



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



In the matter of:)
)
) ISCR Case No. 09-00173
)
)
Applicant for Security Clearance)

Appearances

For Government: Stephanie Hess, Esquire, Department Counsel
For Applicant: *Pro se*

May 21, 2010

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline F, Financial Considerations. Applicant’s eligibility for a security clearance is denied.

On November 2, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline F. The action was taken under 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 in writing on January 5, 2010, and requested a hearing before an administrative judge. The case was assigned to me on March 23, 2010. DOHA issued a Notice of Hearing on March 26, 2010. I convened the hearing as scheduled on April 28, 2010. The Government offered Exhibits (GE) 1 through 4.

Applicant did not object and they were admitted. Applicant testified and offered Exhibits (AE) A through D, which were admitted without objection. The record was held open until May 12, 2010, to allow Applicant to submit additional documents. He did not submit any documents and the record closed. DOHA received the hearing transcript (Tr.) on May 6, 2010.

Findings of Fact

Applicant admitted all of the allegations in the SOR except ¶¶ 1.b, 1.g, 1.i, and 1.k. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 41 years old. He is a high school graduate and graduated from vocational school. He served in the Navy and was honorably discharged. He is employed as a truck driver and lives in his truck. Applicant married in 1995, and has two children from the marriage. His wife passed away in 1998. He remarried in 1999 and divorced in 2000. He remarried in 2004 and had a child from the marriage. He divorced in 2004, and remarried in 2008. His present wife is also a truck driver and they drive as a team.¹

After Applicant's first wife passed away, he had a custody dispute with her parents, for his two children and spent money for a lawyer to represent him. During this time he accumulated many credit card debts. He also experienced periods of unemployment. The grandparents were awarded custody of the children. Applicant does not pay child support for the two children. He does pay child support for the child he had with his third wife. He admitted he accumulated additional debt after each of his marriages. He did not want to file bankruptcy.²

Applicant admitted he was the beneficiary of his wife's life insurance benefits, which were \$100,000. He placed \$10,000 in accounts for each of his two children. He loaned \$30,000 to his mother for a down payment on a house. She never repaid him. He spent \$10,000 for his wife's funeral. He paid \$17,000 on a loan for a truck he purchased for \$30,000. He took the remaining money and had a financial consultant invest it for him. He learned that this person bilked him of his money. He stated 23 other families were also victims. He believed the person was pursued criminally. He never was reimbursed the amount he invested.³

After Applicant was interviewed by an Office of Personnel Management investigator, he understood that he needed to address his delinquent debts. He contacted a debt consolidation company (Company A) to help him organize and pay his delinquent debts. He stated he sent Company A any bills he received or delinquent

¹ Tr. 94-96, 103-108, 112.

² Tr. 20-21.

³ Tr. 69-73.

debts he was aware of, and the company was to consolidate them and arrange a repayment plan. He began making monthly payments of \$758.70 to Company A to pay his delinquent debts. It does not appear, at this time, that any of the debts alleged in the SOR are included in the repayment plan. Some of Applicant's other delinquent debts are being paid through Company A. He continues to send Company A any new bills he receives and assumed they were consolidating them with all of his other debts. His understanding was they would also review his current credit report, contact the creditors he owed money to, and negotiate settlements. Applicant admitted he never provided Company A with a list of his debts nor did he receive a list of debts that they were going to pay. Applicant has made monthly payments since April 2009 on the debts in the plan that Company A arranged, but he has not addressed any of his other debts. He believes that Company A will eventually pay all of the delinquent debts that he provided to them. He believes Company A is using a credit report to address his debts. He did not have a copy of the credit report they are presumably using. It appears that Company A has used Applicant's monthly payment to pay different creditors. At some point, a creditor they have paid drops off the plan because presumably the debt is resolved, and another creditor is added and payments are directed toward that creditor. Applicant did not provide a list of the creditors that have been paid or that are going to be paid by Company A.⁴

Applicant admitted he owed the debt in SOR ¶ 1.a (\$15,426). This debt was a loan for a vehicle that was repossessed approximately three years ago. Company A reached a settlement agreement to make 15 payments and pay a total of \$6,890. Applicant was to begin making the payments in April 2010. No payments were made at the time of the hearing.⁵

The debt in SOR ¶ 1.b (\$238) is for cable services. Applicant denies the debt and contacted the creditor. He was told they do not have an account in his name. The debt is reported as disputed on his credit report.⁶

The debts in SOR ¶¶ 1.c (\$233) and 1.d (\$232) are medical bills that have been owed for approximately two years. Applicant stated he sends his bills to Company A and they are supposed to pay them. He believes the debts are included in his repayment plan with Company A, but they are not paid yet. It is unclear if the debts are included in his repayment plan.⁷

⁴ Tr. 19-20, 38-43.

⁵ Tr. 27-33.

⁶ Tr. 33-35; AE 4.

⁷ Tr. 35-39, 45-50.

The debt in SOR ¶ 1.e (\$3,442) is a credit card debt owed from approximately 1998. Applicant defaulted on the debt in about 1999. He has not made any payments on the debt. He stated it was referred to Company A.⁸

Applicant believes the debt in SOR ¶ 1.f (\$1,179) belonged to his late wife and was in her name. He believed the debt should have been charged off when she passed away. He does not believe he should pay the debt and has disputed it with the credit bureau.⁹

The debt in SOR ¶ 1.g (\$5,575) is a medical debt. Applicant stated he has no idea what the account is. He has not taken any action to inquire about the account. The last activity on the account was June 2003. It remains unpaid. Applicant stated he disputed it, but did not provide any documents to support his assertion. It remains unpaid.¹⁰

The debt in SOR ¶ 1.h (\$1,053) is a credit card debt from 1998. Applicant stated he did not know why he did not pay it. He made a couple of payments and then became overwhelmed with his debts, so stopped paying them. This occurred during the time he was in a custody dispute with his children's grandparents. Applicant stated he referred this debt to Company A.¹¹

The debt in SOR ¶ 1.i (\$8,886) is a student loan debt that Applicant denies. He stated he has been disputing this debt since he was 18 years old. He adamantly stated the debt does not belong to him. He researched the loan and determined it was a loan for a motel-hotel management course. He requested copies of the documents and found several items on the documents were inaccurate. He has referred the debt to Company A. He disputed the debt with the creditor. He credibly testified that he never applied for the loan or attended the course.¹²

The debt in SOR ¶ 1.j (\$306) is a debt for a cell phone. Applicant opened an account for his brother. He stated he did not know that he was ultimately responsible for the debt when he signed the contract. His brother did not pay the bill. Applicant has referred the debt to Company A.¹³

⁸ Tr. 50-52.

⁹ Tr. 52-54; AE 4.

¹⁰ Tr. 54-57.

¹¹ Tr. 57-60.

¹² Tr. 60-62.

¹³ Tr. 62-63.

The debt in SOR ¶ 1.k (\$4,081) is a judgment obtained by a homeowners association against Applicant for violations while he lived there. He stated he received documents that he was being sued and contacted the court to postpone the hearing. He stated he was never notified of the hearing. He referred the debt to Company A. It is not paid.¹⁴

The debt in SOR ¶ 1.l (\$225) is a phone bill for land line telephone services. The debt was incurred in approximately 2000 or 2001. It is not paid. Applicant stated he referred it to Company A in 2009.¹⁵

The debt in SOR ¶ 1.m (\$5,526) is for a credit card. The debt was incurred in approximately 1999. No payments have been made since 1999. He referred the debt to Company A.¹⁶

The debts in SOR ¶¶ 1.n (\$2,625) and 1.o (\$6,091) are credit card debts from 1999. Applicant explained he paid very little on the debts and they have been referred to Company A. They are not paid.¹⁷

The debt in SOR ¶ 1.p (\$687) is a medical debt from 2003. Applicant believes he owes the debt. He stated he contacted the creditor in 2009. He referred the debt to Company A. It is unpaid.¹⁸

The debt in SOR ¶ 1.q (\$1,270) is a debt for telephone services. Applicant admitted the debt was incurred in approximately 2000 or 2001, and he has not paid it. He stated it was referred to Company A.¹⁹

The debt in SOR ¶ 1.r (\$94) is for utilities incurred by Applicant in approximately 2003. He stated he gave a check to pay the bill to his mother. The bill was not paid. He does not think he referred this debt to Company A.²⁰

The debt in SOR ¶ 1.s (\$3,678) is a credit card debt owed from approximately 2000. Applicant admitted it is not paid. He stated he referred the debt to Company A.²¹

¹⁴ Tr. 63-65.

¹⁵ Tr. 65-67.

¹⁶ Tr. 67-69.

¹⁷ Tr. 73-76.

¹⁸ Tr. 76-81.

¹⁹ Tr. 81-83.

²⁰ Tr. 83-86.

²¹ Tr. 86-89.

The debt in SOR ¶ 1.t (\$174) is a debt for utilities. Applicant stated he thought it was paid. It has been delinquent since 2005. It is unpaid and it has not been referred to Company A. Applicant stated he intended to pay it.²²

The debt in SOR ¶ 1.u (\$1,057) is a credit card debt owed since approximately 2000. It is not paid. Applicant stated he referred the debt to Company A.²³

Applicant has two credit cards that he pays the balance on each month. He does not have any other delinquent debts that he is aware of. His salary is approximately \$35,000 annually. His wife earns approximately \$33,000 annually. He pays \$405 a month for child support. He does not have savings or investments. He is usually able to pay his monthly bills and sometimes his wife helps him out. He started a budget, but has had difficulty keeping track of his expenses. He has not received financial counseling. Applicant is trying to correct the financial mistakes of his past. He plans on continuing to pay all of his delinquent debts until they are all completely paid.²⁴

