



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



In the matter of:)
)
) ISCR Case No. 09-01280
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: *Pro se*

September 7, 2010

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

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

Statement of the Case

On March 11, 2010, 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 (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) effective for cases issued after September 1, 2006.

Applicant answered the SOR on April 9, 2010, and requested a hearing before an administrative judge. The case was assigned to another judge on May 24, 2010. DOHA issued a notice of hearing on May 27, 2010, scheduling the hearing for July 1, 2010. Applicant requested a continuance and his request was granted. The case was

reassigned to me on June 17, 2010. DOHA issued a notice of hearing on July 1, 2010, scheduling the hearing for July 29, 2010. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 7, which were admitted without objection. The Applicant offered Exhibit (AE) A, which was admitted without objection, and testified on his own behalf. The record was held open for Applicant to submit additional information until close of business August 5, 2010. Applicant submitted post-hearing exhibits B through D, which were admitted without objection. Applicant presented no character witnesses or letters of support. DOHA received the transcript of the hearing (Tr.) on August 6, 2010.

Findings of Fact

Applicant is a 47 year-old employee of a defense contractor. He has been with his current employer since July 2008. He has been divorced four times and is currently married to his 5th wife. His wife suffers from systemic lupus and she is unable to work. He has two children, ages 21 and 14. He volunteers for a university emergency response team. (GE 1; Tr. 23-30, 32, 39, 48-51.)

The SOR alleges 39 delinquent debts totaling \$42,919, which are all substantiated in the record. Applicant admitted all of the debts alleged in SOR, with some qualifications, addressed below. He has not made payments on 32 of the accounts listed in ¶¶ 1.a. through 1.f., 1.h. through 1.q., 1.s. through 1.z., 1.bb through 1.cc., 1.ff. through 1.jj., and 1.mm. However, he claims he has satisfied the debt stated in ¶ 1.r, totaling \$25. He asserts that he is making payments on 1.aa. He contests 1.g., 1.dd., 1.ee., 1.kk., and 1.ll. (Answer; GE 2; GE 3; GE 4; GE 5; GE 6; GE 7.) Applicant's qualifications to his admissions are as follows:

The debt in 1.r. was for a medical collection account in the amount of \$25. Attached to his Answer, Applicant presented a copy of his VISA statement showing that a \$25 payment was made to this creditor on March 24, 2010. (Answer; Tr. 42.)

Subparagraph 1.aa. alleges Applicant was 120 days past due to a creditor in the approximate amount of \$21, on a balance of \$1,067. Applicant testified that he was making payments on this account. He asserted that he only had \$460 left to pay on this debt. Attached to his Answer, he presented an online payment history showing five payments of \$50, made in January through March of 2010. However, it is unclear from the face of this document that the payments are going to the creditor alleged in 1.aa. (Answer; Tr. 43.)

Subparagraph 1.g. alleges Applicant is indebted on a medical account placed for collection in the approximate amount of \$125. Applicant contends that this debt is a duplicate of the debt alleged in 1.f., with an additional collections fee added. He presented no documentation to substantiate this claim. However, entries for each of these allegations on Applicant's credit reports show the same account number, which match the medical accounts and amounts alleged in 1.g. and 1.f. (Answer; GE 5; GE 6; GE 7.)

Subparagraph 1.dd. alleges Applicant is indebted to a university in the approximate amount of \$268. This debt was for a student loan. In his Answer, Applicant contends that he dropped this class and that the university refunded the money back to the lender. At the time he completed the interrogatories in January 2010, he indicated this debt was for an online course Applicant took and that he was making payments on the debt. He failed to produce documentation that he has disputed or otherwise addressed this debt. (Answer; GE 2.)

Subparagraph 1.ee. alleges Applicant is indebted to a state Attorney General for delinquent child support in the amount of \$22,000. Applicant admits that he is behind on his child support, but contends he is only past due by approximately \$500. He testified that his wages were being automatically deposited from his pay into his ex-wife's account at the rate of \$125 per week for his child support obligation. He presented pay statements that show a \$125 distribution from his pay directly to a bank account occurred on a weekly basis from April through December of 2007. He claims that the mother of his child fraudulently filed a state claim against him. He presented April 2008 e-mails from his ex-wife requesting delinquent child support payments in the amount of \$1,625. He asserted that shortly after she sent the e-mails, she filed with the state for back child support, claiming he had not paid her in four years. He contested the debt with the state and sent the state the e-mail from his ex-wife as proof he owed much less. He relayed that the state responded that the e-mails were insufficient proof of payment. (AE A; AE D; Tr. 24-27; 40-41, 53-54.)

Subparagraph 1.kk. alleges Applicant is indebted on a phone bill that has been placed for collections. Applicant contends that he has been disputing this debt with the creditor, because he believes the bill was excessive. He failed to produce documentation to support his dispute. At the time he completed the interrogatories, he indicated he would negotiate a settlement on this debt. Applicant failed to present documentation to support a negotiated settlement. (Answer; GE 2.)

Subparagraph 1.ll. alleges Applicant is indebted to a creditor in the approximate amount of \$216. Applicant noted that he has tried to contact this creditor, but has been unable to reach the collections agent. However, in Applicant's answer to the interrogatories, he indicated he paid \$55 on this debt, but the creditor still expected to receive payment in full. Applicant failed to present documentation to support any payments or dispute filed on this debt. (Answer; GE 2.)

Applicant attributes all of his debts to bad spending habits. He "turned to getting online and just buying things that [he] wanted, for no reason." He financed his bad spending habits by taking out payday loans which he was not able to keep current.¹ He also moved twice in 2005 and worked at a low paying job from March 2005 through September 2005, after he had been laid-off from a higher paying position. Applicant did not have medical insurance during this time period, and incurred the medical debts listed in the SOR. (AE B; Tr. 56-58.)

¹ At hearing, Applicant disclosed that he was bi-polar. He disclosed that in a manic state, he would make internet purchases, but that he had been properly medicated since approximately 2000 or 2001. He asserted that only one debt, subparagraph 1.cc., was directly attributable to his condition. (Tr. 28-30.)

Applicant intends to address all of his debts by filing Chapter 7 bankruptcy. He retained a bankruptcy lawyer on or about June 5, 2010 to assist him with this process. To date, he has paid the attorney approximately \$600 of the \$3,700 retainer fee. As part of the process of preparing to file bankruptcy, Applicant testified that he participated in a two-hour online financial course. There is no evidence that the bankruptcy petition has been filed. (AE C; Tr. 24-39, 60.)

Applicant's personal financial statement indicates that he has a negative monthly net remainder of -\$254.24. He failed to produce any character evidence. (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 concern 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 \$42,919 in delinquent debts and has been unable to pay the majority of his obligations. His financial problems have been ongoing since at least 2005. The evidence is sufficient to raise the above disqualifying conditions.

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's financial delinquencies are recent and ongoing. He has not demonstrated that his financial problems are unlikely to recur. His track record shows he has ignored his delinquencies and he has failed to address his delinquent accounts in a meaningful way. His failure to repay his creditors over the past five years demonstrates that he lacks good judgment. Thus, AG ¶ 20(a) does not apply.

Applicant partially attributes his debts to lay-off, and period of low income without medical insurance, in 2005. However, he also accepts culpability for making internet purchases that he could not afford. He admitted that he had bad spending habits. Applicant does not dispute that he is responsible for paying the majority of the debt. Applicant has been ignoring the delinquent accounts he was legally responsible for, over a number of years. AG ¶ 20(b) is inapplicable, as well.

Applicant presented information that he completed a two-hour online financial course as part of preparing to file bankruptcy. However, it was unclear what lessons Applicant learned in that course. He had the burden to establish that his financial problems were under control and he did not meet that burden. AG ¶ 20(c) does not apply.

Applicant has not made a good-faith effort to pay or resolve his delinquent debts. He has satisfied a \$25 debt alleged in 1.r. However, the rest of his debts remain unsatisfied. He has made some initial steps toward filing bankruptcy and plans to include his unpaid debts in his bankruptcy filing, but he still has a significant bill to pay his attorney, before the bankruptcy will even be filed. Given his track record of failing to meet his financial obligations, he has not established mitigation under AG ¶ 20(d).

Although Applicant disputes the validity of the debts in subparagraphs 1.dd., 1.ee., and 1.kk, he has been unable to provide documented proof of the dispute or his attempts to resolve these debts with each of these creditors. AG ¶ 20(e) 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. I have incorporated my comments under Guidelines F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant has taken some initial steps to file bankruptcy. However, his actions come too late. He has had financial problems for a number of years and has presented little evidence to show that he acted responsibly in light of his financial situation. He has not demonstrated any change in spending habits or any other form of rehabilitation. Given Applicant's past irresponsible spending, it is likely that he will continue to experience financial problems in the future even if he does discharge his debt through bankruptcy.

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 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:	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.:	For Applicant
Subparagraph 1.h.:	Against Applicant
Subparagraph 1.i.:	Against Applicant

Subparagraph 1.j.:	Against Applicant
Subparagraph 1.k.:	Against Applicant
Subparagraph 1.k.:	Against Applicant
Subparagraph 1.l.:	Against Applicant
Subparagraph 1.m.:	Against Applicant
Subparagraph 1.n.:	Against Applicant
Subparagraph 1.o.:	Against Applicant
Subparagraph 1.p.:	Against Applicant
Subparagraph 1.q.:	Against Applicant
Subparagraph 1.r.:	For Applicant
Subparagraph 1.s.:	Against Applicant
Subparagraph 1.t.:	Against Applicant
Subparagraph 1.u.:	Against Applicant
Subparagraph 1.v.:	Against Applicant
Subparagraph 1.w.:	Against Applicant
Subparagraph 1.x.:	Against Applicant
Subparagraph 1.y.:	Against Applicant
Subparagraph 1.z.:	Against Applicant
Subparagraph 1.aa.:	Against Applicant
Subparagraph 1.bb.:	Against Applicant
Subparagraph 1.cc.:	Against Applicant
Subparagraph 1.dd.:	Against Applicant
Subparagraph 1.ee.:	Against Applicant
Subparagraph 1.ff.:	Against Applicant
Subparagraph 1.gg.:	Against Applicant
Subparagraph 1.hh.:	Against Applicant
Subparagraph 1.ii.:	Against Applicant
Subparagraph 1.jj.:	Against Applicant
Subparagraph 1.kk.:	Against Applicant
Subparagraph 1.ll.:	Against Applicant
Subparagraph 1.mm.:	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.

Jennifer I. Goldstein
Administrative Judge