



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



In the matter of:)	
)	
)	ISCR Case No. 09-01609
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: D. Michael Lyles, Esquire, Department Counsel
For Applicant: Pro Se

September 21, 2009

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on October 1, 2008. On June 10, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the 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 July 9, 2009, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on July 21, 2009. The case was assigned to me on July 24, 2009. On August 3, 2009, a Notice of Hearing was issued, scheduling the hearing for August 25, 2009. The case was heard on that date. The Government offered five exhibits which were admitted as Government Exhibits (Gov) 1 – 5. The Applicant testified and offered no exhibits. The record was held open until September 8, 2009, to allow Applicant to submit additional documents.

He timely submitted a 4-page document that was admitted as AE A. Department Counsel's response to AE A is marked as Hearing Exhibit (HE) I. The transcript was received on September 10, 2009. 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 admits SOR allegations 1.a – 1.l, 1.n, 1.o, 1.s, 1.v, and 1.w. He denies SOR allegations 1.m, 1.p, 1.q, 1.r, 1.t, and 1.u.

Applicant is a 38-year-old independent contractor with a Department of Defense contractor applying for a security clearance. He has worked as an independent contractor for the Department of Defense contractor since March 2008. This is his first time applying for a security clearance. He is a high school graduate and has taken some college courses. He is divorced and has two sons, ages 17 and 3. (Tr at 5-6, 17; Gov 1.)

Applicant's security clearance background investigation revealed that he has the following delinquent accounts: a \$238 utility account placed for collection (SOR ¶ 1.a: Gov 3 at 1; Gov 4 at 7); a \$2,158 judgment entered against Applicant in April 2007 (SOR ¶ 1.b: Gov 3 at 1; Gov 4 at 3); a \$2,448 credit card account placed for collection (SOR ¶ 1.c: Gov 3 at 1; Gov 4 at 11); a \$1,827 credit card account placed for collection (SOR ¶ 1.d: Gov 3 at 1; Gov 4 at 10); a \$975 credit card account placed for collection (SOR ¶ 1.e: Gov 3 at 2; Gov 4 at 5); a \$264 auto account placed for collection (SOR ¶ 1.f: Gov 3 at 2; Gov 4 at 6, 14); a \$2,928 credit card account placed for collection (SOR ¶ 1.g: Gov 3 at 2; Gov 4 at 4, 13); a \$4,520 credit card account placed for collection (SOR ¶ 1.h: Gov 3 at 2; Gov 4 at 9); a \$2,989 credit card account placed for collection (SOR ¶ 1.i: Gov 3 at 2; Gov 4 at 9, 14); and \$9,537 in delinquent child support owed to State A (SOR ¶ 1.j: Gov 3 at 2; Gov 4 at 10).

Additional delinquent accounts include: a \$131 tax lien filed in March 1994 (SOR ¶ 1.k: Gov 4 at 3); a \$543 credit card account placed for collection (SOR ¶ 1.l: Gov 4 at 4, 13); a \$731 telephone account placed for collection (SOR ¶ 1.m: Gov 4 at 4) a \$233 telephone account placed for collection (SOR ¶ 1.n: Gov 4 at 4); a \$2,653 credit card account that was charged off (SOR ¶ 1.o: Gov 4 at 6); a \$279 cable television account placed for collection (SOR ¶ 1.p: Gov 4 at 6); a \$573 fitness club account placed for collection (SOR ¶ 1.q: Gov 4 at 8); a \$222 charged off account (SOR ¶ 1.r: Gov 4 at 8); a \$2,799 account placed for collection (SOR ¶ 1.s: Gov 4 at 12); \$10,613 in delinquent child support owed to State B (SOR ¶ 1.t: Gov 4 at 13); and a \$5,200 credit card account placed for collection (SOR ¶ 1.u: Gov 4 at 13).

The investigation also discovered that in October 2005, Applicant was charged with Fraud-Insufficient Funds Check. The charge was disposed through pre-trial diversion. (Gov 5)

Applicant consulted a credit counseling agency about two months prior to the hearing. He is considering filing for bankruptcy. He has not paid any of the debts alleged in the SOR because he could not afford to pay the debts. He claims some of the debts are duplicates but provided no proof that any of the debts were duplicate accounts. (Tr at 18 – 20) Applicant is listed as an authorized user on the \$5,200 credit card debt alleged in SOR ¶ 1.u. This allegation is found for Applicant because he is not the account holder. (Gov 4 at 13)

In September 2007, Applicant's divorce was final. He claims most of the debts were incurred during events leading up to and after his divorce. He was held responsible for all of the credit card accounts even though most of the accounts belonged to his ex-wife. His ex-wife filed for bankruptcy shortly after the divorce. (Tr at 17, 20)

Applicant had several periods of unemployment within the past five years. In 2002, he was unemployed for approximately five months until he was hired by a publishing company in January 2003. In March 2005, he was asked by the publishing company to resign. Applicant testified that he was asked to resign because one of his wife's friends worked at the company and spread numerous rumors about Applicant's marital problems which created morale problems in the workplace. After he resigned, Applicant was unemployed for one year. He did not file for unemployment during this time. Before resigning, he received a \$16,000 bonus which he used for living expenses. He also worked periodic construction jobs. His e-QIP application indicates he operated his own construction business during that time. (Tr at 33-38; Gov 1, section 11)

The two accounts for past due child support, \$9,537 for State A (SOR ¶ 1.j) and \$10,613 for State B (SOR ¶ 1.t), involve Applicant's oldest son, age 17. When his oldest son was one-year-old, his mother moved from State A to State B without informing Applicant. He has not seen his son for 16 years. Applicant has always paid child support to State A. He admits that he owes approximately \$10,613 in past due child support to State A. He has been making child support payments to State A which include payments towards the arrearage for several years. (Tr at 25-28, 50) There is some confusion between State A and State B as to which state should be collecting child support. Apparently the child has lived in both states at some point. State A and State B are in the process of resolving this issue. (AE A at 3)

It was discovered during the hearing that Applicant owes back taxes to the Internal Revenue Service (IRS) for tax years 2001 and 2002. The balance is approximately \$25,000. The last time he paid towards the tax debt was two years ago. He has not contacted the IRS recently. (Tr at 44-46) This tax debt is not alleged in the SOR. However, SOR ¶ 1.k alleges that a tax lien was filed against Applicant in March 1994.

A personal financial worksheet completed by Applicant on April 27, 2009, listed a net monthly income of \$1,600. His monthly expenses were: rent \$650, groceries \$100, utilities \$100, car expenses \$360, and child support \$425. His total monthly expenses

were \$1,635. (Gov 2 at 5) Applicant's net monthly income recently increased to \$4,000. His rent increased to \$1,000. His total monthly expenses are currently \$1,900. He recently received the raise and did not have time to pay any of his debts. He hopes to apply an extra \$500 to \$700 a month towards his debts. (Tr at 18, 22-23)

Applicant claims he disputed some accounts but has not heard anything from the credit reporting agencies. He is in the process of trying to put his life back together. (Tr at 53-54)

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. 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 to Applicant’s case. Applicant has had financial difficulties for several years. The SOR alleged 21 delinquent accounts, an approximate total balance of \$51,861. It was also discovered during the hearing that Applicant owed \$25,000 to the IRS for tax years 2001 and 2002.

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. Most of the delinquent accounts remain unresolved. While Applicant looked into the options of credit counseling or filing for bankruptcy, he had no definitive plan to resolve his delinquent accounts at the close

of the record. Applicant's 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 because of Applicant's divorce and two periods of unemployment in 2002 and 2005. However, I cannot conclude Applicant acted responsibly under the circumstances because he has ignored his delinquent debts during periods where he has been employed full-time. The \$25,000 federal income tax debt was created in tax years 2001 and 2002 before his periods of unemployment. Applicant has been financially irresponsible for a number of years. While circumstances beyond his control contributed to his financial problems, he has not acted responsibly with regards to resolving his delinquent 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. Applicant consulted a credit counseling agency two months before his hearing but did not establish a payment plan. It is unlikely Applicant's financial problems will be resolved in the near future because he does not have a plan established as to how he was going to resolve his financial problems.

FC MC ¶20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. Applicant is in the process of deciding what action to take in order to resolve his delinquent accounts. He made no payments towards any of his delinquent accounts by the close of the record. He has not made a good-faith effort to resolve his delinquent accounts.

FC MC ¶20(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) does not apply. Applicant testified that he disputed several of the accounts with the credit reporting agencies. He provided no documentation verifying the disputes and did not provide a substantiated basis for the dispute.

Applicant 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 divorce in 2007 and his periods of unemployment in 2002 and 2005. I considered the issues between State A and State B regarding Applicant's child support obligation. Applicant has had financial issues since 2001 when he incurred a delinquent federal tax obligation. At the close of the record, he had no plan in place to resolve his delinquent accounts. 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:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	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:	Against Applicant
Subparagraph 1.s:	Against Applicant

Subparagraph 1.t:	Against Applicant
Subparagraph 1.u:	For Applicant
Subparagraph 1.v:	Against Applicant
Subparagraph 1.w:	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 interests to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

ERIN C. HOGAN
Administrative Judge