



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

In the matter of:)	
)	
)	ISCR Case No. 08-11983
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: *Pro se*

October 27, 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. His eligibility for a security clearance is denied.

Applicant completed and certified an electronic Standard Form 86 (SF-86) on June 9, 2008. On February 22, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. DOHA acted 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 adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on March 31, 2010, and requested a decision on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on August 19, 2010. The FORM contained documents identified as Items 1 through 8. By letter dated August 24, 2010, DOHA forwarded a copy of the FORM to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the file on September 1, 2010. His response was due on October 1, 2010. He filed additional information within the required time period. Department Counsel did not object to the admission of Applicant's additional information. On October 18, 2010, the case was assigned to me for a decision. I admitted to the record the additional information that Applicant provided in response to the FORM.

Findings of Fact

The SOR contains six allegations of financial delinquency under AG F, Financial Considerations. (SOR ¶¶ 1.a. through 1.f.) In his Answer to the SOR, Applicant denied all six Guideline F allegations of financial delinquency and provided additional information (¶¶ 1.a., 1.b., 1.c., 1.d., 1.e., and 1.f.). (Item 1; Item 2.)

Applicant is 48 years old, married, and the father of three children, aged 20, 18, and 14. Since January 2008, Applicant has been employed as a senior instructor by a federal contractor. Applicant was first awarded a security clearance in 1992.¹ (Item 4.)

In October 1981, Applicant enlisted in the United States military. He rose to the rank of E-8 and served on active duty for 26 years, until December 2007. In 2004, Applicant earned an Associate of Arts degree in Business Administration. (Item 4.)

In his answer to the SOR, Applicant reported a monthly income of \$8,700. He rents his residence and reported monthly living expenses, including his rent, of \$3,200. Applicant stated: "I'm definitely not financially overextended, or living outside my means, whatsoever." (Item 2.)

When he completed his SF-86, Applicant responded "Yes" when asked if he had been over 180 days delinquent on any debt in the last seven years. He then provided information on several delinquent debts. He reported that a creditor was suing him to recover \$5,262 on an account the creditor claimed he defaulted on in March 2004 and which had not been satisfied. This debt was alleged at SOR ¶ 1.a. In his answer to the SOR, Applicant provided court documents establishing that the creditor sought payment of the debt. In his response to the FORM, Applicant provided documentation establishing that upon a motion by the creditor's counsel, the court dismissed the cause

¹ In his answer to the SOR, Applicant stated that he was first awarded a security clearance in approximately 1985. (Item 2 at 2.)

of action against Applicant without prejudice. (Item 1; Item 2; Item 4; Response to FORM at 3.)

On his SF-86, Applicant disclosed a delinquent credit card debt of \$9,432, incurred in March 1995. In disclosing this debt, Applicant wrote: "This account was closed and charged off. Total balance was written off." The debt is listed as 180 days delinquent and the account is listed as closed on Applicant's credit report of June 19, 2008. Applicant's credit reports of June and December 2009 state that the account was charged off and that Applicant disputed the account information. This debt is alleged at SOR ¶ 1.b. (Item 4; Item 5; Item 6; Item 7.)

Applicant also identified a delinquent department store charge account on his SF-86. He stated that he incurred the debt, which totaled \$6,769, in 1989. Applicant claimed that the account was closed, charged off, and the balance was written off. Applicant's credit report of December 2009, established that the debt was assumed by a successor creditor and had grown to \$8,343. This debt is alleged at SOR ¶ 1.c. (Item 4; Item 7.)

On his SF-86, Applicant also identified a delinquent debt which a creditor alleged he opened in 2006. The debt appears on Applicant's credit reports of June 2008 and June 2009. The SOR alleges at ¶ 1.d. that this debt of approximately \$1,701 remains unsatisfied. Applicant provided a letter he wrote to the creditor in May 2008 requesting validation of the debt. Applicant claimed the creditor did not respond to his request. (Item 2; Item 4; Item 5; Item 6.)

When Applicant completed his SF-86, he also identified a credit card debt he incurred in 1999. He stated that the account has been closed and charged off. The \$1,243 credit card debt appears as 180 days past due on Applicant's June 2008 credit report and is alleged at SOR ¶ 1.e. (Item 4; Item 5.)

The SOR alleged at ¶ 1.f. that Applicant owes a debt of \$314 for a cash advance. The debt is listed as a collection account on Applicant's credit report of June 2008. In his answer to the SOR, Applicant provided documentation establishing that the debt had been satisfied in September 2008. (Item 1; Item 2; Item 5.)

In his answer to the SOR, Applicant attributed his financial problems to his wife's loss of employment in 1994: "When my wife lost that job we took a substantial hit in our finances, and even though we tried for several years, we were never able to catch-up on our bills. I eventually told our creditors what happened, and asked them to stop charging over the credit limit fees and late payments, but I was told that they would only deal with a third party. . . ." In his answer to the SOR, Applicant also denied he was responsible for debts that had been charged off or which no longer appeared on his credit reports. The record does not support a finding that Applicant has sought or received credit counseling. (Item 2.)

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.

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 over-arching 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 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. When he completed his SF-86, Applicant identified delinquent debts he had accumulated and had not paid.

The record establishes that Applicant satisfied the debt alleged at SOR ¶ 1.f. Additionally, Applicant provided documentation establishing that the debt alleged at SOR ¶ 1.a. had been resolved. Accordingly, these two allegations are concluded for Applicant. However, four of the debts alleged in the SOR remain unresolved or unsatisfied. This evidence is sufficient to raise potentially disqualifying conditions under Guideline F.

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, such as 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 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, security concerns related to financial delinquencies might be mitigated 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 actions to resolve the issue.” (AG ¶ 20 (e)).

Applicant has a history of financial delinquencies that dates to at least the late 1990s. Four of his delinquencies remain unpaid, and Applicant insists that because these debts have been charged off by the creditors and may no longer appear on his credit reports, he is no longer responsible for them.

DOHA’s Appeal Board has noted that “a strategy of merely waiting out creditors is not an adequate substitute for serious and reasonable efforts to pay off debts.” Moreover, it is well settled that failure to discharge debts over a period of time constitutes a continuing course of conduct that raises concerns about an applicant’s reliability and trustworthiness. ISCR Case No 07-10575 at 4 (App. Bd. Jul 3, 2008).

Applicant reports income and financial resources sufficient to pay or settle several of his delinquent debts, and he has failed to do so. Certainly, his wife’s loss of a job in 1994, 16 years ago, was beyond Applicant’s control. However, the record does not reflect that Applicant’s actions in the face of his financial difficulties were reasonable and responsible. He has not sought financial counseling. While the record reflects that Applicant disputed the delinquent debts alleged at SOR ¶¶ 1.b. and 1.d., he failed to explain why he was not responsible for paying them. He had steady employment during his military service and has worked for his current employer since January 2008. I conclude that AG ¶ 20(e) applies in part in mitigation. However, I also conclude that AG ¶¶ 20(a), 20(b), 20(c), and 20(d) do not apply in mitigation to the facts of Applicant’s case.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of an 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 have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a mature adult. He has been steadily employed by his current employer since January 2008, and he reports a monthly income of \$8,700. Despite these financial strengths, Applicant has failed to satisfy his delinquent debts. His failure to initiate actions to satisfy his remaining delinquent debts even when he had sufficient funds to do so raises security concerns about his judgment and reliability.

In ISCR Case No. 07-08049 (App. Bd. Jul. 22, 2008), DOHA's Appeal Board reiterated the central concern in a security clearance adjudication in which financial delinquency is at issue:

A security clearance adjudication is not a proceeding aimed at collecting an applicant's debts. Rather, it is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness. Accordingly, even if a debt is legally unenforceable, the government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring the debt and failing to satisfy it in a timely manner. See, e.g., ISCR Case No. 07-09966 at 2-3 (App. Bd. June 25, 2008).

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. For these reasons, I conclude 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:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a.:	For Applicant
Subparagraphs 1.b. through 1.e.:	Against Applicant
Subparagraph 1.f.:	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 grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Joan Caton Anthony
Administrative Judge