



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-12153
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O' Connell, Esq., Department Counsel
For Applicant: *Pro se*

December 17, 2010

Decision

LYNCH, Noreen, A. Administrative Judge:

On December 24, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations).¹ Applicant timely answered the SOR, denied all allegations, and requested a decision without a hearing.² DOHA assigned the case to me on November 18, 2010. The record³ in this case closed October 16, 2010, the day Applicant's response to the FORM was due. Applicant responded to the FORM on October 20, 2010. The response was not forwarded with the case file and was not considered in my initial decision dated December 6, 2010. The response to FORM was

¹DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense Directive (DoD) 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

²Applicant requested a hearing which was scheduled for June 23, 2010. Another hearing was scheduled for August 12, 2010. On August 4, 2010, Applicant requested a decision on the record.(Item 4)

³Consisting of the File of Relevant Material (FORM), Items 1-16.

forwarded to me by Department Counsel after my decision was issued. I received a copy of the Response on Friday December 10, 2010.⁴ Based on that information, I withdrew my decision on December 14, 2010. Department Counsel did not object to Applicant's untimely response, and I have considered Applicant's response to the FORM in this new decision. Based on the record in this case, Applicant's clearance is denied.

Findings of Fact

Applicant is a 49-year-old employee of a defense contractor. He is attending college classes online to earn his undergraduate degree, which he will obtain soon. (Response to FORM) He is married, and has three children. Applicant served in the United States Coast Guard Reserve from 1979 until 1982. (Item 1) He has worked for his current employer since April 2008. (Item 5)

Applicant worked in the private sector for more than 20 years. He claims his credit was "great" and allowed him to purchase several homes. Applicant notes that his financial trouble began after he purchased a franchise business in December 2001. (Response to FORM) He decided to pursue "his dream of owning his own business" instead of relocating his family to another state where his current job had been transferred. (Response to FORM) The business venture failed despite assurances he received from the company's financial advisor. Applicant spent his entire savings, retirement and other funds in the failed business. As a result, Applicant filed for Chapter 13 bankruptcy in October 2003. Applicant states he filed a Chapter 13 bankruptcy for two reasons. He wanted to repay his creditors and to "separate himself from the franchise." (Response to FORM)

Applicant paid approximately \$45,000 in payments under the bankruptcy plan by 2005, but records show that he was still delinquent on his payments. In February 2005, Applicant requested the Court's permission to refinance his home. (Item 14) After receiving approval, Applicant paid all filed and allowed bankruptcy claims in full. The bankruptcy was discharged on April 25, 2005.⁵ (Item 14)

Applicant remained self-employed after the 2005 bankruptcy discharge. He notes he was in the business of "restoration services." He stated he began to feel comfortable about his financial prospects. Applicant noted on his SF 86 that he traveled to the Caribbean on a seven day cruise for pleasure in May 2005. (Item 5) However, he explains that as the "housing troubles" began because of the mortgage crisis, his business suffered. (Response to FORM) At the time, Applicant's income from his business was approximately \$117,000. (Item 15) Applicant disclosed that in December 2007, he was 90 days delinquent in his adjustable rate mortgage for approximately \$46,000. (Item 5) His wife returned to work at the end of 2007, and he joined his current

⁴I received the complete file folder on December 14, 2010.

⁵Applicant noted on his SF 86 that the bankruptcy was filed in the amount of \$175,000 to "refute a franchised operation."

employment in April 2008. He does not plan to venture into another business. (Response to FORM)

Applicant states his February 2008 Chapter 13 bankruptcy was “filed to stop a foreclosure on his personal residence.” He explains that the bank would not work with him on a payment plan and he required additional time to get his finances in order. (Response to FORM) He states that he is now in a “loan modification trial period.” (Item 3) The mortgage company approved the modification but the terms have not been finalized. (Item 8) In May 2008, Applicant was delinquent on his bankruptcy payment plan. (Item 15) In June 2008, Applicant modified his Chapter 13 payment plan. (Item 15) In December 2008, the bankruptcy case was dismissed for failure to make plan payments. (Item 15)

Applicant explains he is now working with another bank because the loan was sold before the conversion took place. As of October 20, 2010, he is working with another bank to fulfill terms of a modification plan. He states he continues to make all payments on time during this transition. (Response to FORM)

