



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 08-11866
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric H. Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

December 31, 2009

Decision

MASON, Paul J., Administrative Judge:

Based on a review of the case file, pleadings and exhibits, Applicant's eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted his Security Clearance Application (SCA, Item 3) on June 12, 2008. He submitted interrogatory answers (Item 7) concerning delinquent financial accounts to Defense Office of Hearings and Appeals (DOHA) adjudicators on March 11, 2009. On June 30, 2009, DOHA issued Applicant a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F). The action was taken pursuant to 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 made effective within the Department of Defense for SORs issued on or after September 1, 2006.

In Applicant's answer to the SOR, dated July 20, 2009, he admitted SOR 1.a., 1.b., and 1.d., and denied 1.c. He requested a decision be made on the record in lieu of a hearing. A copy of the government's File of Relevant Material (FORM, the government's evidence in support of the allegations of the SOR) was sent to Applicant on August 21, 2009. He received the FORM on August 31, 2009. His response was due on September 30, 2009. No response was received. The case file was assigned to me on November 9, 2009.

Findings of Fact

Applicant is 45 years old. He married in August 1995, and has three children. After unexpectedly learning his wife was having an affair in the spring of 2002, he obtained a divorce in January 2003 (Item 2).

In May 1996, Applicant received an Associate's degree in Applied Science (AAS) (Item 3). He has been employed as a pilot since 1998 (*Id.*). He held a Top Secret security clearance while on active duty in the United States Army between 1982 and 1986 (*Id.*). He seeks a Secret security clearance.

Applicant has four delinquent debts totaling \$29,825. They are listed in his credit bureau reports dated July 22, 2008 (Item 7), December 12, 2008 (Item 6), and August 19, 2009 (Item 5).

- SOR 1.a. In his answer to the SOR (Item 2), Applicant acknowledged owing this creditor \$3,627. The last date of activity on this account before becoming delinquent was April 2004 (Item 6). Applicant explained that on March 5, 2009, a settlement of \$2,000 had been worked out with the creditor (Item 4). The settlement would be satisfied after Applicant made a down payment of \$545, followed by eight monthly payments of 181.88 (*Id.*). Documentation from the creditor reflects the down payment was made, but no subsequent payments were made to complete the settlement (*Id.*). Applicant still owes the debt.

- SOR 1.b. Applicant admitted this judgment of \$10,005 (Item 2). Before becoming delinquent, the last activity on this account was February 2004, and a judgment (based on this account) was entered against Applicant in February 2008 (Item 7). Applicant planned to contact the collection firm in October 2009 (Item 2). He started a savings account to accumulate funds to pay this judgment (Item 4). No other action has been taken on this account. The judgment is resolved against Applicant.

- SOR ¶ 1.c. In his answer to the SOR, Applicant denied he owed the collection agency \$2,488. He was renting an apartment in April 2004 when his employer advised him to look for a new job because his employer was being sold (Item 2). Applicant spoke with his apartment manager about breaking the lease since he had to find another job. The manager told him she understood his predicament, and there would be no problem in terminating the lease because of a waiting list of prospective tenants (*Id.*, Item 4). No independent verification was produced to substantiate Applicant's claim.

Because the manager told Applicant she understood his problem, he had no intention of paying the past due debt (Item 2, 4). I find Applicant owes the debt.

■ SOR 1.d. Applicant acknowledged he owed this delinquent account amounting to \$12,805 (Item 2). The last activity on the account occurred in November 2004, and the account was assigned to a collection agency in October 2008 (Item 6). Applicant indicated that because his father anticipated an inheritance of money in September or October 2009, his father decided to give him property he had been renting. Applicant planned to use the property as collateral in the repayment of this debt (*Id.*). On the advice of several attorneys, Applicant indicated he started a savings account to accumulate money to pay the judgment in SOR 1.b. and the delinquent account in SOR 1.d. (Item 4). Following the legal advice, when he saves \$5,700 (25% of the total debt in SOR 1.b. and 1.d.), he will begin negotiating settlement with both creditors (*Id.*). Applicant provided documentation indicating his savings account totaled \$510 in March 11, 2009 (*Id.*). No additional information was presented concerning the savings account. The SOR 1.d. account remains Applicant's responsibility.

In a credit report dated March 7, 2009, submitted by Applicant as an attachment to Item 4, he made handwritten entries claiming he paid certain creditors. The only documented proof Applicant furnished proving payment of any creditor, besides the creditor in SOR 1.a., is a money order of \$65 dated March 9, 2009, to an unlisted collection agency (*Id.*).

Applicant believes he has always exercised good judgment and self-control, and he has no gambling habit (Item 2). His financial problems were caused by his divorce, job change/salary reduction, and move occurring in the winter of 2002 and 2003 (Item 4). For about a one and one-half year following his divorce, Applicant dropped into a deep depression resulting in a lack of interest in personal and financial affairs (*Id.*). After he resolves or reduces his student loan, his delinquent taxes for 2002 and 2005, and his child support, in the next 1 to 18 months, he will have more money to save for the delinquent accounts identified in SOR 1.b. and 1.d. (*Id.*).

