executed and signed a security clearance application (SF-86) on March 11, 2008. He re-signed his SF-86 on June 30, 2008. On July 24, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

On August 26, 2009, Applicant answered the SOR in writing and requested a hearing before an administrative judge. The case was assigned to me on October 8, 2009. I convened a hearing on November 9, 2009, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses and introduced three exhibits, which were marked Ex. 1 through 3 and admitted to the record without objection. Applicant testified on his own behalf and called no witnesses. He introduced five exhibits, which were identified and marked as Applicant's Ex. A through E. All of Applicant's exhibits were admitted without objection. I left the record open until November 30, 2009, so that Applicant could provide additional information for the record.

Applicant timely filed six additional documents, which were marked as Ex. F through K and admitted into evidence without objection. DOHA received the transcript (Tr.) of the hearing on November 18, 2009.

Findings of Fact

The SOR contains 12 allegations of disqualifying conduct under AG F, Financial Considerations (SOR ¶¶ 1.a. through 1.l.). In his Answer to the SOR, Applicant admitted eight allegations (SOR ¶¶ 1.b., 1.e., 1.f., 1.g., 1.h., 1.i., 1.k., and 1.l.) He denied four allegations (SOR ¶¶ 1.a., 1.c., 1.d., and 1.j.) (SOR; Answer to SOR.)

Applicant is 37 years old and employed as a software design engineer by a government contractor. In 1995, he received a Bachelor of Science degree. He has worked for his present employer for approximately five years. He seeks a security clearance for the first time. (Ex. 1; Tr. 59-63.)

Applicant and his wife have been married for ten years.¹ Applicant and his wife are the parents of four young children, ages eight, seven, and four.² Applicant also has a 20-year-old son, who is a college student. All of Applicant's children reside with him and his wife. (Ex. 1; Tr. 61-62.)

Applicant's current annual salary is \$108,000. His wife, who is an attorney, earns approximately \$90,000 a year. Together, Applicant and his wife have approximately \$210,000 in student loan debt. The SOR alleges that Applicant is responsible for delinquent consumer and utility debts totaling approximately \$550,000, including a \$384,802 mortgage account that was foreclosed with a past due balance of approximately \$46,460 (SOR ¶ 1.i.). (Ex. 3 at 11; Tr. 57, 144.)

Applicant has had financial difficulties since at least 2001, when he and his wife were denied forbearance by a lender holding the mortgage on a rental property they

¹ At his hearing, Applicant stated he had been married for 14 years. On his SF-86, Applicant listed his wedding date as July 2, 1999. (Ex. 1; Tr. 61.)

² Applicant's youngest children are four-year-old fraternal twins. (Tr. 62.)

owned. To avoid foreclosure on the property, Applicant and his wife filed for Chapter 13 bankruptcy in October 2001. Their Chapter 13 plan was confirmed in February 2002. Applicant and his wife converted the Chapter 13 bankruptcy to a Chapter 7 bankruptcy in November 2002, and the bankruptcy court discharged their debts in February 2003. Applicant's bankruptcy was alleged at SOR ¶ 1.i. (Ex. 2 at 7, 8, 9, 18-19; Ex. 3 at 4.)

In 1998 or 1999, Applicant and his wife purchased a home for \$269,000. Their monthly mortgage payments were approximately \$1,700 a month. In 2005, Applicant refinanced the property in order to make some improvements to the property and to pay off some debts. The new mortgage, an adjustable rate mortgage, was for \$384,802. His mortgage payments on the refinanced loan rose to approximately \$3,500 a month. His wife became pregnant with twins and was unable to work. In 2006, Applicant fell behind on his mortgage payments. Applicant tried to work out a restructuring arrangement with the lender, but was unable to do so. The property went into foreclosure in October 2007. At the time of his hearing, Applicant had not been in contact with the mortgage company for several months and did not know if the property had been sold. The debt alleged at SOR ¶ 1.i. remained unresolved. (Ex. 2 at 29, 33; Tr. 32, 51-52, 115-119.)

When Applicant refinanced his home in 2005, he also took out a second real estate mortgage for \$100,000 in order to purchase rental properties in another state. The SOR alleged at ¶ 1.g. that the \$100,000 mortgage account had become delinquent, had been placed for collection, and was not paid as of February 9, 2009. At his hearing, Applicant stated that he had offered to pay the creditor \$500 a month on the debt, but the creditor wanted a one-time payment of \$30,000 to settle the debt. Applicant lacked the money to pay the lump sum demanded by the creditor. Instead, he sent the creditor a check for \$250, which was not accepted. The debt has not been settled or paid. (Ex. 2, 49-51; Tr. 33-34, 100-114.)

Also in 2005, when he refinanced his home, Applicant took out a home equity loan from a credit union for approximately \$25,000. He planned to use the proceeds to make home improvements. Applicant became delinquent on the loan. The SOR alleged at ¶ 1.b. that the creditor had obtained a judgment on the debt in 2008 for approximately \$26,386, and, as of February 2009, the judgment had not been satisfied. At his hearing, Applicant stated that he had contacted the creditor in about March 2009 to arrange payment of the debt. Applicant and the creditor agreed that he would pay \$250 a month to satisfy the debt. Applicant made one payment in March 2009. Then, because he was behind on his payments on an automobile loan with the same creditor, he discontinued his home equity payments for several months and, instead, made payments on his delinquent auto loan. Applicant later resumed his home equity loan payments, and he estimated that he had made four payments of \$250 on the debt. (Tr. 39, 74-80.)

Applicant denied the debt alleged at SOR ¶ 1.j because he believed it was a duplicate of the debt alleged at SOR ¶ 1.b. He stated that he would provide documentation to corroborate his assertion that SOR ¶¶ 1.b. and 1.j alleged the same debt. In a post-hearing submission, Applicant stated that he had requested but had not

received confirmation from the creditor that the debt alleged at SOR ¶ 1.j. was a duplicate of the debt alleged at SOR ¶ 1.b. (Ex. G; Tr. 52-53, 78.)

The SOR alleged at ¶ 1.a. that Applicant owed \$378 on a medical account that was in collection status and which had not been paid as of February 9, 2009. In his answer to the SOR and at his hearing, Applicant denied the debt and acknowledged that it had not been paid. He stated that he had asked the creditor to provide him with documentation to validate the debt as his, but the creditor had failed to do so. He also stated that he had disputed the debt with the credit reporting agencies after receiving the SOR in July or August 2009. The debt appears on the February 2009 credit report that Applicant provided to DOHA in response to interrogatories. Applicant acknowledged that he sometimes set aside invoices associated with his children's medical care for future payment. He acknowledged that he paid the invoices "the majority of the time." He provided no documents to corroborate that he had disputed the debt. (Ex. 2 at 22; Tr. 38-39, 67-73.)

In his answer to the SOR, Applicant denied a \$70 debt, in collection status, alleged at ¶ 1.c. The debt is listed on Applicant's credit bureau report of July 29, 2008. Applicant also denied the debt at his hearing. He acknowledged that the debt was for a returned check, but he thought he had paid the debt. In a post-hearing submission, Applicant offered a transaction receipt from his on-line banking account, dated November 28, 2009, showing payment of \$83.75 to the creditor. The transaction receipt also showed that Applicant had an available balance in the account of \$32.13. (Ex. 3 at 5; Ex. I; Tr. 44, 80-83.)

Applicant denied a \$352 debt, in collection status, alleged at SOR ¶ 1.d. He stated that he had disputed the debt, and it had been removed from his credit bureau report in about 2007. He cited a February 25, 2009, letter from the creditor in the record as evidence that the debt had been removed from his credit report. However, the letter did not inform Applicant that the account had been removed from his credit report. Instead, the letter informed him that the \$352 debt had been sold to a successor creditor and advised Applicant to contact the successor creditor to arrange payment of the debt. (Ex. 2 at 10; Tr. 44-45, 83-88.)

As a post-hearing submission, Applicant provided a letter from the successor creditor, dated November 27, 2009, offering to settle the debt for \$176.45. Applicant provided further documentation to show that he intended to settle the debt on December 24, 2009. (Ex. G; Ex. J.)

Applicant admitted a \$5,042 debt in collection status, which was alleged at SOR ¶ 1.e. In his answer to the SOR, he stated that he had a payment arrangement with the creditor, who had given Applicant notice of court action to resolve the debt. However, at his hearing, Applicant acknowledged that he and the creditor had a disagreement about payment plan procedures, and he had stopped making payments under the payment plan. The debt has not been satisfied. (Ex. 2 at 13-15; Tr. 88-96.)

The SOR alleged at ¶ 1.f. that Applicant owed a \$1,079 debt, in collection status, and the debt had not been paid as of February 9, 2009. In his answer to the SOR and in direct testimony at his hearing, Applicant stated that he and the creditor had entered into an agreement whereby Applicant would pay \$539 to settle the debt. Applicant further stated that the creditor had made a subsequent settlement demand, and he and the creditor were renegotiating the terms of the settlement. However, in cross-examination, Applicant asserted that the account was paid in full. He stated he did not have receipts to corroborate payment. In a post-hearing submission, Applicant provided a document, dated November 13, 2009, from the creditor stating that it would agree to a settlement amount of \$730, provided it was paid no later than November 27, 2009. (Ex. K; Ex. 2 at 11; Tr. 47, 96-100.)

The SOR alleged at ¶ 1.h. that Applicant owed a \$171 debt, in collection status, and the debt had not been paid as of February 9, 2009. Applicant admitted the debt and stated he had not paid it because he was waiting for the creditor to provide him with an invoice validating the debt. In his answer to the SOR, he stated he would pay the debt if he received an invoice from the creditor. Applicant contacted the creditor once in about February 2009 and requested that the creditor provide him with an invoice. Applicant did not follow up on his request and had no further contact with the creditor. The debt has not been paid, and Applicant did not provide a copy of documentation that he sent to the creditor. (Answer to SOR; Tr. 50, 114-115.)

The SOR alleged at ¶ 1.k. that Applicant owed \$4,499 on an account that was in collection status, and, as of February 9, 2009, the account had not been satisfied. Applicant admitted the debt and stated that he had a payment arrangement with the creditor that was current. At his hearing, Applicant stated that the debt was charged off. He identified it further as a credit card debt. He said the creditor told him it would not enforce the debt since he was paying on two other debts owed to that creditor. (Answer to SOR; Tr. 121-123.)

Applicant's net monthly salary is \$6,254, and his wife's net monthly salary is approximately \$5,076, for a combined net monthly income of approximately \$11,330. Their total monthly household expenses total \$7,808. In addition, Applicant and his wife pay approximately \$950 on their automobile and student loan debts. Their net monthly remainder is \$2,572. (Ex. 2 at 46; Ex. B; Tr. 148-169.)

Applicant has approximately \$26,680 in his 401K plan. His stocks and bonds total approximately \$200. His checking account balance is about \$400. (Tr. 169-172.)

Applicant and his wife received some financial advice and counseling when they filed for bankruptcy in 2001 and 2002. They have not had consumer credit counseling, and they do not have a financial advisor. (Tr. 173-174.)

In 2009, Applicant acquired a second job that lasted for about one month. He gave up the second job because his wife needed his help in caring for their children. (Tr. 174.)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant Applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, the administrative judge applies these guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion 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 decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant accumulated substantial delinquent debt and was unable or unwilling to pay his creditors. This evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant’s financial delinquencies. Unresolved financial delinquency might be mitigated if it “happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment.” (AG ¶ 20(a)) Additionally, unresolved financial delinquency might be mitigated if “the conditions that resulted in the financial problem were largely beyond the person’s control, (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation), and the individual acted responsibly under the circumstances.” (AG ¶ 20(b)) Still other mitigating circumstances that might be applicable include evidence that “the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or

is under control” (AG ¶ 20(c)) or “the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” (AG ¶ 20(d)) Finally, if “the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of options to resolve the issue,” then AG ¶ 20(e) might apply.

Applicant’s financial difficulties are ongoing and date at least to 2001 and 2002, when he and his wife declared bankruptcy to avoid foreclosure when they fell behind on their mortgage payments on a rental property. In 2003, their debts were discharged in a Chapter 7 bankruptcy. In 2005, they refinanced the mortgage on their residence, and Applicant used some of the proceeds to purchase investment property in another state. Applicant and his wife suffered some loss of income when his wife became pregnant, and she was unable to work outside the home. When the payments under Applicant’s adjustable rate mortgage rose, he fell behind in his payments. Eventually, the mortgage went into foreclosure in 2007. While Applicant was affected by the downturn in the real estate market and was subject to events beyond his control, he also elected to incur additional debt by purchasing real property as an investment when he had difficulty meeting his existing financial obligations. This was not responsible conduct under the circumstances.

Applicant’s mortgage payments and investment expenditures, in addition to his monthly fixed expenses and consumer debt payments, caused him to become financially overextended. The \$46,460 mortgage debt alleged at SOR ¶ 1.i. remains unsatisfied. Moreover, Applicant demonstrated that he had satisfied only one of the ten additional debts alleged in the SOR. He hopes to pay his creditors at a later time, but his current financial situation casts doubt on his ability to plan realistically for the future.

To his credit, Applicant made attempts to clarify and resolve some of his debts. I conclude that the medical debt alleged in SOR ¶ 1.a. was not established by the Government. Additionally, Applicant consistently denied the debt and acted reasonably to seek documentation showing that he owed the debt. I also conclude SOR ¶¶ 1.b. and 1.j are duplicative and allege the same debt.

Applicant received some financial advice before he decided to file for bankruptcy in 2001 and 2002, but he has not received consumer credit counseling. While he admitted his financial delinquencies, it was not clear that he understood his financial problems or how to resolve them. He has no plan in place to systematically resolve his substantial delinquent debt and prepare for future contingencies. I conclude that none of the Financial Considerations mitigating conditions fully applies to the facts of Applicant’s case.

Whole Person Concept

Under the whole person concept, the administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of the applicant’s

conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is a mature adult of 37 years. He has worked for his present employer for five years. He is dedicated to his family.

However, his financial problems date to at least 2002, when he filed for bankruptcy. In 2003, he was granted a discharge in bankruptcy and thereby acquired a fresh start in his financial life. While he received some financial counseling as a part of his bankruptcy, he failed to apply that knowledge. His lack of attention to his financial delinquencies continues to raise security concerns.

Applicant has failed to meet his financial obligations. He has a \$46,000 mortgage debt that is unresolved. He owes \$100,000 on a delinquent second mortgage account and \$25,000 on a delinquent home equity loan. While he reports a substantial monthly net remainder, he has not used his existing financial resources to pay his creditors. His financial situation remains precarious. He lacks a realistic plan to satisfy his financial obligations, raising concerns about his judgment and potential financial vulnerability.

Applicant may find it beneficial to seek professional financial counseling and legal advice about resolving his debts and acquiring financial stability in the near term. Applicant can reapply for a security clearance one year after the date of this decision if his employer will sponsor him. At that time, he can produce new evidence that addresses the Government's current security concerns.

Overall, the record evidence leaves me with questions and doubts at the present time as to Applicant's eligibility and suitability for a security clearance. Accordingly, I conclude, after a careful review of the facts of his case, the Financial Considerations adjudicative guideline, and the whole person analysis, that Applicant failed to mitigate the security concerns arising from his financial delinquencies.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

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|----------------------------|-------------------|
| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraph 1.a.: | For Applicant |
| Subparagraph 1.b.: | Against Applicant |
| Subparagraph 1.c.: | For Applicant |
| Subparagraphs 1.d. – 1.i.: | Against Applicant |
| Subparagraph 1.j.: | For Applicant |
| Subparagraphs 1.k. – 1.l.: | Against Applicant |

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Joan Caton Anthony
Administrative Judge