Applicant's wife testified on his behalf. She explained they both keep separate accounts. She helps her husband out financially when he has difficulty making some payments. She tries to help him manage his money. She provided him with a ledger to keep track of his money. They do not have a written budget. Because they live in their truck, they do not have housing costs. They each have a phone that they pay for. They share their expenses incurred on the road. She has saved approximately \$4,200 for an emergency. She has a security clearance. She has approximately \$2,000 in delinquent debts that are not paid. She admitted she does not pay careful attention to how much money is going into her account and how much is being deducted. She remembers Applicant attempting to maintain a budget, but he did not stick to it.²⁵

Applicant did not provide proof that any of the debts in the SOR are paid, or that he formally disputed them with the credit bureaus, although there are notations of a dispute on his credit report regarding one debt. He referred many of his delinquent debts to Company A, but did not provide any documents to show a new repayment plan has been formulated to pay his delinquent debts, or that Company A has contacted the creditors, or that Applicant has increased his monthly payments to Company A, so as to pay the other debts. Applicant has approximately \$45,000 of undisputed delinquent debts.

Applicant provided character letters that I considered. He is described as a giving and generous person. He assists others and is a compassionate and inspiring leader. He is considered dedicated, reliable, honest, and responsible. He is committed to his

²² Tr. 89-91.

²³ Tr. 91-92.

²⁴ Tr. 92-103, 108-117.

²⁵ Tr. 119-129.

work, is a hard worker, and is devoted to his family. He is a patriotic person and solid contributor to society.²⁶

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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 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.

²⁶ AE D.

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. I have considered all of the disqualifying conditions under AG ¶ 19 and especially considered:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Appellant has a long history of being unwilling or unable to meet his financial obligations. He has debts that remain unpaid and delinquent. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions 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 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's behavior is recent because he has many delinquent debts that remain unpaid. Some of his debts date back to 2000, 2001, and 2002. Because the ongoing problems are not isolated and there is no evidence to support a finding that the delinquent indebtedness is unlikely to recur, the situation casts doubt on his reliability. Mitigating condition AG ¶ 20(a) does not apply.

Applicant lost his wife in 1998, and spent money on legal fees pertaining to the custody of his children. He also experienced periods of unemployment. These facts raise the application of mitigating condition AG ¶ 20(b). In order for that mitigating condition to be fully applicable, Applicant must have acted responsibly under the circumstances. Applicant was the beneficiary of his late wife's life insurance. He did not use the money to pay his bills. During this period he overextended himself with credit cards and did not pay them. He bought a new truck. After the money was exhausted, he did not attempt to resolve the debts he incurred. It has been many years since some of his debts were incurred. Applicant did not act responsibly under the circumstances. I find mitigating condition (b) only partially applies.

In April 2009, Applicant began paying a monthly amount toward some delinquent debts through Company A, a debt consolidation company. None of these debts are alleged in the SOR. Although Applicant stated he has provided Company A with his bills and any correspondence he may have received regarding his delinquent debts, he does not know what debts are being addressed and when they will be resolved. He believes Company A will include them in a future repayment plan. He believes Company A is using a current credit report to address his debts. Applicant is making payments to Company A and some of his delinquent debts are being resolved, but he does not have a clear financial plan or understanding regarding his finances.

There is no evidence Applicant has participated in financial counseling. Although he stated he has some type of budget he has not adhered to it. Some debts Applicant disputes, but he did not provide documentary evidence to substantiate the basis of his disputes. I did find Applicant credible in denying he was responsible for the debt in SOR ¶ 1.i. However, he did not provide documentary evidence to support the actions he took to dispute this debt with the creditor. It is noted that the debts alleged in SOR ¶¶ 1.b and 1.f are reported as disputed on the credit report. I find AG ¶ 20(e) applies to these

debts. There is some evidence that Applicant has made a good-faith effort to resolve some of his delinquent debts, but he has left the responsibility for handling his delinquent debts to Company A, without really understanding what specific debts are being addressed. I find AG ¶ 20(d) only partially applies. There are not clear indications Applicant's financial problems are under control. It appears his repayment plan is for delinquent debts that are not included on the SOR. I find mitigating condition AG ¶ 20(c) does not apply.

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.

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 Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2 were addressed under that guideline, but some warrant additional comment. Applicant served in the Navy and was honorably discharged. He has begun to repay some of his delinquent debts through a repayment plan, but the delinquent debts alleged on the SOR remain unresolved. Although he stated he sends his delinquent bills to Company A for them to pay, he failed to show the current status of each of his delinquent debts. He does not have a list of what debts Company A intends on paying and when.

Applicant does not adhere to a budget and has not had financial counseling. At this juncture, it does not appear Applicant has a grasp on all of his financial issues. He has taken a good first step with Company A, but needs to take the next step in understanding all of his financial responsibilities and obligations. At this time, 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 failed to mitigate the security concerns arising under the guideline for Financial Considerations.

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:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c-1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g-1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraphs 1.j-1.u:	Against Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge