



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



In the matter of:)	
)	
)	ISCR Case No. 08-11645
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro Se*

February 22, 2010

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated Personal Conduct concerns but has not mitigated Financial Considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On May 29, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E and F, Personal Conduct and 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 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 received a copy of the SOR on June 24, 2009. He answered the SOR on July 24, 2009, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on September 28, 2009, and reassigned to me on September 30, 2009. DOHA issued a notice of hearing on November 9, 2009, and the hearing was convened as scheduled on December 9, 2009. The government offered Exhibits (GE) 1 through 11, which were received without objection. Applicant testified on his own behalf and submitted Exhibits (AE) A through L, which were received without objection. I granted Applicant's request to keep the record open to submit additional information. Applicant submitted documents, which were marked AE M through S and admitted without objection.¹ Department Counsel's memorandum is marked Hearing Exhibit (HE) I. DOHA received the transcript of the hearing (Tr.) on December 22, 2009.

Procedural Rulings

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.

Findings of Fact

Applicant is a 51-year-old engineer for a defense contractor. He is seeking to retain his security clearance, which he has held since 1979. Except for a period when he was laid-off, he has worked for his current employer, or a predecessor company, since 1978. He attended college for several years but did not obtain a degree. He has been married since 1978. He and his wife have two children, ages 27 and 25.²

Applicant has experienced financial difficulties for many years. He and his wife filed Chapter 7 bankruptcy in 1984, and their debts were discharged in 1985. They filed Chapter 13 bankruptcy in 1988. The bankruptcy was dismissed in 1989, after he was unable to maintain the payments to the trustee. They filed Chapter 7 bankruptcy in 1998, and their debts were discharged the same year. They filed Chapter 13 bankruptcy in September 2003. The bankruptcy was dismissed in October 2004, for failure to make the required payments to the plan. Applicant testified that they voluntarily withdrew from the Chapter 13 bankruptcy because he wanted to purchase a home, and he did not know if he would be permitted to do so while subject to the bankruptcy court's jurisdiction. He stated that he planned on paying the debts on his own.³

Applicant attributed the 1984 bankruptcy to a failed business. He stated his wife stopped working in 1986, which placed a strain on their finances and led to the Chapter 13 bankruptcy in 1988. He was laid-off from his job for a year in 1988 to 1989, and

¹ AE S is a copy of a credit report that Applicant meant to introduce at his hearing, but it was copied incorrectly. Department Counsel submitted a copy after the hearing along with Applicant's exhibits. I have admitted the exhibit because it is in accordance with Applicant's original plans.

² Tr. at 27-28, 70-71; GE 1, 2.

³ Tr. at 43-44, 56-58; Applicant's response to SOR; GE 2, 4-7.

stopped paying into his Chapter 13 plan. He admitted in a 1990 statement that he “mismanage[d] money,” and he “sometimes spen[t] the money allocated for bills on other expenses.”⁴

Applicant stated that his 1998 Chapter 7 bankruptcy resulted from unpaid medical expenses. Additionally, he purchased a new car believing one of their older cars was sold, but the buyer backed out of the purchase, leaving him with three car loan payments. He also had “too many credit card bills.” He admitted in a September 1998 statement that he and his wife “also had gotten into a very bad habit in that we did not balance the bank statements and we were not living within a budget.”⁵ He wrote in that 1998 statement:

Since the bankruptcy we now have a positive cash flow at the end of the month which we try to put away some of this every month so that we always have a reserve. We also pay cash for everything and do not plan to change that, with the exception of a major purchase such as a car or a house. We have been very careful since the bankruptcy to balance the bank statement every month and watch what we spend so that we are always within budget. We do not want to repeat the mistakes that we made to date.⁶

Applicant attributed the 2003 bankruptcy to changes in his employer’s policies on bonuses and reimbursing car expenses, which caused his income to decrease about \$1,000 per month.⁷ In a November 2003 statement, he wrote:

To the best of my knowledge, the accounts on my current bankruptcy are closed and I am not going to reopen them. I am not going to secure any additional credit. I understand it is my responsibility to pay my bills and debts. However, my income was reduced through no fault of my own. I am making an earnest effort to live within my means.⁸

In addition to his four bankruptcies, the SOR alleges seven delinquent debts, with balances totaling \$16,932. Applicant denied owing all the debts at the time of his response, with the exception of the debts alleged in SOR ¶¶ 2.e and 2.i, which he partially admitted. He also provided explanations about the debts. All of the debts are listed on one or more of the credit reports obtained in June 2008, December 2008, March 2009, and December 2009.⁹ Specific debts are addressed below.

⁴ Tr. at 56-58; GE 6.

⁵ GE 5.

⁶ *Id.*

⁷ Tr. at 56-57; GE 4.

⁸ GE 4.

⁹ Applicant’s response to SOR; GE 8-11.

SOR ¶ 2.e alleges a delinquent debt of \$14,114 to a collection company for the deficiency owed on an auto loan after the vehicle was repossessed in about 2004. In August 2009, Applicant agreed to settle the debt for \$7,276 through monthly payments of \$150. He made the first four payments. He told the company that he would attempt to increase the payments as his financial situation improves.¹⁰

Applicant paid the \$52 delinquent medical debt alleged in SOR ¶ 2.f on July 6, 2009. He settled the delinquent debt of \$644 to a collection company on behalf of a women's-clothing catalog/internet company on July 30, 2009. This debt was alleged in SOR ¶ 2.g. He paid delinquent debts of \$72 and \$265 owed to the same credit card company on August 10, 2009. The \$72 debt was alleged in SOR ¶ 2.h. The \$265 debt was not alleged in the SOR.¹¹

SOR ¶ 2.i alleges a delinquent debt of \$534 to a collection company for medical expenses. Applicant contacted the collection company and discovered that it was not his debt. The debt was deleted from his credit report.¹²

Applicant denied owing the delinquent debt of \$1,180 to a collection company on behalf of a check cashing/loan company, as alleged in SOR ¶ 2.j. Applicant stated that the debt was removed from his credit report. He was asked if he originally owed the creditor. He responded:

That was one that I had that was part of the bankruptcy, but I couldn't find any documentation that I paid it, but when I contacted them that was - - again, it was not me so they removed it from the credit [report].¹³

Applicant was interviewed for his background investigation on August 30, 2008, by an investigator from the Office of Personnel Management (OPM). He was asked about his finances and the delinquent debts that were listed on the credit report. A signed statement was not taken, but the interview was summarized in a report of investigation (ROI). DOHA sent the ROI to Applicant in an interrogatory and asked him if the ROI accurately reflected the information he provided to the investigator. He responded that it did not, and he provided almost two pages of corrections. Applicant discussed the \$1,180 debt with the investigator. He stated that before his 2003 bankruptcy, he went to the creditor to obtain a loan to pay his debts. He did not pay the loan company back because he did not have the funds. He contacted the collection company in 2004, in order to make payment arrangements. The company wanted payment in full, which he was not able to do. He indicated that the debt had not been paid. In the corrections to the ROI submitted in response to DOHA interrogatories on March 3, 2009, Applicant did not correct any of the information in the ROI about this debt. He certified that, subject to

¹⁰ Tr. at 44-46, 61-63; Applicant's response to SOR; GE 2, 8-11; AE H, L.

¹¹ Tr. at 63-65, 69-70; Applicant's response to SOR; AE A, I, K.

¹² Tr. at 66-67; Applicant's response to SOR; GE 8-11; AE S.

