



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



In the matter of:)
)
) ISCR Case No. 08-11531
SSN:)
)
Applicant for Security Clearance)

Appearances

For Government: Robert E. Coacher, Esquire, Department Counsel
For Applicant: Pro Se

February 4, 2010

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on July 10, 2008. On June 4, 2009, the Defense Office of Hearings and Appeals (DOHA) issued 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 July 31, 2009, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on November 4, 2009. The case was assigned to me on November 9, 2009. On November 12, 2009, a Notice of Hearing was issued, scheduling the hearing for December 1, 2009. The case was heard on that date. The government offered four exhibits which were admitted as Government Exhibits (Gov) 1 – 4. The Applicant testified and offered nine exhibits which were admitted as Applicant Exhibits (AE) A - I. The record was held open until

December 15, 2009, to allow Applicant to submit additional documents. He timely submitted a 14-page document that was admitted as AE J. Department Counsel's response to AE J is marked as Hearing Exhibit (HE) I. Applicant also timely submitted a four-page document that was admitted as AE K. Department Counsel's response to AE K is marked as HE II. The transcript (Tr) was received on December 10, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for a security clearance is denied.

Findings of Fact

In his Answer to the SOR, Applicant admits all of the SOR allegations.

Applicant is a 37-year-old security officer, employed with a Department of Defense contractor, who is applying for a security clearance. He has worked for his current employer for over a year and a half. He previously held a security clearance from 1990 to 1995. He is a high school graduate. He is married and has two stepchildren, a stepdaughter, age 23, and a stepson, age 21. All of his stepchildren live with him and his wife. His stepdaughter's husband and baby also live with them. (Tr at 4-5, 48-49; Gov 1.)

Applicant's security clearance background investigation revealed that he has a history of financial problems. On July 21, 2000, he filed for Chapter 7 bankruptcy. Approximately \$25,000 in debts were discharged. Most of the debts consisted of an automobile repossession and credit cards. Applicant had a low paying job and over-extended himself. (Tr at 23; Gov 2 at 1; Gov 3 at 4)

Applicant also filed for Chapter 7 bankruptcy on June 22, 1993. Approximately \$5,000 in debts were discharged. In 1993, Applicant had credit card debt. He followed the bad advice of an attorney to file for bankruptcy. (Tr at 24)

Applicant has the following delinquent accounts: a \$212 medical collection account placed for collection (SOR ¶ 1.c: Gov 2 at 1; Gov 3 at 5); a \$1,039 account placed for collection (SOR ¶ 1.d: Gov 2 at 1); a \$631 cell phone account placed for collection (SOR ¶ 1.e: Gov 2 at 1); a \$494 credit card account placed for collection (SOR ¶ 1.f: Gov 2 at 1; Gov 3 at 6); a \$978 credit card account placed for collection (SOR ¶ 1.g: Gov 2 at 1); a \$706 account that was charged off (SOR ¶ 1.h: Gov 2 at 1); a \$76 medical account (SOR ¶ 1.i: Gov 2 at 1); and a \$1,658 judgment. (SOR ¶ 1.j: Gov 3 at 4)

Additional delinquent accounts include: a \$8,001 personal loan placed for collection (SOR ¶ 1.k: Gov 2 at 1-2; Gov 3 at 7); a \$4,006 credit card account placed for collection (SOR ¶ 1.l: Gov 3 at 7); a \$16,800 debt owed as a result of a truck repossession that was placed for collection (SOR ¶ 1.m: Gov 3 at 8-9); an \$877 account placed for collection (SOR ¶ 1.n: Gov 3 at 8); a \$226 account placed for collection (SOR ¶ 1.o: Gov 3 at 9); a \$245 insurance account placed for collection (SOR ¶ 1.p: Gov 3 at 9); and a \$560 insurance account placed for collection. (SOR ¶ 1.q: Gov 3 at 9)

In his response to the SOR, Applicant claims that he intends to take care all of his bills. He has not been able to pay his bills in the past because he was only making \$30,000 a year. His stepdaughter got married last year, and he and his wife are paying for the costs of the wedding which was about \$7,500. He and his wife purchased a house in June 2009 for \$300,000. They paid about \$10,000 as a down payment. Applicant discovered there were a lot of additional expenses when owning a home. The mortgage is in his wife's name only because of his poor credit. They keep their accounts separate. He looked into financial counseling but never attended financial counseling. (Tr at 50, 54-55, 60)

From 2002 to 2003, Applicant had several periods of unemployment. He was unemployed from March 2002 to September 2002. He was unemployed for a year in 2003. His wife worked full-time. (Tr at 52-54; Gov 1)

The current status of the delinquent accounts are:

SOR ¶ 1.c: \$212 medical collection account: Applicant believes his insurance company should pay this debt, but decided that he is going to pay the debt. No proof was provided that the debt was paid at the close of the record. The debt is unresolved. (Tr at 23)

SOR ¶ 1.d: \$1,039 collection account: Applicant cannot determine who the original creditor is on this account. The debt is unresolved. (Tr at 26)

SOR ¶ 1.e: \$631 cell phone account placed for collection: Applicant admitted this debt in his response to the SOR. At the hearing, he disputed the debt. He claims he had an account with the cell phone company about four years ago and he paid the account. He claims he disputed the debt with the credit reporting agencies in the past and the debt was removed. He claims the credit reporting agencies put the debt back on his credit report. The debt is unresolved. (Tr at 27-28)

SOR ¶ 1.f: \$494 charged off account: Applicant admits this debt is still owed. The debt is unresolved. (Tr at 28)

SOR ¶ 1.g: \$978 charged off credit card account: On December 1, 2009, Applicant agreed to a settlement. He agreed to settle the account for \$400 in two installments of \$200. The first payment was due on December 30, 2009. The final payment is due on January 31, 2009. The status of the debt is uncertain. (Tr at 29-30; AE H)

SOR ¶ 1.h: \$706 bank account that was overdrawn: Applicant settled this account in late October 2009. (Tr at 30; AE G)

SOR ¶ 1.i: \$76 medical co-pay: Applicant intends to pay this debt by the end of the year. The debt is unresolved. (Tr at 30)

SOR ¶ 1.j: \$1,658 judgment for a personal loan: Appellant claims that he paid \$300 towards this judgment. He does not have a regular payment plan. He was given the opportunity to provide additional documents verifying payment after the hearing. He did not submit any documents. The debt is unresolved. (Tr at 31-32)

SOR ¶¶ 1.k (\$8,001), 1.l (\$4,006), and 1.m (\$16,800), delinquent accounts with the same credit union placed for collection: Applicant originally agreed to pay \$100 per month towards each debt, a total of \$300 a month. He made three payments in February 2009, March 2009, and April 2009. He stopped making payments because he was unable to afford the payments. He renegotiated the payment agreement and now pays the credit union \$100 per month for all three debts. His payments resumed in December 2009. (Tr at 32-40; Gov 4 at 6-8; AE I at 2; AE K at 2-4)

SOR ¶ 1.n: \$877 collection account: Applicant admits to owing this debt. There is no payment plan yet. The debt is unresolved. (Tr at 40-41)

SOR ¶ 1.o: \$226 collection account: Debt was paid on April 23, 2009. (Tr at 41; AE A at 1)

SOR ¶ 1.p: \$245 insurance account placed for collection: The debt was paid in July 2009. (Tr at 41; AE A at 2)

SOR ¶ 1.q: \$560 insurance account placed for collection: Applicant disputes this account. He claims that he contacted the insurance company and they cannot find an account in his name. The debt is unresolved. (Tr at 41-42; AE F)

Applicant had several debts that were not alleged in the SOR. He paid off a \$1,588 judgment owed to a bank on September 18, 2008. His wages were garnished to satisfy the judgment and costs. He paid \$4,000 towards this debt. (Tr at 38-40; AE 4 at 5) Applicant owes taxes to the Internal Revenue Service for tax years 2002 and 2003. He is not sure how much he owes. He pays \$205 a month pursuant to his agreement with the Internal Revenue Service. He hopes to pay the debt in full by the end of the year. (Tr at 43-44; Gov 4 at 14-15; AE J at 3-12)

