



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



In the matter of:)
)
) ISCR Case No. 09-00384
)
)
Applicant for Security Clearance)

Appearances

For Government: Allison O’Connell, Esq. Department Counsel
For Applicant: *Pro Se*

August 18, 2009

Decision

HEINY, Claude R., Administrative Judge:

Applicant owed approximately \$63,000 for nine unpaid obligations. Applicant failed to rebut or mitigate the government’s security concerns under financial considerations. Clearance is denied.

Statement of the Case

Applicant contests the Defense Department’s intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a

¹ 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 effective within the Department of Defense for SORs issued after September 1, 2006.

Statement of Reasons (SOR) on March 24, 2009, detailing security concerns under financial considerations.

On April 8, 2009, Applicant answered the SOR and elected to have the matter decided without a hearing. Department Counsel submitted the government's case in a File of Relevant Material (FORM), dated May 11, 2009. The FORM contained ten attachments. On May 18, 2009, Applicant received a copy of the FORM, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions.

Responses to the FORM are due 30 days after receipt of the FORM. Applicant's response was due on June 17, 2009. As of August 4, 2009, a response was not received. On August 7, 2009, I was assigned the case.

Findings of Fact

In Applicant's Answer to the SOR, he denied the factual allegations in SOR ¶ 1.i stating the claim against the insurance company had been filed for payment of a medical debt, but payment had yet to be received. He admitted the remaining factual allegations in SOR ¶¶ 1.a through 1.h. Applicant's admissions to the SOR allegations are incorporated herein as facts. After a thorough review of the record, pleadings, and exhibits, I make the following additional findings of fact:

Applicant is a 51-year-old individual working in a security position for a defense contractor since December 2007. He is seeking to obtain a security clearance. (Item 5)

From October 2003 to January 2006, Applicant owned a dry cleaning business. Applicant incurred a \$45,148 loan (SOR ¶ 1.b) to start and run this business. (Item 6) The business failed. Applicant asserts the bank was to liquidate the remaining materials and equipment from the business and he would pay half of the debt that remained. (Item 6) No documentation of the repayment agreement was provided. The cleaning business incurred a \$1,086 utility bill (SOR ¶ 1.g), which remains unpaid. (Item 7) The certified public accountant (CPA) used by the business has not been paid \$587 for services provided (SOR ¶ 1.h). Applicant owes the landlord² \$680 (SOR ¶ 1.c) related to the business.

Applicant, in his response to the SOR (Item 4), states that 90 % of his debt is related to his failed business. He asserts he had excellent credit before acquiring the business. In January 2009, in response to interrogatories (Item 7), Applicant stated he had talked with a financial coach and decided to file for chapter 7 bankruptcy protection.

On March 20, 2009, Applicant filed for Chapter 7 bankruptcy protection. (Item 10) Applicant listed total assets of approximately \$79,000 and total liabilities of

² This debt was listed in his March 2009 bankruptcy as owed to a hardware store. (Item 10)

approximately \$110,000. Applicant listed approximately \$70,600 in obligations, excluding his home mortgage. Those obligations include: a \$4,000 priority debt to the IRS (SOR ¶ 1.a); a \$680 debt (SOR ¶ 1.c); three credit card accounts totaling \$9,826 (SOR ¶ 1.d and ¶ 1.e); a \$52,681 debt (SOR ¶ 1.f); the \$1,086 utility bill (SOR ¶ 1.g); the \$587 CPA debt (SOR ¶ 1.h); and a \$264 medical bill (SOR ¶ 1.i). (Item 10) The only SOR debt not listed was the state tax lien (SOR ¶ 1.b). At the time of filing, Applicant's and his wife's net monthly take home pay was approximately \$3,300. (Item 10)

From the bankruptcy filing it does not appear Applicant was living beyond his means. In the filing, he listed as assets a 1997 Mercury Cougar as his vehicle and a \$70,000 home, on which approximately \$39,000 was owed. (Item 10)

In September 2006, the state entered a \$732 tax lien (SOR ¶ 1.b) for unpaid employee taxes related to Applicant's business. In a July 2008, personal subject interview, Applicant stated he was aware of the lien and was "currently working to pay off the debt." (Item 6) In January 2009, in response to written interrogatories, Applicant stated the debt had ballooned to approximately \$4,500, not further explained. He stated he would make an \$80 payment on January 25, 2009. (Item 7) No proof of payment was received. As of January 2009, the bank was still trying to sell the remaining equipment and supplies. (Item 7)

Applicant's January 2009 credit bureau report (CBR) lists a \$5,751 lien (SOR ¶ 1.a) and a \$732 lien (SOR ¶ 1.b). (Item 8) The \$732 lien is also listed in Applicant's March 2008 CBR. These are tax liens.

Applicant had two³ credit cards with the same creditor (SOR ¶ 1.d, \$3,036 and SOR ¶ 1.e, \$2,213) Applicant was 120 days past due on his personal credit card account (SOR ¶ 1.d, \$3,036). (Item 7) The credit card was used for daily purchases and travel expenses. Applicant disagreed with the amount owed. As of June 2008, Applicant was "trying to make payments to have the debt [brought] up to date." (Item 6) In January 2009, Applicant stated he had made a few payments on the debt (SOR ¶ 1.d, \$3,610), but was unable to continue. The second credit card (SOR ¶ 1.e, \$2,213) was a business credit card with the same creditor. (Item 7)

Following the business failure, Applicant was unemployed from January 2006 to February 2007. (Item 4) As of June 2008, Applicant asserted he was living within his means and meeting his financial obligations, other than the debts listed in the SOR. (Item 6) In January 2009, in response to written interrogatories, Applicant stated he was overwhelmed with stress and worry. He did not realize the importance of these matters and would provide the information requested. He stated he had learned much concerning debts and was a wiser person. This was not further explained. (Item 7)

³ The bankruptcy filing lists Applicant and his wife as owing three credit card accounts to this creditor. (Item 10)

A summary of the nine debts alleged in the SOR follows:

	Creditor	Amount	Current Status
a	Internal Revenue Service tax lien.	\$5,751	Included in Applicant's bankruptcy.
b	State tax lien amount.	\$4,500	Unpaid. Not Included in Applicant's March 2009 Chapter 7 bankruptcy.
c	This is either a defaulted lease account or a hardware store debt.	\$680	Included in Applicant's bankruptcy.
d	Credit card account.	\$3,036	Included in Applicant's bankruptcy.
e	Credit card account.	\$2,213	Included in Applicant's bankruptcy.
f	Default on a business loan.	\$45,186	Included in Applicant's bankruptcy.
g	Unpaid utility bill.	\$1,086	Included in Applicant's bankruptcy.
h	Unpaid CPA bill.	\$587	Included in Applicant's bankruptcy.
gi	Unpaid medical account.	\$264	Included in Applicant's bankruptcy.
	Total debt listed in SOR	\$63,303	

Policies

When evaluating an applicant's suitability for a security clearance, the 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 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. 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, 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

Revised Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances so as to meet his financial obligations.

Applicant owed a dry cleaning business which failed in January 2006. The business generated a state and federal tax lien, unpaid credit card debt, an unpaid CPA bill, an unpaid utility bill, and unpaid rent. The record evidence supports a conclusion that Applicant has a history of financial problems. Applicant had to resort to bankruptcy protection as to his business obligations. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Five financial considerations mitigating conditions under AG ¶¶ 20(a) – (e) are potentially applicable:

- (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; or
- (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.

Following the failure of the business, there is little evidence Applicant acted responsibly in trying to address his financial obligations. Applicant's dry cleaning business ended in January 2006. Applicant asserted he made some payments on this debt, but provided no documentation supporting his assertion. In March 2009, he filed

for bankruptcy protection. There is evidence the bankruptcy was filed, but no evidence the debts having been discharged.

The debts are recent and not infrequent. Some, but not all, of the SOR debts were included in Applicant's bankruptcy filing. Because Applicant chose to have this matter handled administratively, I am unable to evaluate his demeanor, appearance, or form a positive determination as to his truthfulness. Additionally, I am prevented from obtaining additional information in order to have a more complete picture concerning the facts and circumstances resulting in Applicant's financial problems and his bankruptcy filing.

From the record, I am unable to find Applicant's financial problems occurred under such circumstances that they are unlikely to recur and does not cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶ 20(a) does not apply.

Applicant's financial problems were contributed to by a failed business and a period of unemployment for more than one year following the failed business. Normally a business downturn and loss of employment are factors beyond a person's control. The record gives no indication why the unemployment occurred and I will not speculate as to its cause. However, it has been more than three and a half years since the business failed and Applicant has failed to document payment on any debt. Even the medical debt of \$264 (SOR ¶ 1.i) was not paid. Because Applicant has not acted responsibly under the circumstances, AG ¶ 20(b) does not apply.

There is no evidence Applicant has received financial counseling, nor is there clear indication the problem is being resolved. There is evidence of a bankruptcy filing, but no evidence the debts have been discharged. Applicant asserts he is living within his means and meeting his financial obligations. He also stated he had learned much concerning debts and is a wiser person. Having been unable to evaluate Applicant's demeanor, appearance, or form a positive determination as to his truthfulness, I am unable to find Applicant was sincere, open, and honest in his statements. AG ¶ 20(c) does not apply.

For AG ¶ 20(d) to apply there must be an "ability" to repay the debts, the "desire" to repay, and evidence of a good-faith effort to repay. A systematic, concrete method of handling his debts is needed, but is not present here. The majority of the SOR debts may be discharged in bankruptcy. The \$4,500 state tax lien was not included in that bankruptcy and remains unpaid. The record fails to establish a good-faith effort to repay the debts. AG ¶ 20(d) 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 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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The majority of the debts relate to a failed business. A bankruptcy has been filed, but there is no indication that the debts have been discharged. His bankruptcy filing indicates he has a modest home and an older car. He does not appear to be living beyond his means. I am limited in my findings as to credibility and honesty because Applicant chose to have this matter handled administratively.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his failure to meet his financial obligations.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a security clearance. The awarding of a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under the Applicant's current circumstances, a clearance is not recommended. Should the Applicant be afforded an opportunity to reapply for a security clearance in the future, having paid the delinquent obligations, established compliance with a repayment plan, established they were discharged in bankruptcy, or otherwise adequately addressed the obligations, he may well demonstrate persuasive evidence of his security worthiness. However, a clearance at this time is not warranted.

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: AGAINST APPLICANT

Subparagraph 1.a—1.i: 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

CLAUDE R. HEINY II
Administrative Judge