¹³ Tr. at 67.

the corrections he made, the ROI accurately summarized his interview. This debt is listed by Experian on the joint credit report obtained in June 2008. It is not listed on the three Equifax credit reports from December 2008, March 2009, and December 2009, or the October 2009 credit report submitted by Applicant.¹⁴

SOR ¶ 2.k alleges a delinquent debt of \$336 owed to a city in a different state than where Applicant lives. The debt was for an unpaid parking ticket issued in February 2006. Applicant's son received the ticket after he borrowed Applicant's truck. Applicant contacted the city in 2006, and informed them that his son was driving the vehicle when the ticket was issued. The city informed Applicant that because he was the registered owner of the vehicle, he was liable for the ticket. Applicant did not pay the ticket for several years because he did not feel responsible for the citation. He told the OPM investigator in August 2008, that he would contact his son to pay the ticket. Applicant paid the citation on July 31, 2009, after he received the SOR.¹⁵

Applicant received financial counseling as required for his bankruptcy in 2003. He has a detailed budget. He stated the counseling has helped him manage his finances, live within his budget, and not incur new delinquent debt. He obtained a 15-year mortgage when he purchased his home. It costs him about \$400 more per month than a 30-year mortgage, but it will save him more than \$200,000 in interest over the life of the mortgage. He owns a 2005 model car for which he pays \$536 per month to the creditor. When he has completed paying that loan, he plans on paying an extra \$500 per month to the auto loan for his wife's vehicle, so that loan will be paid early.¹⁶

Applicant's company issued him a corporate credit card. The company policy limited the card to business-related expenses only. Applicant used the card for personal purchases from about 2000, through when the company switched to a different credit card in late 2007. Applicant stated that he thought the card could be used for personal purposes as long as the balance was paid. He would submit his monthly business expenses to his company, and the company would pay the credit card company directly. The bills were mailed to Applicant. He would estimate what he spent for personal purchases and pay that amount. The balance on the account grew over the years. By the time the company switched to another card, his personal balance had grown to more than \$2,000. Applicant received the new corporate card in late 2007. The original card was paid in full with payments of \$4,200 on February 18, 2008, and \$2,281 on March 3, 2008. Applicant's company placed him on unpaid leave for one week; his supervisor was required to monitor his corporate card for six months; and he had to attend ethics classes. There is no indication of any recurrence of this type of behavior.¹⁷

¹⁴ GE 2, 8-11; AE S.

¹⁵ Tr. at 68-69; Applicant's response to SOR; GE 2; AE J.

¹⁶ Tr. at 43-47, 57-61, 71; AE G.

¹⁷ Tr. at 29-43, 48-56; Applicant's response to SOR; GE 2, 3; AE E, F, M-P.

Applicant's security manager testified favorably about his job performance, honesty, and trustworthiness. He has been recognized by his company and the U.S. military with numerous awards and commendatory materials. Character letters from supervisors and managers attest to his work performance, respect for security rules and regulations, professionalism, integrity, and judgment. His character references recommend him for a security clearance.¹⁸

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 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. 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 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 as to potential, rather than actual, risk of compromise of classified information.

¹⁸ Tr. at 75-77; AE B-F, Q.

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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:

(3) a pattern of dishonesty or rule violations;

(4) evidence of significant misuse of Government or other employer’s time or resources; and

(e) personal conduct, or concealment of information about one’s conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as . . . engaging in activities which, if known, may affect the person’s personal, professional, or community standing.

Applicant violated his company’s policy by using his corporate credit card for personal purchases from about 2000 to 2007. AG ¶¶ 16(d) and 16(e) are applicable as disqualifying conditions.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(f) the information was unsubstantiated or from a source of questionable reliability.

Applicant accepted responsibility for his actions. He was disciplined by his company, received ethics training, and there is no evidence of any recurrence of that behavior. AG ¶¶ 17(d) and 17(e) are applicable. Personal Conduct security concerns have been mitigated.¹⁹

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. Two are potentially applicable in this case:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

¹⁹ While I found the Personal Conduct security concerns were mitigated, the information is relevant in assessing Applicant's overall financial situation; in the application of Financial Considerations mitigating conditions; and in evaluating the "whole person."

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay his obligations for a period. The evidence is sufficient to raise the above disqualifying conditions.

Five Financial Considerations mitigating conditions under AG ¶ 20 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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant filed bankruptcy in 1984, 1988, 1998, and 2003. AG ¶ 20(a) would be applicable to those actions but for the fact that he still has not paid all the delinquent debt from his 2003 bankruptcy. I am unable to find that Applicant's financial problems are unlikely to recur. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

Applicant attributed the 1984 bankruptcy to a failed business. His wife stopped working in 1986, and he was laid-off from his job for a year in about 1988. He had unpaid medical expenses, a buyer reneged on an offer to buy his car, and his company changed its bonus and auto reimbursement policies, resulting in a substantial loss of income. All of these incidents could potentially qualify as conditions that were outside his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant also admitted that he mismanaged money, spent the money allocated for bills on other expenses, had too many credit card bills, did not balance his bank statements, did not live within a budget, and used his corporate credit card for personal purchases. Despite twice having his debts discharged in bankruptcy, he continued to accrue delinquent debts. I do not find that he acted responsibly under the circumstances. AG ¶ 20(b) is not applicable.

Applicant received financial counseling as part of his bankruptcy. He paid the debts alleged in SOR ¶¶ 2.f, 2.g, 2.h, and 2.k. He also paid a \$265 debt that was not alleged in the SOR. The total amount owed on those five debts was \$1,369. All of the debts were paid in July and August 2009, after he received the SOR. AG ¶ 20(d) is applicable to those debts. He began making \$150 monthly payments in August 2009, to settle the \$14,114 debt alleged in SOR ¶ 2.e for \$7,276. The four payments to that creditor are not yet sufficient to qualify as a good-faith effort to pay or resolve his other debts.²⁰ AG ¶ 20(d) is not applicable to his other debts. Applicant has not established that the problem is being resolved or under control. AG ¶ 20(c) is partially applicable.

Applicant successfully disputed the debt alleged in SOR ¶ 2.i. AG ¶ 20(e) is applicable to that debt. He denied owing the \$1,180 debt alleged in SOR ¶ 2.j. He testified that the debt was removed from his credit report because “it was not [him].” He admitted to the OPM investigator that he obtained a loan from that creditor before his 2003 bankruptcy, and he did not pay it. Accounts are removed from credit reports for many reasons unrelated to the validity of the debt. I find that Applicant failed to establish that he is not responsible for this debt. The debt is unpaid. AG ¶ 20(e) is not applicable to that debt.

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

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 Financial Considerations Mitigating Condition 6, 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 Financial Considerations Mitigating Condition 6.

(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)).

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 have incorporated my comments under Guidelines E and F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant has a long history of financial problems. He filed bankruptcy on four occasions, and twice had his debts discharged. He voluntarily withdrew from his Chapter 13 bankruptcy because he wanted to purchase a home, and he did not know if he would be permitted to do so while subject to the bankruptcy court's jurisdiction. He purchased a home and obtained a 15-year mortgage. He stated that he planned on paying the debts on his own. He paid five debts totaling \$1,369 and began paying \$150 per month to settle a \$14,114 debt for \$7,276 after he received the SOR. He denied responsibility for a debt because it was removed from his credit report, when that debt is clearly his. He wrote in a September 1998 statement that he and his wife had a positive cash flow at the end of the month, they paid cash for everything, and they did not want to repeat the mistakes that led to their bankruptcies. That is similar to what he presented at his hearing. About two years after that statement, Applicant began using his corporate credit card for personal purchases. About five years later, he filed Chapter 13 bankruptcy. Two debts remain unpaid. I considered Applicant's long and commendable work history and his favorable character evidence. However, his finances continue to be a security concern.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated Personal Conduct concerns but 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 E:	FOR APPLICANT
Subparagraphs 1.a-1.b:	For Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraphs 2.a-2.e:	Against Applicant
Subparagraphs 2.f-2.i:	For Applicant

Subparagraph 2.j:
Subparagraph 2.k:

Against Applicant
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