Applicant's net monthly income is \$2,484. His wife's net monthly income is \$2,800. Their combined net monthly income is \$5,284. Their mortgage payment is \$1,781 (Their rent used to be \$825). Other monthly expenses include: groceries \$500, utilities \$300, car payment \$192, car insurance \$200, cell phone \$190, home phone \$40, and clothing \$50. Their total monthly expenses are \$3,253. Applicant and his wife have \$2,031 left over each month to apply towards their debts. Applicant's total monthly debt payments were not discussed during the hearing. The total amount of the debt payments listed on a personal financial statement prepared by Applicant on February 24, 2009, is \$2,465. As mentioned previously, the \$300 monthly payment to the credit union has been reduced to \$100 a month. Based on the evidence in the record and the reduced payment to the credit union, Applicant and his wife's monthly debt payments

now total \$2,265. If this information is accurate, they have a negative monthly balance of \$434. (Tr at 45-51; Gov 4 at 4)

Applicant's 2008 performance review indicates that he met expectations. (AE B) The security manager at Applicant's company states that he is very professional and responsive to ideas presented to him. He is eager to learn and is an excellent asset to the team. (AE J at 2) His supervisor in the mailroom from November 2005 to July 2008 states that he is reliable and responsible. (AE C) Other co-workers have made similar favorable statements about Applicant. (AE D; AE E)

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 must be considered 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, 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 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 disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition (FC DC) ¶19(a) (an inability or unwillingness to satisfy debts); and FC DC ¶19(c), (a history of not meeting financial obligations) apply to Applicant’s case. Applicant has had a long history of financial irresponsibility as evidenced by two Chapter 7 bankruptcy discharges in 1993 and 2000, and his current financial situation. The SOR alleged 15 delinquent accounts, an approximate total balance of \$36,509.

The government’s substantial evidence and Applicant’s own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. (See ISCR Case No. 02-31154 at 5 (App. Bd. September 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Financial Considerations Mitigating Condition (FC MC) ¶ 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) is not applicable. Applicant has had difficulty managing his finances for over 17 years. While he has resolved some accounts, numerous accounts remain unresolved. Applicant has not demonstrated that he will be financially responsible in the future. Applicant’s history of

financial irresponsibility raises questions about his reliability, trustworthiness, and good judgment.

FC MC ¶ 20(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) partially applies because Applicant has had some periods of unemployment. He was out of work the entire year in 2003. However, Applicant has been employed full-time since 2004. There is no evidence that Applicant acted responsibly because the delinquent accounts are old and he took little action towards resolving these accounts. I cannot conclude that it was a wise decision to purchase a new home, albeit in his wife's name, when Applicant had numerous unresolved debts. While circumstances beyond Applicant's control contributed to some of Applicant's financial problems, he has not acted responsibly with regard to his finances after finding full-time employment.

FC MC ¶20(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) does not apply. Applicant looked into credit counseling but did not attend classes about properly managing his finances. While he has paid some accounts, and has payment agreements with two creditors, it is unlikely Applicant's financial problems will be resolved in the near future considering the extent of his unresolved debt.

FC MC ¶20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies with respect to the debts alleged in SOR ¶¶ 1.h, 1.o, and 1.p. Most of his delinquent accounts remain unresolved. Partial credit is given to Applicant for entering into a repayment agreement with the credit union regarding the debts owed in SOR ¶¶ 1.k, 1.l, and 1.m. However, he was unable to meet the original terms of his repayment agreement after making two payments. He only recently began making payments again in December 2009. It is too soon to conclude that he will follow the terms of his repayment plan.

FC MC ¶20(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) does not apply. While Applicant disputes the debts alleged in SOR ¶¶ 1.e, and 1.d, he provided no documentation verifying the disputes and did not provide a substantiated basis for the dispute.

Applicant has not mitigated the concerns raised under Guideline 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 the applicant's

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

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

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

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant's two bankruptcy discharges in 1993 and 2000. I considered Applicant's periods of unemployment in 2002 and 2003. I considered that Applicant resolved some of his delinquent accounts. However, a significant amount of delinquent debt remains. Applicant's decision to purchase a home rather than resolve his financial issues raises questions about his judgment and reliability. Despite two bankruptcy discharges, Applicant continued to incur delinquent debt. His long history of financial irresponsibility and the extent of his delinquent debt outweigh the steps Applicant has taken to resolve some of his delinquent accounts. He did not mitigate the concerns raised under financial considerations and did not meet his ultimate burden of persuasion to obtain a favorable clearance decision.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant

Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	For Applicant
Subparagraph 1.p:	For Applicant
Subparagraph 1.q:	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.

ERIN C. HOGAN
Administrative Judge