



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



In the matter of:)	
)	
)	ISCR Case No. 09-00375
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: David F. Hayes, Esquire, Department Counsel
For Applicant: *Pro se*

October 14, 2010

Decision

HOGAN, Erin C., Chief Administrative Judge:

Applicant submitted a security clearance application (SF 86) on June 13, 2008. On January 8, 2010, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations. 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) which became effective within the Department of Defense on September 1, 2006.

On May 10, 2010, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on July 21, 2010. The case was assigned to me on July 28, 2010. On August 9, 2010, a Notice of Hearing was issued scheduling the hearing for August 31, 2010. The case was heard on that date. The Government offered seven exhibits which were admitted as Government Exhibits (Gov) 1 – 7. The Applicant testified and offered four exhibits which were admitted as Applicant Exhibits (AE) A - D. The record was held open until September 15, 2010, to allow Applicant to submit additional documents. On September 10, 2010, Applicant requested additional time to submit documents. His request was granted until

October 1, 2010. He submitted eight exhibits which were admitted as AE E – L. Department Counsel's response to the post-hearing submissions is marked as Hearing Exhibit (HE) I. The transcript (Tr.) was received on September 8, 2010. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his answer to the SOR, Applicant admitted the allegations in ¶¶ 1.a, 1.b, 1.c, 1.d, 1.e, and 1.f. He denied the allegation in ¶ 1.g. Department counsel withdrew the allegation in ¶ 1.g because it was a duplicate of SOR ¶1.b.

Applicant is a 58-year-old logistical analyst employed with a Department of Defense (DOD) contractor seeking to maintain a security clearance. He has been employed with his current company since December 2009. He served 22 years on active duty in the United States Marine Corps. He retired at the rank of gunnery sergeant in March 1998. He has held a security clearance continuously since 2007. He also held a security clearance while on active duty. He is a high school graduate. He divorced his first wife after 19 years of marriage in 1998. He married his current wife in February 2008. Three sons were born during his first marriage. His current wife's two children, ages 14 and 18, live with Applicant and his wife. (Tr. 5-7, 27-28, 32-33, 81; Gov 1)

When Applicant divorced his first wife, he gave her the house and assumed responsibility for all of the debts of the marriage. He incurred credit card debt after the divorce. (Tr. 28-31)

Applicant worked several jobs after retiring from the military. In January 2006, he quit his job to start his own medical billing company. He and his wife and two employees handled the medical billing for several doctor's offices. He leased office space and borrowed \$20,000 to start the business. Unbeknownst to him, Applicant's two employees made inappropriate charges on company accounts. They eventually quit, in part, because he was unable to pay their salaries. He and his wife moved the business to their home around 2008. In January 2008, Applicant obtained full-time employment with a defense contractor. He worked for several contractors before being hired in his current position. He paid off the office lease and the water bill. His medical billing company has only one client. His wife is the sole employee. He estimates that he accumulated \$50,000 in debt from business losses. (Tr. 7, 33-36, 66; Gov 1, section 11; Gov 3 at 3)

Applicant's security clearance background investigation revealed that Applicant has six delinquent accounts which total approximately \$82,584. (SOR ¶¶ 1.a – 1.f; Gov 2-7) During the hearing, he testified that he was making payments towards his accounts. He did not bring documentation to the hearing verifying that he was paying his debts. He was given additional time to provide documentation. (Tr. 40-44) Applicant was advised about the importance of providing documentation to corroborate that his debts were being paid at the end of the hearing. (Tr. 88-93)

The status of the delinquent debts are:

1.a: \$1,530 judgment filed against Applicant in February 2008 on behalf of a credit card company. In response to interrogatories dated September 4, 2009, Applicant indicated he was making \$200 payments to the creditor. He alleged SOR ¶¶ 1.a, 1.b, and 1.c were the same account but did not provide documentation verifying this assertion. Status of this debt is uncertain. After the hearing, he provided a written statement that he mails checks to a collection agency but provided no documentation verifying payments or a payment history. It is also unclear whether the \$100 payment goes to the account alleged in SOR ¶ 1.a or SOR ¶ 1.c. (Tr. 51, 83-84; Gov 2 at 2; Gov 7 at 3; AE I)

1.b: \$12,365 judgment filed against Applicant in December 2008 on behalf of a bank. Applicant testified that he is making monthly payments of \$200. After the hearing, he provided the top part of a receipt that he received from the debt collection group to whom he claims that he sends monthly payments. He wrote check numbers on the top part of the receipt for checks that he apparently sent to the debt collection group. The documents provided do not verify the amount of the payment, the date the payment was made, and the current balance. He did not provide copies of his bank records showing the processed checks. (Tr. 49; Gov 3 at 3; Gov 6 at 2; Gov 5 at 3; gov 7 at 4, 11; AE H)

1.c: \$18,161 charge off account with a credit card that is held by the same creditor alleged in SOR ¶1.a. In his response to interrogatories, dated September 4, 2009, Applicant claimed that he was making \$200 monthly payments towards this account. In his post-hearing submissions, Applicant claims that he mails \$100 checks to a collection agency each month. He provided no documentation corroborating this assertion. It is also unclear whether the \$100 payment goes to the account alleged in SOR ¶ 1.a or SOR ¶ 1.c. (Tr. 41, 50, 65; Gov 2 at 2; Gov 3 at 3; Gov 4 at 1; Gov 5 at 1; Gov 6 at 1; Gov 7 at 5, 11; AE I)

1.d: \$5,911 judgment owed to a credit union. Applicant has been paying this judgment. The balance is down to \$392.64. (Tr. 41, 58; Gov 3 at 3-4; Gov 4 at 3; Gov 5 at 3; Gov 6 at 3; Gov 7 at 5; AE J at 2)

1.e: \$29,611 charged off account owed to a military credit union. Applicant testified that he pays between \$100 to \$200 a month towards this account. After the hearing, he provided a statement from the law office collecting on the account that he been paying \$100 a month towards this debt per the arrangement made with their office. It is not clear how long he has been making payments towards this account. (Tr. 41; Gov 2 at 3; Gov 3 at 4; Gov 4 at 3; Gov 6 at 3; Gov 7 at 9; AE E)

1.f: \$15,006 charged off account owed to a military credit union. Applicant claims that he has been paying \$100 to \$200 a month towards this debt. After the hearing, he provided a statement from the law office collecting on the account that he been paying \$200 a month towards this debt and is current on his scheduled monthly payments. It is not clear how long he has been making payments towards this account. (Tr. 41; Gov 2 at 3; Gov 3 at 4; Gov 4 at 2; Gov 5 at 2; Gov 6 at 1; Gov 7 at 11; AE F)

Applicant's annual salary for his full-time job is \$80,000. He receives \$8,340 annually from his military retirement check. The annual income generated from his medical billing business is approximately \$20,400. His wife receives approximately \$12,000 annually in disability payments. He receives \$3,900 annually in disability payments. Their joint annual income is \$124,640. His and his wife's total monthly income is \$7,650. Their monthly expenses and debt payments total \$4,786. After expenses and debt payments, he and his wife have approximately \$2,864 left over each month. (AE A) Applicant has paid off other debts that were not alleged in the SOR. (AE K at 2)

Applicant provided several references from co-workers, superiors, and two ministers. His deputy program manager states he has known Applicant for several years. He trusts him completely and believes he is a person with high integrity. He recommends he be granted his security clearance. (AE B) Applicant's landlord provided a letter stating Applicant has been an outstanding tenant for more than three years. (AE C and AE G) A business counselor with the Small Business Administration wrote that she has been working with Applicant since he started his medical business in April 2006. She notes his honesty, integrity, and persistence were evident in their many counseling sessions. (AE L.)

During his active service in the Marine Corps, Applicant served in Desert Storm, Okinawa, Korea, and Thailand. His military awards and decorations include a Letter of Appreciation (6), Meritorious Mast (5 Awards), Achievement (6 Awards), Sea Service Deployment Ribbon w/2 stars; Good Conduct Medal w/1 Bronze Star and 1 Silver Star, Kuwaiti Liberation Medal, Navy Achievement Medal w/1 Star; and Navy Commendation Medal w/1 Star. (Tr. 39; AE D)

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 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.

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

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 disqualifying conditions that could raise security concerns. I find AG ¶19(a) (an inability or unwillingness to satisfy debts) and AG ¶19(c) (a history of not meeting financial obligations) apply to Applicant’s case. Applicant has six delinquent accounts with a total approximate balance of \$82,584. Some of the debt resulted from his divorce from his first wife. Most of the debts were the result of his medical billing business which was not as successful as Applicant anticipated.

The Government’s substantial evidence and Applicant’s own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce

evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. 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) does not apply. While Applicant presented evidence that he is making payments towards the debts alleged in SOR ¶¶ 1.d, 1.e, and 1.f, he did not provide sufficient proof that he is making payments towards the debts alleged in SOR ¶¶ 1.a – 1.c. It cannot be determined from the record evidence whether Applicant has established a significant track record of timely debt repayments to mitigate doubts about his reliability and trustworthiness regarding his finances based on his significant debts.

AG ¶ 20(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) partially applies. Applicant incurred some debt when he divorced his first wife. However, his divorce occurred over 12 years ago. Most of the debt resulted when Applicant's medical billing business was not as successful as he anticipated. While there were some factors beyond Applicant's control which created his financial problems, for AG ¶ 20(b) to apply, it must also be determined that the individual acted responsibly under the circumstances. It appears Applicant has the money to resolve his delinquent accounts. However, the record is unclear as to whether Applicant has a track record of making payments towards all of his delinquent accounts. I cannot conclude that Applicant has acted responsibly under the circumstances. AG ¶ 20(b) only partially applies.

AG ¶ 20(c) (the person has received counseling for the problem and/or there are clear indications that the problem is being resolved or is under control) potentially applies. Applicant received some counseling with an employee from the Small Business Administration regarding his medical billing business. However there is no evidence that he formally sought out counseling regarding his personal finances. While he is making some payments towards some of his delinquent accounts, it is unlikely that his financial situation will be resolved in the near future, considering the large amount of the delinquent debts. AG ¶ 20(c) does not apply.

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies with respect to the debts alleged in SOR ¶¶ 1.d, 1.e, and 1.f. However, Applicant did not provide sufficient evidence to verify that he is making timely payments towards the delinquent debts alleged in SOR ¶¶ 1.a, 1.b, 1.c, which account for approximately \$32,056 of the delinquent debt. Applicant did not provide sufficient evidence to mitigate the concerns raised under Guideline F.

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 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 considered Applicant's 22 years of honorable active duty service in the United States Marine Corps as well as his favorable references. Applicant's financial problems were partially caused by his first divorce. However, most of his financial problems were caused by Applicant's attempt to start a business which did not prove to be as successful as anticipated. Applicant has been employed continuously since January 2008. He has earned a good income since December 2009. During the hearing, Applicant testified that he was paying on all of the debts but provided no documentation verifying his assertions. He was advised that he needed to provide documentation corroborating that his debts were being paid after the hearing. The record was initially held open two weeks to allow Applicant the opportunity to submit documentation. An extension was granted for an additional two weeks. While Applicant provided some documentation, it is insufficient to verify Applicant has been making payments towards all of his delinquent accounts. Questions remain about Applicant's financial situation. I find Applicant did not meet his ultimate burden of persuasion to obtain a favorable clearance decision.

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 – 1.c:	Against Applicant
Subparagraphs 1.d - 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.

ERIN C. HOGAN
Administrative Judge