



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



In the matter of:)	
)	
)	ISCR Case No. 09-01175
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: Pro Se

February 17, 2010

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted a security clearance questionnaire (SF 86) on November 20, 2008. On June 30, 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.

On August 20, 2009, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on September 9, 2009. The case was assigned to me on September 16, 2009. On September 24, 2009, a Notice of Hearing was issued, scheduling the hearing for October 22, 2009. On October 20, 2009, Applicant requested additional time because he intended to retain counsel. His request was granted. On October 21, 2009, an amended Notice of Hearing was issued, scheduling the hearing for December 2, 2009. The hearing was held on that date. On November 20, 2009, Applicant requested a delay

until January 2010 because he still had not retained counsel. The request was denied because Applicant had over a month to retain counsel. During the hearing, the government offered five exhibits which were admitted as Government Exhibits (Gov) 1 – 5. Applicant testified and offered four exhibits which were marked as Applicant Exhibits A – D without objection. The record was held open until January 4, 2010, to allow Applicant to submit additional documents. He timely submitted a 29-page document that was admitted as AE E. Department Counsel’s response to AE E is marked as HE I. The transcript (Tr) was received on December 9, 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 denies all of the SOR allegations.

Applicant is a 51-year-old senior computer operator employed by a Department of Defense contractor seeking renewal of his security clearance. He has worked for his current employer since July 2009. He has worked at the same location for various different contractors for more than 22 years. He has held a SECRET security clearance since 1987 with no security violations. He has two years of college credit. He is single and has a 27-year-old daughter. (Tr at 6-8, 34; Gov 1.)

Applicant’s security clearance background investigation revealed that he has the following delinquent accounts: a \$15,147 federal tax lien entered in March 2007 (SOR ¶ 1.a: Gov 4 at 1; Gov 5 at 4); a \$2,712 federal tax lien entered in February 1996 (SOR ¶ 1.b: Gov 4 at 1; Gov 5 at 4); a \$26,140 federal tax lien entered in October 1994 (SOR ¶ 1.c: Gov 4 at 1; Gov 5 at 4); a \$6,247 department store credit card account that was charged off in July 2008 (SOR ¶ 1.d: Gov 4 at 2; Gov 5 at 7); a \$30,823 credit card account that was charged off in February 2007 (SOR ¶ 1.e: Gov 3 at 3; Gov 4 at 2; Gov 5 at 6); a \$9,204 credit card account charged off in April 2007 (SOR ¶ 1.f: Gov 4 at 2; Gov 5 at 6); and a \$12,581 credit account charged off in June 2008 (SOR ¶ 1.g: Gov 4 at 2; Gov 5 at 5).

Additional delinquent accounts include: a \$103 telephone account that was charged off in January 2006 (SOR ¶ 1.h: Gov 4 at 2; Gov 5 at 8); a \$480 electric utility account that was delinquent as of May 11, 2009 (SOR ¶ 1.i: Gov 3 at 4); \$100 hospital bill that was delinquent as of May 11, 2009 (SOR ¶ 1.j: Gov 3 at 4); a \$81 gas bill that was delinquent as of May 11, 2009 (SOR ¶ 1.k: Gov 3 at 4); a \$200 doctor bill that was delinquent as of May 11, 2009 (SOR ¶ 1.l: Gov 3 at 4); and a \$387.44 monthly car loan payment that was delinquent as of May 11, 2009 (SOR ¶ 1.m: Gov 3 at 4).

In his response to the SOR, dated August 20, 2009, Applicant blames his financial problems on “sinisterly unfair” child support payments, poor health, and the Internal Revenue Service’s (IRS) garnishment of his wages at an inopportune time. Applicant claims that between 1993 to 2003, between 45% to 48% of his take-home pay went towards child support payments (i.e. \$1,000 per month). In addition, he served as

his mother's primary caretaker for 12 years before she passed away in 2006. In 2007, the IRS garnished his paycheck. Applicant's wages were garnished \$1,900 a month over a six-month period. Applicant claims that he was then unable to pay other expenses. His health suffered and he could not work. (Tr at 18-26, 39; AE A; AE B; Response to SOR)

Applicant claims he did not pay his federal tax debts because he had no money to pay the tax debts. He denied that he owed the three federal tax liens alleged in SOR ¶¶ 1.a – 1.c because the IRS considers them uncollectable. The tax liens related to years that Applicant owed income taxes, some in the 1980s and 1990s. During the hearing, he admitted that he has not paid federal taxes owed for tax years 2008 and 2009. He intends to submit an offer in compromise to resolve the tax debts. He does not remember the last time he made a payment towards his federal tax debt other than garnishment. (Tr at 31, 36, 44-45; Response to SOR)

Applicant admits that the credit card debts alleged in SOR ¶¶ 1.d, 1.e, 1.f, and 1.g are his credit card accounts. He disputes the balances because of the excessive interest charges and fees. He indicates that the accounts are charged off and claims no collection agency has contacted him about collecting the debt. He recently sent a settlement offer to each credit card company but has not received a response. He consulted a bankruptcy attorney in October 2009, and intends to file for bankruptcy in the spring of 2010. (Tr at 30-32, 51-52; 57, 66-68; Gov 3; AE C; Response to SOR)

In response to interrogatories dated May 11, 2009, Applicant listed the following accounts as delinquent: an electric company utility account, hospital account, gas company account, dental bill, and a car loan. He testified that all of the accounts are current and provided proof after the hearing that the following accounts were current: electric company utility account (SOR ¶ 1.i: AE E at 24), hospital account (SOR ¶ 1.j: AE E at 20-21); gas company account (SOR ¶ 1.k: AE E at 25); dental bill (SOR ¶ 1.l: AE at 26), and a car loan (SOR ¶ 1.m: AE E at 22-23). SOR ¶¶ 1.i – 1.m are found for Applicant.

Applicant provided proof that he resolved the charged off telephone account that was alleged in SOR ¶ 1.h. (AE E at 27-29) SOR ¶ 1.h is found for Applicant.

Applicant has been continuously employed since 1987. He currently earns \$54,000 annually. His net monthly income is approximately \$3,000. His rent is \$760. Other monthly expenses include groceries \$400; clothes \$50; utilities \$160; car expenses \$850 (includes loan payment, insurance and repairs); medical expenses \$250 and miscellaneous \$120. Based on these figures, his total monthly expenses are \$2,590 which leaves him \$410 a month in discretionary income. His car loan will be paid this spring. (Tr at 42-43, 70-73; see Gov 3 at 5) He has approximately \$16,000 saved in individual retirement accounts. He owns no property or other assets. (Tr at 77-78)

Applicant recently sought the advice of several lawyers and individuals well versed in financial matters. They told him that he had no chance of paying back this

money and recommended bankruptcy. (Tr at 30) He attended financial counseling classes through his church but has not attended in several years. (Tr at 79-80)

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 when determining 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

Guideline F, Financial Considerations

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 Financial Considerations Disqualifying Condition (FC DC) ¶19(a) (an inability or unwillingness to satisfy debts); and FC DC ¶19(c), (a history of not meeting financial obligations) apply here. Applicant has had financial difficulties for several years. The SOR alleged 13 delinquent accounts, an approximate total balance of \$104,475. Of that amount, \$43,999 is for unresolved federal income tax debts, and \$59,125 is for charged off credit card accounts.

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. September 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Financial Considerations Mitigating Condition (FC MC) ¶ 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) is not applicable. Applicant has had financial problems for several years. While Applicant's accounts alleged in SOR ¶¶ 1.h through 1.m are resolved, the federal income tax issue remains unresolved as well as the \$59,125 in charged off credit card accounts. While Applicant intends to file bankruptcy, he has not filed yet. His federal income tax debts will more than likely not be discharged in bankruptcy. Applicant's past financial history and unresolved debts raise questions about his reliability, trustworthiness, and good judgment.

FC MC ¶ 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 served as his mother's caregiver for 12 years until she passed away in 2006. His health issues further complicated his financial situation. However, I cannot conclude he has acted responsibly under the circumstances given the amount of his indebtedness. He attributes much of his financial problems to excessive child support payments, but he has not been required to pay child support for more than seven years. A simple change of his exemptions on his W-2 form could have lessened the amount of taxes he owed at the end of each tax year. The amount of his credit card debt indicates an individual who has acted irresponsibly. While there are mitigating conditions in Applicant's case, they do not explain why he has been unable to pay his federal tax debt and do not explain the excessive charges that Applicant made on his credit card accounts.

FC MC ¶ 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. While Applicant attended financial counseling through his church a few years ago, he did not follow through with the class. He is in the process of filing for bankruptcy, which may result in the bankruptcy court discharging the \$59,125 charged off credit card accounts, but the bankruptcy court is unlikely to discharge the \$43,000 in unresolved federal income tax debts because tax debts are not dischargeable debts in bankruptcy except in rare circumstances. His tax debt is likely higher because Applicant admits he owes federal income taxes for tax years 2008 and 2009. Applicant's financial problems are unlikely to be resolved in the near future.

FC MC ¶ 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.h – 1.m. He is in the early stages of preparation for filing for bankruptcy, which may resolve the debts alleged in SOR ¶¶ 1.d – 1.g. However, it is premature to conclude that the debts will be discharged because Applicant has not filed for bankruptcy yet. Even if his debts were discharged in bankruptcy, questions remain as to whether Applicant will be financially responsible in the future.

Overall, the record evidence is insufficient to conclude that Applicant has established and implemented a plan to resolve his delinquent accounts. He has not mitigated 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 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 considered Applicant's health issues, his medical costs, as well as the costs of being his mother's primary caregiver for 12 years before her death in 2006. I considered that from 1999 to 2003, he made large child support payments. However, he has not been required to pay child support in more than seven years. His daughter is 27 years old. It was his duty to pay his federal income taxes. He has not paid his federal tax debts for years, some years going back the 1980s and 1990s. While there are some mitigating circumstances in Applicant's financial situation, it does not really explain how he got to the point where he owed \$43,999 in past-due federal income taxes and \$59,125 in charged off credit card accounts. While Applicant is likely to file for bankruptcy in the near future, he will still owe the IRS a significant amount of past-due income taxes. He intends to submit an offer in compromise to the IRS, but had not done so at the close of the record. He did not mitigate the concerns raised under financial considerations and 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	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 interests to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

ERIN C. HOGAN
Administrative Judge