Character Evidence

Applicant submitted no evidence of his job performance. He supplied no character evidence of his lifestyle away from the job. Lastly, there is no evidence he has had financial counseling.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). Each guideline lists potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information. These

guidelines are flexible rules of law that must take into consideration the complexities of human behavior.

The administrative judge's ultimate goal is to reach a fair and impartial decision that is based on common sense. The decision should also include a careful, thorough evaluation of a number of variables known as the "whole person concept" that brings together 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. Reasonable 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 sensible, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 the potential, rather than actual, risk of compromise of classified information.

Under Directive ¶ E3.I.14., the government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.I.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.

Analysis

Financial Considerations (FC)

Paragraph 18 of the Adjudicative Guidelines (AG) sets forth the security concern related to financial considerations:

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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of

income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) applies to disqualify Applicant's security clearance application because he owes four collection agencies approximately \$28,925 that he is unable to satisfy. In addition, he is unwilling to repay the balance on the lease (SOR 1.c.) he broke in 2004.

The last activity on the SOR 1.a. account before it became delinquent occurred in April 2004. The last activity on the remaining three accounts was also in 2004. The accumulation of four delinquent accounts (one of those accounts becoming a judgment in October 2008) over the last five years triggers the application of AG ¶ 19(c) (*a history of not meeting financial obligations*).

Five mitigating conditions are potentially applicable. However, no mitigation is available under AG ¶ 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 reliability, trustworthiness, and good judgment*). Even though the four listed accounts became delinquent in 2004, Applicant has paid only \$545 toward the settlement of one account. But, since he has not complied with the remaining settlement terms on that account, he will probably have to negotiate another settlement or pay off the balance of the original debt. Applicant's failure to comply with the remaining terms of that settlement, and his unwillingness to repay the apartment lease balance, continue to raise doubts about his reliability, trustworthiness and good judgment.

AG ¶ 20(b) (*the conditions that resulted in the financial problem were largely beyond the person's control and the individual acted responsibly under the circumstances*) does apply, but on a limited basis. The mitigator refers to unemployment, underemployment, marital problems, and other unanticipated events that may hamper or impede a person from paying their debts. In addition, to gain full credit under the condition, once the unexpected events pass, Applicant is required to act "responsibly under the circumstances." Applicant had unforeseen marital problems leading to his divorce, child support, and depression. He also confronted tax problems and unemployment/underemployment problems. Yet, the only documented action Applicant has taken on his delinquent accounts is a \$545 payment to a listed creditor in February 2009, and a \$65 payment to an unlisted creditor on March 9, 2009. The lack of substantial action to address his debts since 2004 entitles Applicant to only limited mitigation under AG ¶ 20(b).

AG ¶ 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 because Applicant has furnished no evidence of counseling.

Applicant receives some mitigation under AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). Documentation that a payment plan has been established to repay an overdue account has little

probative value without proof that at least some documented payments were made under the plan. Applicant provided documentation he paid \$545 to the SOR 1.a. creditor, but he supplied no proof of any of the eight payments required to complete the settlement. Applicant's payment of an unlisted creditor, and partial payment of the SOR 1.a. creditor entitles him to limited mitigation under AG ¶ 20(d).

AG ¶ 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 to the circumstances of this case. Applicant provided no documented proof of his dispute with the SOR 1.c. delinquent account. His statements in his answer to the SOR and his interrogatory answers that he does not intend to pay the debt cannot be mitigated under this condition, or any of the other mitigating conditions under the financial considerations guideline.

The limited mitigation Applicant is credited with under AG ¶¶ 20(b) and 20(d) is not sufficient to successfully rebut, extenuate, and mitigate the adverse evidence under the financial considerations guideline.

Whole Person Concept

I have examined the evidence under the disqualifying and mitigating conditions in my ultimate finding against Applicant under the financial considerations guideline. I have also weighed the circumstances within the context of nine variables known as the whole person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors:

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 the participation was 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.

At age 38, Applicant unexpectedly discovered his wife was having an affair. He noted that in the one and one-half year period following his divorce in January 2003, he encountered difficulties with mental issues, finding a suitable job, paying his taxes for 2002 and 2005, and paying child support. The credit bureau reports show that the listed accounts became delinquent in 2004. The credit bureau reports show that the listed accounts are still delinquent in August 2009. See, Item 5. In addition, Applicant's interrogatory answers (Item 4) indicate that he still has the back taxes and student loan to resolve. Applicant was given an opportunity to respond to the FORM by providing information about the listed accounts as well as the back taxes and student loan. His decision not to provide any information raises a reasonable inference that he has not

made the remaining payments on the SOR 1.a. settlement, or payments on the other delinquencies, including his back taxes and student loan. Without documentation of payments to his listed creditors and other creditors he mentioned, it is likely Applicant's current financial trouble will extend into the future. Given that likelihood, he has not met his burden of demonstrating his suitability for security clearance access.

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, Guideline F): AGAINST APPLICANT

Subparagraph 1.a.	Against Applicant
Subparagraph 1.b.	Against Applicant
Subparagraph 1.c.	Against Applicant
Subparagraph 1.d.	Against Applicant

Conclusion

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

Paul J. Mason
Administrative Judge