



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 09-00955
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline H. Jeffreys, Esq., Department Counsel
For Applicant: *Pro se*

November 30, 2010

Decision

MASON, Paul J., Administrative Judge:

The Statement of Reasons (SOR) lists four delinquent debts totaling \$49,827. Applicant claimed that he started paying \$1,100 a month in February 2008 into a debt consolidation plan to satisfy the delinquent accounts identified in ¶¶ 1.a, 1.b, and 1.d, of the SOR. However, because he lost his job, he was no longer enrolled in the plan. Without any evidence of payments under the debt plan, e.g., cancelled checks, checking account statements, or evidence of a debt plan, Applicant has not met his burden of showing that he qualifies for a security clearance. Eligibility for access to classified information is denied.

Statement of the Case

Applicant signed and certified his Security Clearance Application (SCA, Item 5) on November 18, 2008. He was interviewed by an investigator from the Office of Personnel Management (OPM) on November 25, 2008. This interview appears in his Interrogatory Answers provided to the Government on March 19, 2010. In his interrogatory answers submitted to the Government, Applicant agreed with the

investigator's summary of his November 2008 interview, and that it could be used in a security clearance hearing to determine his security suitability. On June 9, 2010, DOHA issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (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).

Applicant furnished his answer to the SOR on June 18, 2010. A copy of the Government's File of Relevant Material (FORM, the Government's evidence in support of the allegations of the SOR) was sent to Applicant on August 2, 2010. He received the FORM on August 11, 2010. In an attachment to the FORM, Applicant was advised he could object to the information in the FORM or submit additional information in explanation or extenuation. His response was due on September 9, 2010. No response was received. The case was assigned to me on October 25, 2010.

Findings of Fact

The SOR contains four allegations under financial considerations (Guideline F). The underlying accounts represent one loan, two credit cards, and security system maintenance costs. Applicant admitted all allegations.

Applicant is 50 years old. He married in June 2001, and divorced in November 2006. He entered the United States Army in 1980, and was honorably discharged in February 2000. He seeks a security clearance.

Information for the four delinquent debts listed in the SOR appears in Item 6 (Interrogatory Answers, dated March 19, 2010), Item 7 (Interrogatory Answers, dated August 29, 2009), Item 8 (Interrogatory Answers, August 16, 2009), Item 9 (Credit Bureau Report, April 2, 2010), Item 10 (Credit Bureau Report, April 24, 2009), and Item 11 (Credit Bureau Report, November 18, 2008). The delinquent accounts shall be discussed in the order they are listed in the SOR.

SOR 1.a, \$16,566, credit union loan. The loan became delinquent in January 2009. Applicant claimed the delinquent account was placed with two other debts into a debt consolidation plan that he joined in February 2008. (Item 8)¹ In August 2009, Applicant indicated he made his most recent payment leaving a balance of about \$13,000. No documentation was provided to support Applicant's claims of payments independent of or through the debt plan.

¹ It is also unclear from the record when and how many payments Applicant made to this creditor independent of those payments he made into the debt consolidation plan. It is not clear from the record exactly which creditors were in the debt plan.

SOR 1.b, \$25,037, credit card. The account became delinquent in February 2009. Applicant indicated he also placed this account in a debt consolidation plan that was discontinued when he lost his employment.² He estimated his last payment on the debt into the debt plan was October 2008. (Item 8)

SOR 1.c, \$707, home security system. This account became delinquent in May 2008. According to Applicant, he opened the account in September 2004. He and his wife used the service until their divorce in August 2006. In the divorce, she was awarded the house and the costs to maintain the house. Applicant cancelled the service at some time in 2008 after he lost his employment, and even though the SCA does not show he was unemployed. He did not have plans to pay the debt because it was his former wife's responsibility. (Item 6)

SOR 1.d, \$6,977, credit card. The account became delinquent in May 2006. Applicant recalled making a \$120 payment to the creditor in September 2007, but supplied no documentation verifying proof of payment. Applicant also indicated this debt was in the debt plan that he joined in February 2008. (Item 6, Item 7) He estimated his last payment on this debt was also in October 2008.

Character Evidence

Applicant joined the United States Army in February 1980. He obtained an honorable discharge from the service in February 2000. During his service, he received six military awards for his performance. He furnished no other character evidence from his work or his community.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. Each guideline lists potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

The administrative judge's ultimate goal is to reach a fair and impartial decision that is based on sound and prudent judgment. The decision should also include a careful, thorough evaluation of a number of variables known as the "whole-person concept" that brings together all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. I have avoided drawing inferences grounded on mere speculation or conjecture. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or

² Item 5 (SCA) reflects Applicant has had uninterrupted employment from 2001 to the present. Under Section 11 of Item 5, Applicant's employment is as follows: (1) a co-owner of a dental care business from October 2001 to July 2005; (2) an analyst from July 2005 to November 2006; (3) an insurance consultant from December 2006 to December 2007; (4) an instructor from January 2008 to September 008; and, (4) a consultant from October 2008 to the present. (*Id.*, at 3)

inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to the potential, rather than actual, risk of compromise of classified information.

Under Directive ¶ E3.I.14., the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.I.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.

Analysis

Financial Considerations

The security concern for financial considerations is set forth 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

The Government has the responsibility of presenting sufficient information to support all allegations of the SOR. Based on the credit reports (showing the delinquent debts listed in the SOR), Applicant's interrogatory responses (including his November 25, 2008 interview), and his answers to the SOR, the Government has presented sufficient information to establish all the allegations in the SOR. AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c) (*a history of not meeting financial obligations*) apply. AG ¶ 19(a) applies based on Applicant inability to pay the delinquent accounts totaling approximately \$48,800. The credit bureau reports establish that AG ¶ 19(c) applies because Applicant let four accounts fall delinquent between May 2006 and February 2009.

Four mitigating conditions are potentially applicable. No mitigation is available 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 reliability, trustworthiness, and good judgment*). The four listed debts became delinquent between May 2006 and February 2009. The amount of delinquent debt and the lack of documented action to address the debt forecasts the probability the financial delinquencies will persist in the foreseeable future. The likelihood of financial

problems in the future without a strategy to eliminate the debt continues to cast a pall over Appellant's reliability and judgment.

AG ¶ 20(b) (*the conditions that resulted in the financial problem were largely beyond the person's control and the individual acted responsibly under the circumstances*). Based on the information Applicant provided about the loss of his job, this unanticipated event would weigh in his favor under AG ¶ 20(b) to explain why he could not continue to pay his delinquent debts. However, his SCA shows he has been employed consistently since 2001. Without more information, his unemployment claim is not a credible reason for not paying the listed delinquent accounts.

Applicant should receive credit for joining a debt consolidation plan to demonstrate he acted responsibly after becoming unemployed. However, the credibility of his debt consolidation claim is substantially diminished by the lack of documentation of the plan's existence and of payments under the plan. The passage of time from the end of 2008 (after he claims he made his most recent payments to three of the listed creditors) to June 9, 2010 (issuance of the SOR), without documented action to address his delinquent accounts, results in no mitigation for Applicant under AG ¶ 20(b).

AG ¶ 20(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*) does not apply. The record does not indicate Applicant had financial counseling. His enrollment in a debt plan in February 2008 indicates that he was concerned about his delinquent debts, and initially took responsible action to pay the accounts in an organized manner. However, he furnished no evidence showing he paid into the plan or that he paid any of the debts independent of the plan. Since there is no indication of counseling or that the delinquent debts are under control, AG ¶ 20(c) does not apply.

Applicant receives no mitigation under AG ¶ 20(d), (*a good-faith effort to repay overdue creditors or otherwise resolve debts*) because there is no documentation confirming payments under the plan. After weighing and balancing the disqualifying evidence against the mitigating evidence under the financial guideline, Applicant has not presented sufficient favorable evidence to receive access to a security clearance.

Whole-Person Concept

I have examined the evidence under the disqualifying and mitigating conditions in my ultimate finding against Applicant under the financial considerations guideline. I have also weighed the circumstances within the context of nine variables known as the whole-person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors listed in 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 the participation was 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.

Applicant is 50 years old. He had a successful 20-year career in the United States Army. He received six prestigious awards for laudable military service in the field of information technology.

The credit bureau reports indicate that Applicant began having financial problems in May 2006 when the first listed debt became delinquent. After his divorce in September 2006, three additional debts became delinquent by February 2009. To substantiate his enrollment in the debt plan and/or payments to the plan, Applicant could have provided documentation. For some reason, he decided not to, even though he had a chance to explain his positions after he received the FORM. Since the end of 2008, Applicant could have tried another strategy, including a Chapter 7 bankruptcy, to eliminate his debts. He could have tried a Chapter 13 bankruptcy to bring his delinquent debts under control. Instead, the record shows the only action taken was to cancel the security system contract. Without a plan to address the debts, the chances are that Applicant's current financial problems will continue in the future. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9). The financial guideline is resolved 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
Subparagraph 1.a through 1.d	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Paul J. Mason
Administrative Judge