



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



In the matter of:)
)
) ISCR Case No. 08-11699
)
)
Applicant for Security Clearance)

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: Stephanie N. Mendez, Esq.

March 19, 2010

Decision

HEINY, Claude R., Administrative Judge:

Applicant owed four debts, three of which had been placed for collection, totaling approximately \$43,500. He has accepted settlement offers and made payment on two of the debts. Applicant failed to address the remaining debt, totaling approximately \$16,700. Applicant has failed to rebut or mitigate the government's security concerns under financial considerations. Clearance is denied.

Statement of the Case

Applicant contests the Defense Department's intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a

¹ 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)

Statement of Reasons (SOR) on July 10, 2009, detailing security concerns under financial considerations.

On August 21, 2009, Applicant answered the SOR, and requested a hearing. On October 13, 2009, I was assigned the case. On November 5, 2009, DOHA issued a notice of hearing scheduling the hearing which was held on November 18, 2009. Applicant waived the 15-day notice rule. The government offered Exhibits (Ex.) 1 through 6, which were admitted into evidence. Applicant testified on his own behalf and submitted Ex. A through U, which were admitted into evidence.

The record was held open to accept additional information from Applicant. On November 25, 2009, additional material was submitted. Department Counsel had no objection to the material, which was admitted into the record as Exs. V, W, and X. On December 18, 2009, additional material was submitted. Department Counsel had no objection to the material, which was admitted into the record as Exs. Y and Z. On November 30, 2009, the transcript (Tr.) was received.

Findings of Fact

In Applicant's Answer to the SOR, he denied the factual allegations in ¶¶ 1.a, 1.b, 1.d and 1.e of the SOR. He admitted the factual allegations, with explanations, in ¶ 1.c of the SOR. Applicant's admissions to the SOR allegations are incorporated herein. After a thorough review of the record, pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 33-year-old WEB application developer who has worked for a defense contractor since August 2008, and is seeking to obtain a security clearance. Coworkers, supervisors, and acquaintances state Applicant is reliable, dependable, trustworthy, honest, ambitious, hard-working, conscientious, punctual, and professional. He has integrity, a strong work ethic, and finishes his products on time or early. (Ex. E through N, Tr. 37, 42) Applicant's November 2009 work evaluation rates him as "very good" to "excellent" indicating his duty performance has been above average to far exceeding standards. (Ex. T)

Applicant is married and has two children ages three and six. (Tr. 67) His wife recently obtained a three-month job paying \$1,800 per month to help pay for his \$3,800 attorney fees related to his security clearance. (Tr. 67, 75, 93) His wife worked until 2006, when their second child was born and the \$1,200 monthly day care cost would have made it counterproductive for her to continue working. (Tr. 75, 102) When working, she was an accountant with an annual salary of \$30,000. (Tr. 75) His annual salary at his current job is \$74,000. (Tr. 74)

Applicant graduated high school with honors ranking 13th in his class of 290 students. (Ex. O) Applicant worked full time while going to school full time. In the spring

promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

of 2000, he obtained a Bachelor of Science in Computer Engineering and was a member of a national honor society. (Ex. O, Tr. 72) He has been steadily employed since 1997. (Tr. 74)

In September 2002, Applicant purchased a 2003 Mitsubishi automobile for approximately \$41,000² for his sister who was an administrative assistant at an engineering company. (Ex. 2, p. 19, Tr. 105) In November 2003, criminal charges were brought against his mother and sister when Applicant's niece cut her chin and emergency treatment was not sought. (Ex. V, Tr. 76) Both were briefly incarcerated. (Tr. 115) His sister was charged with failing to provide medical attention to a child younger than 15 years of age which recklessly caused bodily injury by omission, a felony. (Ex. V) Applicant provided \$2,700 for his mother's attorney fees. (Tr. 77) Applicant gives his mother \$150 per month for her support. (Tr. 78)

In 2004, Applicant purchased a 2004 Ford Ranger pick-up truck for \$13,000 and a Ford Expedition, SUV, for \$27,000. (Tr. 83) Applicant's annual salary was \$48,000 and the two cars cost \$40,000. His wife's annual salary added another \$30,000. (Tr. 58, 114) In 2004, the payments on his vehicles became delinquent, but the creditor agreed to add the delinquent payments to the end of the loan period, which extended the repayment period to July 2009. (Tr. 84) Applicant has recently paid for his vehicles, on which he had been paying \$700 monthly. (Tr. 68)

In June 2004, the Mitsubishi was repossessed when his sister failed to make the \$570 monthly payments because she was out of work for six weeks and also had to pay for her attorney. (Tr. 79) The car was sold and a balance of \$11,000 remained to be paid. (Ex. 6) Applicant told the lender he would be liable for the debt and made two \$300 payments on the debt. (Tr. 79) When the \$300 payments caused his inability to make his other monthly payments, he stopped. (Ex. 2, p. 16). Five years later, a collection agency (SOR ¶ 1.a) was attempting to collect the debt, which had now grown to \$20,550. In September 2004, Applicant sought legal advice concerning this debt and was advised to file bankruptcy. He was told by legal counsel not to make additional payments on his debts anticipating his bankruptcy filing.

In November 2004, Applicant received a substantial pay increase and was informed he no longer qualified for bankruptcy protection. (Ex. 2, p. 17) His annual salary was \$65,000 at his new job and his wife's annual pay remained at \$30,000 for a combined annual salary of \$95,000. (Tr. 58, 74, 119) In January 2005, Applicant attempted to set up a repayment plan. (Tr. 82) Between 2005 and 2007, Applicant was able to pay his bills in a timely manner, except for the debts listed in the SOR. In October 2009, Applicant informed the creditor (SOR ¶ 1.c) he was willing to pay \$2,840 on the \$6,235 credit card debt. (Ex. C) In November 2009, the creditor made a counter offer to settle the debt for \$3,000, which Applicant accepted and paid. (Ex. W)

² The total cost of the car was \$40,966, which included approximately \$14,000 in finance charges. (Tr. 2, p. 19)

In August 2007, Applicant received \$24,286 from the sale of his home. (Ex. 2, p. 113) He had anticipated using the money to pay his debts. However, he had to make an \$18,000 down payment on a new home. (Ex. 2, p. 17) Applicant was able to pay off two debts not listed in the SOR, one for \$4,200 and the other for \$2,000. (Ex. 2, p. 118 and 119) The house was sold for \$161,000 and the new home purchased for \$189,000. (Tr. 87) The new home was in a better area and better school district. (Tr. 87) In 2008, Applicant purchased furniture for \$5,000 for the new house. (Tr. 92) He currently owes \$1,400 on the account. (Tr. 93)

Applicant denied the debt in SOR ¶ 1.b and admitted the debts in SOR ¶ 1.d and SOR ¶ 1.e. (Answer to SOR) Applicant owed a credit card company \$19,237 (SOR ¶ 1.b). The account was sold from one collection agency to another. Applicant asserts this debt (SOR ¶ 1.b) is a duplicate debt. The debt was transferred to the collection agency attempting to collect two credit card debts placed for collection: \$10,116 (SOR ¶ 1.d) MasterCard account and \$6,606 (SOR ¶ 1.e) VISA account. (Answer to SOR, Tr. 61) When Applicant contacted the agency, they wanted Applicant to commit to a payment he could not pay. He asserts they offered to settle for 50 per cent of the debt. In August 2008, when Applicant completed a Questionnaire of Sensitive Positions, Standard Form (SF) 86, in response to question 28b, he indicated he owed \$9,721 and \$6,341 on these two debts. (Ex. 1, p 9, Tr. 112)

In August 2009, Applicant contacted the creditor by letter and requested verification of the debt. (Ex. R) At the hearing, Applicant stated he was going to pay the creditor. (Tr. 126) No evidence of payment has been received. In October 2008, Applicant stated he wanted to pay the SOR debts. At the hearing he again stated he wanted to pay the SOR debts. (Tr. 100, 126) Following the hearing, Applicant's counsel indicated the debt no longer appears on Applicant's CBR. There is no indication Applicant now intends to satisfy this past due obligation.

Applicant owed a credit card company \$6,235 (SOR ¶ 1.c), which the company offered to settle for 60 percent of the balance. In October 2009, Applicant sent the creditor a letter offering to pay \$1,560 on the debt. (Ex. C) In November 2009, the creditor made a counter offer to settle the debt for \$1,870, which Applicant accepted and paid. (Ex. X)

In October 2008, when Applicant was first interviewed about his financial problems, he discussed the four SOR debts, which he admitted owing. He stated he wanted to repay the debts, but the collection agencies wanted only large lump-sum payments, which he could not afford. (Ex. 3)

In March 2009, Applicant responded to written interrogatories. (Ex. 2) At that time his monthly income was \$4,863, his monthly expenses \$1,348, his monthly debt payment approximately \$3,000, and his monthly net remainder was \$555. (Ex. 2, p 14) At the hearing, Applicant's net remainder was \$800. (Ex. P) His net worth was \$33,000. (Ex. P)

In September 2009, Applicant contacted and received financial counseling from a consumer credit counseling service. (Ex. B) Applicant is current on his mortgage, student loan, and ten additional accounts not listed in the SOR. (Ex. S)

Applicant's September 2009 credit bureau report (CBR) lists two negative accounts. (Ex. A) Those are the debts listed in SOR ¶ 1.a and SOR ¶ 1.c, which Applicant has paid by means of a \$5,000 loan. (Tr. 62, 100) Recently, Applicant paid off two accounts and one loan not listed in the SOR. (Tr. 91-92)

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. 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

Revised Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances so as to meet his financial obligations.

The record evidence supports a conclusion Applicant has a history of financial problems starting in 2004 or 2005. Applicant owed approximately \$43,500 on four past due obligations owed to three³ creditors. Disqualifying Conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a) – (e) are potentially applicable:

³ Applicant's September 2008 CBR (Ex. 6, p. 12) clearly indicates the collection agency listed in SOR ¶ 1.d and e. was collecting for the creditor listed in SOR ¶ 1.b. These are the same debts and I find for Applicant as to SOR ¶ 1.b. as a duplication of the other two debts.

(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; or

(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's financial problems started in 2004 when his sister and mother were incarcerated. He provided his mother approximately \$3,000 in attorney fees. In addition, the vehicle he had purchased, on which his sister was paying, was repossessed when she was out of work for six weeks and unable to continue the payments. Although Applicant and his wife's joint annual salary was \$78,000, he was unable to pay his debts as agreed and make the \$570 monthly car payment. All his creditors, except for the three creditors listed in the SOR, worked with Applicant to arrange repayment of the debts. Following the hearing, Applicant paid two the SOR creditors. There is no evidence he has paid the remaining creditor or established a repayment plan with that creditor.

Applicant's delinquent debts are "a continuing course of conduct" under the Appeal Board's jurisprudence because he had two large delinquent debts from November 2008 until December 2009. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). Applicant does not receive credit under AG ¶ 20(a). Two of the creditors were not paid until after the hearing and one creditor remains unpaid. The debts are a VISA account, a MasterCard account, a credit card account, and vehicle loan, which are common debts. The debts were not incurred under unusual circumstances. AG ¶ 20(a) does not apply.

AG ¶ 20(b) partially applies. Applicant experienced an unexpected \$3,000 debt when his mother needed funds to pay her attorney and his sister stopped making the car payments. These are factors beyond Applicant's control for which he deserves some mitigation. However, these events occurred in 2004. Until 2006, Applicant's

household annual salary was between \$78,000 and \$95,000. It has been more than five years since the events. Additionally, it is not unexpected that someone who purchases a car for another will be required to make payment on the vehicle if the other person stops paying. AG ¶ 20(b) has limited application.

AG ¶ 20(c) also has limited application. Applicant has received counseling and recently obtained a loan to pay two of the three SOR creditors. Except for the SOR debts, Applicant paid his other obligations in a timely manner. AG ¶ 20(c) does not fully apply because Applicant has not addressed the \$16,700 VISA and MasterCard debts listed in SOR ¶ 1.d and 1.e.

AG ¶ 20(d) applies to the debts in SOR ¶ 1.a and 1.c because Applicant obtained a loan and paid them. As previously stated, the debt in SOR ¶ 1.b is a duplication of other debt listed in the SOR. I find Applicant has mitigated these three debts.

The remaining \$16,700 debt remains unpaid. In October 2008, Applicant stated he wanted to pay the debt, which he restated at the hearing. However, no indication of payment or the establishment of a repayment plan has been received. Applicant's counsel asserts this creditor does not appear on Applicant's recent CBR. There are numerous reasons why a debt may or may not appear on a CBR. In this case, Applicant admitted owing the VISA and MasterCard debts. He listed them on his SF 86, he discussed them in his October 2008 interview, in his March 2009 interrogatory response, and at the hearing. He stated he wanted to pay the money. But the debts remain unpaid.

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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The debts incurred were credit card accounts placed for collection and the balance owed on a repossessed vehicle. Applicant's household income was between \$78,000 and \$95,000 and the debts were

not addressed. I find Applicant has not acted responsibly under the circumstances. Additionally, there is no clear indication that the remaining debt is being resolved. Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial considerations.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a security clearance. The awarding of a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under Applicant's current circumstances, a clearance is not recommended. Should Applicant be afforded an opportunity to reapply for a security clearance in the future, having paid the delinquent obligations, established compliance with a repayment plan, or otherwise addressed the obligation, he may well demonstrate persuasive evidence of his security worthiness. However, a clearance at this time is not warranted.

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, Financial Considerations:	AGAINST APPLICANT
Subparagraph 1.a—1.c:	For Applicant
Subparagraph 1.d and 1.e:	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.

CLAUDE R. HEINY II
Administrative Judge