The SOR alleges, and Government exhibits substantiate, nine delinquent debts for unpaid credit card accounts totaling \$44,000. In addition, the 2003 chapter 13 bankruptcy was noted and the January 2008, Chapter 13 bankruptcy filing was included. (Item 15) Applicant’s debts alleged in SOR ¶ 1.h, 1.i, 1.j, and 1.k were resolved in his Chapter 13 bankruptcy in 2003. Applicant denies any knowledge of or responsibility for the debts alleged in SOR ¶¶ 1.d, 1.e, and 1.f. Applicant claims he paid the debts alleged in SOR ¶ 1.c and 1.f. Applicant did not present any documentation to substantiate his claims regarding any payments or formal disputes concerning these debts. Applicant notes that his current delinquent debt for the above remaining SOR allegations is approximately \$4,156. He also notes that they are still listed on his credit report. (Response to FORM)

Applicant states the items could not be legitimate because he has not been contacted by anyone. He believes the two medical charges are not his because he has lived at his current residence for ten years and has never been contacted by anyone about the issue. Furthermore, he states that \$138 would not “drive him to a life of crime.” He just believes they are erroneous items. (Response to FORM) The allegation for one month’s rent from his previous business for \$825 is not valid according to Applicant because he “fulfilled the terms of the rental agreement” and explained this to the collection agent two years ago when he was contacted about the debt. He further notes that if it was legitimate, they would have contacted him again. He believes it just has not been removed from his credit report. (Response to FORM)

Applicant asserts his “reliance on the financial services of the court” will not occur again. He points to his current employment with a defense contractor and to the fact that he is completing his undergraduate degree in Information Technology. However, he has various student loans that are now in deferment. (Item 9) In sum, he states that he was financially sound before he ventured into self-employment and he

has no plans to return to self-employment. He states that he has no credit cards or car loans and pays for everything in cash. (Response to FORM)

Applicant failed to submit evidence and documentation to support his claims of mitigation concerning his efforts. He has failed to meet his burden.

Policies

The adjudicative guidelines (AG) list factors to evaluate a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also reflect a fair, impartial, and commonsense assessment of the factors listed in AG ¶ 2(a). Any one disqualifying or mitigating condition is not, by itself, conclusive. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline F (Financial Considerations).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the required judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels deciding any reasonable doubt about an Applicant's suitability for access in favor of the Government.⁶

Analysis

The Government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. Applicant filed for Chapter 13 bankruptcy in 2008 which has been dismissed. He also filed for Chapter 13 bankruptcy in 2003. He has unresolved delinquent debts.⁷

Filing bankruptcy is a legal remedy that released Applicant from the requirement to pay the majority of his debt. His 2003 bankruptcy gave him a fresh start. In 2008, he again developed financial problems and filed for bankruptcy. It appears that Applicant

⁶See, Department of the Navy v. Egan, 484 U.S. 518 (1988).

⁷¶19(a) inability or unwillingness to satisfy debts; (c) a history of not meeting financial obligations;

does not have his finances under control given the fact that he still has unresolved delinquent debts.

While a discharge in bankruptcy is intended to provide a person with a fresh start financially, it does not immunize an applicant's history of financial problems from being considered for its security significance. See, e.g., DISCR Case No. 87-1800 (February 14, 1989) at p. 3 n.2 ("Although bankruptcy may be a legal and legitimate way for an applicant to handle his financial problems, the Examiner must consider the possible security implications of the history of financial debts and problems that led to the filing of the bankruptcy.")

Applicant has not established that he suffered a business turndown or explained how any turndown impacted him financially. He has not presented evidence that he has acted responsibly under the circumstances. Applicant has not provided any documentation to support his claim that some of the debts are in dispute or that he has made any efforts to pay the remaining debts in the SOR. Applicant has been steadily employed since 2008. However, the debts have not been resolved. There is no indication the financial problems will not recur despite the claims that Applicant makes. He is working with a new bank to modify a loan but has provided no documentation to support the claim. Consequently, none of the mitigating factors for financial considerations apply. I have considered the "whole-person" factors, even though this record contains few facts for that analysis. I conclude Guideline F against Applicant.

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
Subparagraphs 1.a through 1.k:	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 a security clearance. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge

