



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



In the matter of:)	
)	
)	ISCR Case No. 09-01295
)	
)	
Applicant for Security Clearance)	

Appearances

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

November 17, 2009

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

On July 20, 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 (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 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 in writing on August 6, 2009, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the government's written case on August 28, 2009. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the

security concerns. Applicant received the FORM on September 7, 2009. He responded to the FORM on September 15, 2009. Department Counsel did not object to his response. The case was assigned to me on September 30, 2009.

Findings of Fact

Applicant is a 53-year-old engineer for a defense contractor. He has worked for his current employer since September 2008. He served in the military from 1975 to 1978, and was honorably discharged. He had a security clearance at the company where he worked from 1986 to 2005. He is seeking to obtain a security clearance through his current employer after being unemployed from 2005 through September 2008. He has a bachelor's degree, awarded in 1984. He was married from 1975 until his divorce in 1984. He married again in 1990. He has two children, ages 33 and 15.¹

The SOR alleges nine delinquent debts, as listed on a credit report obtained on October 10, 2008. Applicant admitted all the allegations, with the exception of the debts alleged in SOR ¶¶ 1.a, 1.d, and 1.e, which he denied. The six debts that Applicant admitted owing total about \$129,838.

Applicant has experienced financial problems for a number of years. In a 2002 statement provided for his background investigation, he discussed his finances and wrote “[o]ver time we irresponsibly accumulated over \$70,000 in credit card debt.” He contracted with a debt management company to assist in resolving his debts in 2002. Applicant and the company approximated his debt at \$79,000. He agreed to pay the company 15% of the amount of his debt, which amounted to \$11,850, to manage his debt. The contract called for him to make monthly payments to the company for 23 months before their fee would be paid. The company agreed to negotiate settlements with his creditors.²

Applicant's ability to pay his delinquent debts was hampered by his three years of unemployment. He lost his job of almost 20 years after multiple leaves of absence to care for his sick parents. Both parents are now deceased.³

Applicant denied owing the delinquent medical debts of \$233 (SOR ¶ 1.c) and \$72 (SOR ¶ 1.i). He did not recognize the creditors named in the SOR. The names of the original medical providers are not included on the credit reports submitted.⁴

Three of Applicant's debts were reduced to judgments. In 2005, he satisfied the \$5,360 judgment alleged in SOR ¶ 1.a. There is no evidence of payments of any of the other debts. Applicant did not submit any information on how he is planning to address

¹ Item 5.

² Items 5, 8, 9.

³ Item 5; Applicant's response to FORM.

⁴ Items 4, 6, 7; Applicant's response to FORM.

his delinquent debts, except he asked the question: “Would bankruptcy help me in any way with my clearance?”⁵

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 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 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 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

⁵ Items 4, 5; Applicant's response to FORM.

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 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 a number of delinquent debts and was unable or unwilling to pay his obligations for a period of time. 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 has not resolved most of the debts alleged in the SOR. His financial issues are recent and ongoing. AG ¶ 20(a) is not applicable.

Applicant admitted that he “irresponsibly accumulated over \$70,000 in credit card debt.” In 2002, he contracted with a debt management company to pay them \$11,850 to manage his debts of \$79,000. One debt that was reduced to judgment was satisfied in 2005. He lost his job of almost 20 years after multiple leaves of absence to care for his sick parents. His unemployment hindered his ability to pay his delinquent debts. No other debts have been paid. Applicant’s unemployment and his parents’ medical problems could qualify as conditions that were outside his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Much of his debts were accrued before his unemployment. There is no information as to what actions he took while he was unemployed. There is insufficient evidence in the record for a finding that he acted responsibly. AG ¶ 20(b) has minimal applicability.

Applicant has received financial counseling, but there is insufficient evidence for a determination that his financial problems are being resolved or under control. AG ¶ 20(c) is partially applicable.

Applicant satisfied one judgment. AG ¶ 20(d) is applicable to that debt. That payment does not support a finding that he made a good-faith effort to pay or resolve all his delinquent debts. AG ¶ 20(d) is not applicable to the unpaid debts.

Applicant denied owing the two small delinquent medical debts. He did not recognize the creditors named in the SOR. The names of the original medical providers are not included on the credit reports. He admitted to owing more than about \$129,000. Applicant established that he has a reasonable basis to dispute the legitimacy of the two past-due medical debts. AG ¶ 20(e) is applicable to those debts.

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. Applicant is 53 years old. He accumulated a large amount of debt, which he admitted was because of his irresponsibility. He was unemployed for three years after he lost his longtime job after multiple leaves of absence to care for his sick parents. It is unclear from the minimal information in the record as to what actions he took while he was unemployed. He currently owes more than \$129,000. There is not enough evidence in the record for me to conclude that his finances are in order.

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.c:	Against Applicant
Subparagraphs 1.d-1.e:	For Applicant
Subparagraphs 1.f-1.i:	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.

Edward W. Loughran
Administrative Judge