



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 09-00622
)	
Applicant for Security Clearance)	

Appearances

For Government: Francisco Mendez, Esq., Department Counsel
For Applicant: *Pro se*

July 12, 2010

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated Financial Considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On December 4, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F, Financial Considerations. The action was taken under Executive Order (EO) 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).

Applicant answered the SOR on January 26, 2010, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on March 12, 2010, and reassigned to me on March 23, 2010. DOHA issued a notice of hearing on March 18, 2010, and the hearing was convened as scheduled on April 26,

2010. The Government offered Exhibits (GE) 1 through 5. GE 1 and 2 were admitted without objection. Applicant objected to the three credit reports offered as GE 3 to 5 on the basis that the reports were out of date. The objection was overruled, and GE 3 to 5 were admitted. Applicant testified on his own behalf and submitted Exhibits (AE) A through F, which were admitted without objection. The record was held open for Applicant to submit additional information. Applicant submitted documents, which were marked AE G through R and admitted without objection. Department Counsel's memorandum is marked Hearing Exhibit (HE) I. DOHA received the transcript of the hearing (Tr.) on May 3, 2010.

Findings of Fact

Applicant is a 39-year-old employee of a defense contractor. He is applying for a security clearance. He is a law school graduate with a Juris Doctor degree. He married in 1997 and separated in 2002. His wife passed away in December 2007. He has a nine-year-old child.¹

The SOR alleges eight delinquent debts as listed on credit reports obtained in 2008 and 2009. Four of the debts were medical accounts in the amounts of \$658, \$410, \$1,978, and \$605. There were two student loan accounts in default for \$71,000 and \$53,000. There was an unpaid judgment of \$3,831 for a student loan. Finally, the SOR alleged Applicant owed \$47,000 for unpaid child support.²

Applicant graduated college in 1994 and law school in 1997. He funded his education with student loans. He has not passed any state bar and is not a practicing attorney. He had periods of unemployment and underemployment. Applicant defaulted on the student loans. He testified that he started rehabilitating his loans in 2008. He entered into a loan rehabilitation program with the U.S. Department of Education in May 2009. The program consolidated eight loans, including those alleged in SOR ¶¶ 1.b and 1.c. The balance of those eight student loans at that time was \$168,982. The rehabilitation program called for him to make at least nine monthly payments of \$1,070 to bring the loans out of default.³

The Department of Education notified Applicant in December 2009 that he had rehabilitated his defaulted student loans. He submitted a statement from December 27, 2009, which showed the balance of six student loans at \$10,177. These loans appear to be the six loans that were included in his rehabilitation program along with the loans

¹ Tr. at 28-29, 39, 46-47, 110; GE 1, 2.

² GE 3-5.

³ Tr. at 23-27, 38-39, 69-78, 82-89; GE 1, 2; AE H, K, L, P. Any debts that were not specifically alleged in the SOR will not be used for disqualification purposes. They will be used in assessing Applicant's overall financial situation, in the application of mitigating conditions, and in analyzing the "whole person."

alleged in SOR ¶¶ 1.b and 1.c. The repayment obligation called for Applicant to pay those loans by 115 monthly payments of \$117, starting in January 2010.⁴

Applicant submitted another statement dated December 27, 2009. This statement notified Applicant that the “forbearance (temporary suspension or extension of payment)” on his loan(s) expired on December 21, 2009. The balance was \$114,521. The document called for Applicant to pay that amount though 147 monthly payments of \$1,070, starting in January 2010. It is not completely clear if this refers to one or both of the student loans alleged in the SOR, or is another student loan.⁵

Applicant submitted a third statement dated January 10, 2010, stating that he was approved for an Income Contingent Repayment (ICR) plan in which he would only pay the interest that accrues on his loan each month. The first interest payment of \$405 was due in January 2010. The document does not specify what student loans it includes. Applicant testified that he believed the interest rate on his loans was 8%. That is the interest rate for the six student loans that add up to \$10,177. The interest rate for the two student loans alleged in the SOR is not included in any of the documents. Applicant testified he requested the ICR because his payments of \$1,070 caused a real “hit” to his savings, and he wanted to have some security for his child. He stated that the monthly payments will increase as his income and ability to pay the loans increase.⁶

Applicant admitted that he had not paid the \$3,831 judgment for a student loan. He stated he spoke with the plaintiff’s attorney the week before the hearing. The attorney told him the balance due on the judgment was about \$8,000. Applicant made an offer of \$5,000 to settle the judgment. The attorney indicated he would forward the offer to his client. Applicant had not heard back from the attorney as of the date of the hearing. No additional information on the judgment was submitted post-hearing.⁷

Applicant’s wife was sick for a number of years before she passed away. She had a growth on her brain similar to a tumor. She had numerous surgeries. It eventually started affecting her cognitive functions.⁸

Applicant petitioned for divorce in state A where he was living. His wife was living in state B at the time. His wife obtained a judgment in state A against him in August 2005, requiring him to pay \$655 per month in child support. The child support order was retroactive to January 2003. Applicant stated that he was paying child support before the court order, but his wife made false statements to the court in order to obtain the court-ordered arrearages. He stated the court ordered him to pay arrearages of about \$25,000. The court ordered all payments to be sent to state A. State A would forward

⁴ AE B, J, L.

⁵ AE I.

⁶ Tr. at 23-27; AE J, O.

⁷ Tr. at 37-38, 89-91; GE 2; AE E.

⁸ Tr. at 31, 34-35, 58; GE 2.

the payments to state B, where his wife was living, for disbursement to her. Applicant testified that he made the required child support payments through garnishment of his wages for about a year until he changed jobs. He stated that he paid state A for several months, and then his wife requested that he pay her directly. At that time, he did not live far away from his wife. She told him there was a time lag from him sending the money to state A, which sent it to state B, before it was forwarded to her. Applicant stated he felt sorry for his wife because of her medical condition. He stated that it was obvious that she was dying and he felt that he could not deny her request under those circumstances. He stated that he had no proof that he paid her because he paid her in cash.⁹

Applicant received custody of his child upon the death of his wife. Any child support arrearages he paid would likely be forwarded to the custodian of his child, which is Applicant. He stated that he contacted state A and was told that he was “not in arrearage to [state A],” and the balance on his account was zero. Applicant submitted an Equifax credit report obtained on March 17, 2010. That credit report continues to list the child support debt, and it has grown to \$51,436. The address of the child support agency listing the debt is not in state A. The address is in state B, where Applicant’s wife lived until she passed away. State A has no open case against Applicant for unpaid child support. Applicant did not submit any evidence as to the status of the account in state B.¹⁰

Applicant submitted documented proof that he paid the \$658 medical debt alleged in SOR ¶ 1.a on April 22, 2010. He also paid another \$402 medical debt on the same day.¹¹

Applicant disputed owing the medical debts alleged in SOR ¶¶ 1.f, 1.g, and 1.h. The debts are listed on the Equifax credit report obtained on January 13, 2009. They are not listed on the Equifax credit reports obtained on October 2, 2009 and March 17, 2010.¹²

Applicant has not received financial counseling. He stated his current financial situation is stable. He has an annual base salary of \$70,000, with an annual bonus of up to \$5,000. His child receives annual Social Security death benefits of about \$20,000.¹³

⁹ Tr. at 27-37, 47-69; GE 2; AE R.

¹⁰ Tr. at 27-37, 47-69; GE 2; AE C, D, F.

¹¹ Tr. at 22-23; AE A.

¹² Tr. at 39-43; GE 4, 5; AE F.

¹³ Tr. at 44-46, 78-79, 93, 106; GE 2.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the guidelines 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 the applicant or proven by Department Counsel." The applicant 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.

Section 7 of EO 10865 provides that adverse 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 for Financial Considerations is set out in AG ¶ 18, as follows:

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. Two are potentially applicable in this case:

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

Applicant accumulated delinquent debts and was unable or unwilling to pay his obligations for a period. The evidence is sufficient to raise the above disqualifying conditions.

SOR ¶ 1.i alleges that "[Applicant's] personal financial statement has a negative net remainder." The evidence did not support that allegation. SOR ¶ 1.i is concluded for Applicant.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 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; 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 still owes more than \$170,000 in student loans and a judgment. He has not established that his child support arrearages have been resolved. His financial issues are current and ongoing. AG ¶ 20(a) is not applicable.

Applicant's financial difficulties were partly caused by his periods of unemployment and underemployment. These qualify as conditions that were outside her control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant rehabilitated his student loans, but the amount he still owes is so large that he is only paying interest on the loan. The principal will remain, or more likely, continue to grow. He has unresolved child support issues. He did not submit sufficient information for a finding that he acted responsibly under the circumstances. AG ¶ 20(b) is partially applicable.

Applicant paid two medical debts. One of the debts was not alleged in the SOR. AG ¶ 20(d) is applicable to the debt alleged in SOR ¶ 1.a. When considering the total amount owed on his student loans, his payments to date are insufficient to support a finding that he has made a good-faith effort to pay or otherwise resolve those debts. AG ¶ 20(d) is not applicable to his remaining debts. Applicant has not received financial counseling, and he has not established clear indications that the problem is being resolved or is under control. AG ¶ 20(c) is not applicable.

Applicant disputed owing the medical debts alleged in SOR ¶¶ 1.f, 1.g, and 1.h. The debts have been deleted from his credit report. AG ¶ 20(e) is applicable to those debts.

Applicant was in arrears for more than \$40,000 in child support when his wife passed away in 2007. He testified that state A is no longer looking to him for the arrearages because he has custody of his child. The child support debt continues to be listed by state B on his credit report with a higher balance. AG ¶ 20(e) is not applicable to that debt. The Appeal Board has stated that "even if a delinquent debt is legally unenforceable under state law, the federal government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy the debt in a timely manner."¹⁴ Even if states A and B are no longer enforcing this debt, it continues to cast doubt on Applicant's current reliability, trustworthiness, and good judgment.

¹⁴ ISCR Case No. 07-09966 at 2-3 (App. Bd. Jun. 25, 2008).

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. 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 funded his education using student loans. He graduated law school, but has not passed a bar. He was left with a substantial amount of student loans without the income to pay them. He is now gainfully employed and has rehabilitated his student loans, but he is currently only paying interest on the loans. He stated that his wife lied to the court in order to obtain about \$25,000 in arrearages on child support. His wages were garnished for a period, and then he was required to pay through the state. He testified that despite her previous actions, he agreed to pay her child support in cash rather than go through the state. At best, Applicant's actions were foolish. I have significant unresolved concerns about Applicant's finances and judgment.

Overall, 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 has not mitigated Financial Considerations security concerns.

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-1.e: Against Applicant
Subparagraphs 1.f-1.i: 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.

Edward W. Loughran
Administrative Judge