



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



In the matter of:)
)
-----) ISCR Case No. 09-01094
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: *Pro se*

September 21, 2009

Decision

CURRY, Marc E., Administrative Judge:

Applicant fell behind on his debt payments in 2006. By early 2007, he had accrued approximately \$45,000 of delinquent debt. In September 2007, he filed for Chapter 13 bankruptcy protection. Since then, he has satisfied nearly half of the SOR delinquencies through the plan in steady, monthly payments. Applicant has mitigated the financial considerations security concern. Clearance is granted.

On April 1, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing 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 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.

Applicant answered the SOR on April 29, 2009, admitted all of the allegations, and requested a hearing. The case was assigned to me on May 27, 2009. On June 11, 2009, a notice of hearing was issued scheduling the case for July 7, 2009. The hearing was conducted as scheduled. I received seven government exhibits, one Applicant exhibit, and Applicant's testimony. The transcript was received on July 15, 2009.

Preliminary Ruling

SOR subparagraph 1.i, alleges as follows:

You are indebted to [home mortgage company] on an account that was placed for collection in the approximate amount of \$243,000.

At the hearing, Department Counsel moved to amend the allegation, as follows:

You are indebted to [home mortgage company] on an account in the approximate amount of \$243,000. As of March 10, 2009, a monthly mortgage payment of approximately \$2,086 was approximately 30 days past due, and had been referred for collection (Tr. 9).

Applicant did not object to the proposed amendment, and I granted the motion.

Findings of Fact

Applicant is a 43-year-old single man who lives with his elderly mother. He earned a bachelor of science degree in engineering technology in 1989 (Tr. 16). For the past nine years, he has worked for a defense contractor as the lead material engineer for an aircraft carrier (Tr. 28). His job duties include designing and overseeing the installation of high-efficiency lighting fixtures on aircraft carriers (Tr. 17).

In the mid-2000s, Applicant decided to finance extensive home renovations. Also, he spent between ten and twelve thousand dollars on new furniture, (Tr. 52). In 2006, he purchased several more "big-ticket" items including a car, a flat screen television, and some jewelry (Tr. 37, 61).

Applicant gradually became financially overextended. He then began using payday loans to satisfy his debts (Tr. 42). Each time his finances "came up short," he obtained another payday loan (*Id.*). Also, he refinanced his home multiple times, cashing out the equity to supplement his income (Tr. 62). Each time he refinanced, the mortgage's interest rate increased (Tr. 59). By 2009, the interest rate had increased to 10.3 per cent (Tr. 45, 67).

By early 2007, Applicant had accrued approximately \$45,000 of delinquent debt, as listed in the SOR (*see generally*, Answer). In May 2007, Applicant filed for Chapter 13 bankruptcy protection (Answer at 1). The court dismissed the case in July 2007 after Applicant failed to make a payment on time (Exhibit 3 at 7).

Applicant re-filed the Chapter 13 bankruptcy petition in September 2007 (*Id.* at 24; Tr. 57). The bankruptcy petition included all of the SOR debts. Under the new Chapter 13 plan, Applicant was to pay approximately \$70,000, including the SOR debts, other debts not listed in the SOR, and miscellaneous fees (*Id.* at 37-45). Between September 2007 and April 2008, Applicant paid \$9,500 into the plan through regular, monthly payments (*Id.* at 46).

On March 26, 2008, Applicant filed a motion to modify the bankruptcy petition to enable him to pay automatically through monthly wage garnishments (*Id.* at 28). The court granted the motion. Since then, he has paid \$1,692 per month through wage garnishments under the plan, and any income tax refunds have been applied to the plan (*Id.* at 46; Exhibit A). Also, he has made approximately \$3,000 of periodic payments in addition to the wage garnishment payments (*Id.*). By the hearing date, he had paid, approximately \$31,500 into the Chapter 13 bankruptcy plan.

As part of the bankruptcy process, the court required Applicant to attend a financial counseling session in mid-2007 (Tr. 43, 55). He learned how to organize a budget, and to develop strategies to control his spending (Tr. 43).

At some point during the past two years, Applicant missed a property tax payment (Tr. 63-64). At or about that time, the state where Applicant resides, increased the property tax rate (Tr. 63). Before this time, Applicant had been paying his property taxes separately from his mortgage. After Applicant missed the property tax payment, the mortgagor increased the escrow portion of Applicant's monthly mortgage payments to include property taxes (*Id.*; Exhibit 3 at 4). Applicant was unable to afford the increased mortgage payment. By March 2009, his mortgage payments became delinquent (Exhibit 3 at 15).

In May 2009, Applicant retained an attorney to negotiate a loan modification (Tr. 47). Through his attorney, Applicant is working to consolidate the delinquent amount into the amount due under the modified loan (Tr. 65). His attorney has notified the mortgage company that Applicant will not be making any additional mortgage payments until the loan modification is completed (Tr. 63, 67).

Applicant earns \$62,000 annually (Tr. 44). He has no credit cards (Tr. 50). To supplement his income, Applicant obtained a part-time job in 2007 (Tr. 29; 67). Also, he earns additional income as a blood plasma donor (Tr. 67). He has altered his lifestyle, spending less on entertainment. He has approximately \$200 of after-expense monthly income (Tr. 50).

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 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. 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."

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.

Analysis

Guideline F, Financial Considerations

Under this guideline, "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" (AG ¶ 18). Applicant's history of financial problems triggers the application of AG ¶¶ 19(a), "inability or unwillingness to satisfy debts," and 19(c), "a history of not meeting financial obligations."

Applicant readily acknowledges that irresponsible spending caused his financial delinquencies. Further, he is still satisfying his delinquencies through the Chapter 13 bankruptcy process. Neither AG ¶¶ 20(a), "the behavior happened so long ago, was so infrequent, or occurred under such circumstance that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment," nor 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," apply.

Applicant has been satisfying his delinquencies with substantial monthly payments through the bankruptcy process for two years. He has paid approximately \$31,500 into the plan, nearly half the amount due. In the past 18 months, he has made

approximately \$3,000 of payments in excess of the payments required under the garnishment. He has internalized the lessons learned from the court's mandatory financial counseling session, budgeting his money, altering his lifestyle, and obtaining a part-time job to supplement his income.

Applicant's accrual of a mortgage delinquency while the Chapter 13 bankruptcy payment plan is still ongoing raises a concern as to whether he has truly rehabilitated his finances. This concern is outweighed by the amount of time Applicant has been satisfying his debts through the Chapter 13 plan, the amount of debt paid through the plan, the efforts Applicant has taken to supplement his income, and the steps Applicant has taken to resolve the mortgage delinquency. 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," and 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," 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.

Applicant accrued substantial debt purchasing luxury items such as flat-screen televisions and furniture. As his debt became unmanageable, he compounded the problem by obtaining payday loans. The nature, extent, and seriousness of the conduct is significant.

The nature, extent, and seriousness of the conduct is outweighed by the presence of rehabilitation, however. Applicant filed for Chapter 13 bankruptcy protection and has paid \$31,500 into the bankruptcy plan through consistent monthly payments for two years. Applicant's current, delinquent mortgage status does not alter this conclusion. He has confronted his debts aggressively through the Chapter 13 process, paying \$3,000 more than the plan's scheduled payments. Moreover, the mortgage delinquency was caused in part by an increase in the escrow portion of the mortgage generated by a state property tax increase. Also, the mortgage delinquency has remained outstanding at Applicant's attorney's instruction while loan modification

negotiations are pending. Once the modification is finalized, Applicant's delinquency will be consolidated into the amount due under the modified loan.

Applicant has made permanent behavioral changes, cutting back on entertainment expenses and foregoing credit cards. He has obtained a part-time job to supplement his income. Upon considering the relevant disqualifying and mitigating conditions in light of the whole person concept, I conclude the likelihood of continuation or recurrence of Applicant's financial problems is minimal. Applicant has mitigated the financial considerations security concern.

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:	For APPLICANT
Subparagraphs 1.a - 1.o:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

MARC E. CURRY
Administrative Judge