



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



In the matter of:

ISCR Case No. 09-02260

Applicant for Security Clearance

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel

For Applicant: *Pro Se*

March 24, 2010

Decision

HEINY, Claude R., Administrative Judge:

Applicant admitted owing 27 past due, charged-off, or placed for collection accounts, which totaled \$39,000. Additionally, he has a mortgage arrearage of \$31,000. Two days before the hearing, he filed for bankruptcy protection. Applicant has failed to rebut or mitigate the government's security concerns under financial considerations. Clearance is denied.

Statement of the Case

Applicant contests the Defense Department's intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a

¹ 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)

Statement of Reasons (SOR) on July 28, 2009, detailing security concerns under financial considerations.

On August 14, 2009, Applicant answered the SOR, and requested a hearing. On September 1, 2009, I was assigned the case. On September 2, 2009, DOHA issued a notice of hearing. The hearing was held as scheduled on September 24, 2009.

At the hearing, the government offered Exhibits (Ex.) 1 through 11, which were admitted into evidence. Applicant testified on his own behalf and submitted Exhibits A through C, which were admitted into evidence. The record was held open to allow Applicant to submit additional information. On October 6, 2009, additional material was submitted and admitted into the record as Ex. 12. On October 2, 2009, the transcript (Tr.) was received.

Findings of Fact

In Applicant's Answer to the SOR, he denied the factual allegations in SOR ¶ 1.u and ¶ 1.aa. He admitted the remaining factual allegations, with explanations. Applicant's admissions to the SOR allegations are incorporated herein. After a thorough review of the record, pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 54-year-old systems administrator who has worked for a defense contractor since June 1983, and is seeking to maintain a secret security clearance. His annual salary is \$64,000. (Tr. 29)

Applicant and his wife have five children. His children are ages 27, 22, 17, and twins at 15. (Tr. 30) Applicant's wife was on maternity leave from January 1994 through July 1994 with the twin boys. (Ex. 5, Tr. 26) Applicant's annual salary at the time was \$48,000; his wife's salary was \$42,000 for a combined annual household income of \$90,000 per year. (Tr. 29) Following the birth of the children, his wife was out of work for one year before obtaining a job paying \$42,000 annually. (Tr. 27)

In June 1994, Applicant and his wife filed for Chapter 7 bankruptcy protection. (Ex. 4) In September 1994, their debts were discharged and the bankruptcy was closed in November 1994. Credit card accounts were discharged. (Ex. 5) No medical bills were listed in the bankruptcy. In July 1994, Applicant completed a signed, sworn statement concerning his finances. He also completed a Personal Financial Statement (PFS) which listed his monthly net remainder (monthly income less monthly expenses and monthly debt payment) of \$1,800. (Ex. 6) Applicant owed approximately \$18,000 on two time shares and \$10,000 on credit cards. He tried, but was unsuccessful, to sell the time shares.

In 1997, one of Applicant's twins became ill and was diagnosed with Crohn's Disease. In 1999, the other twin was similarly diagnosed. In 2004, both had their colons removed and were in the hospital for six weeks. One has been hospitalized 19 times and the other 22 times. (Answer to SOR) Applicant's insurance covered approximately seventy percent to eighty percent of the provided costs. (Tr. 25) His current insurance pays "practically 100 percent on everything." (Tr. 34) Applicant asserts the medical bill for his sons was \$400,000. (Tr. 25) His portion of the medical expenses was \$38,000, which he paid. (Tr. 42) Since their colectomies five years ago, there have been no significant medical expenses. (Tr. 41)

In September 2004, the Social Security Administration ruled both children were disabled and entitled to Supplemental Security Income payments. (Ex. B, C) However, Applicant's income was too great to allow supplemental income and they have received no social security payments. (Tr. 30, 37)

In October 2001, Applicant completed another signed, sworn statement concerning his finances. (Ex. 8) He completed a PFS showing a monthly net remainder of \$183. (Ex. 8) Applicant asserts he was financially responsible following the 1994 bankruptcy until 1998, when he incurred between \$12,000 and \$15,000 in medical expenses not covered by insurance due to his sons' Crohn's Disease. (Ex.8) In 1999, another \$5,000 was incurred and in 2000, an additional \$2,600, all in uninsured medical expenses. At the time of the hearing, the twins were age 15 and doing better. (Tr. 25)

In December 2000, Applicant was involved in a rear-end vehicle accident. He purchased a new 2000 Chevrolet van for \$36,000 requiring a \$778 monthly payment. Applicant expected to receive an insurance check between \$10,000 and \$13,000 for the damage to their vehicle, which would be paid on the new vehicle. (Ex. 8) The record is silent as to any insurance money being used on the purchase. As of October 2001, Applicant was thinking of filing a lawsuit against the other driver. (Ex. 8) In June 2001, Applicant refinanced his home paying the first and second mortgages and incurring a new \$96,000 mortgage.

In February 2005, the van engine blew up and cost \$9,500 to replace the engine. (Ex. 11) This unpaid debt (\$7,752) was listed in SOR ¶ 1.f. From 1995 until July 2006,² his wife was working for a defense contractor with an annual salary of \$37,000. (Ex. 11, Tr. 27) In 2006, she became a teacher assistant with monthly salary of \$700. Her previous monthly pay had been \$2,800.

Two and one-half years ago, Applicant went to credit counselors and it was recommended he file bankruptcy. (Tr. 40) He started the filing, and then stopped. (Tr. 40) In May 2009, Applicant answered financial interrogatories. He completed a PFS showing his monthly expenses and debt payment exceeded his income by \$2,000 per month. (Ex. 11) His mortgage had increased to \$128,000. Applicant indicated his

² In Ex. 11, answer to interrogatories, Applicant stated, "in July 2006 my wife was laid off due to military spending cuts, she was making around \$37,000 a year." At the hearing, he asserts she was laid off in 2004. (Tr. 27)

financial status was bad and he was past due on his mortgage payments, medical bills, personal loans, and credit card payments. (Ex. 8) In May 2009, he stated he was again contemplating filing for Chapter 13 bankruptcy relief. In September 2009, two days prior to the hearing Applicant filed a Chapter 13 Wage Earner's plan. (Ex. 12)

Applicant filed for Chapter 13 bankruptcy protection in an attempt to save his home from foreclosure. The plan listed \$226,000 in liabilities, \$160,000 in assets, and \$47,000 in unsecured debts. Of the unsecured debts, nine debts totaling approximately \$3,800 are medical debts. The bankruptcy schedules indicate he was \$31,000 in arrears on his \$146,000 mortgage. His monthly mortgage payments are \$1,172. (Ex. 11, p. 2) To be \$31,000 in arrears, Applicant must be in excess of a year behind on his mortgage payments. The house had been purchased in 1983 for \$87,000. (Tr. 33) In September 2009, as required for the bankruptcy, Applicant and his wife received credit counseling. (Ex. 12)

As of September 2009, when the bankruptcy was filed, Applicant's and his wife's combined average monthly income was approximately \$5,300. The five-year Chapter 13 Wage Earner's Plan requires Applicant to make \$2,220 monthly payments, which includes the mortgage payment of \$1,310. (Tr. 32) The plan will run for five years with payment starting 30 days after it is filed. (Tr. 32) Four of the SOR debts totaling approximately \$1,200 do not appear on the bankruptcy schedules. Those debts are: SOR ¶ 1.a (\$696), SOR ¶ 1.g (\$343), SOR ¶ 1.i (\$93), and SOR ¶ 1.n (\$65).

Applicant denies two of the debts: the \$2,000 bank account placed for collection (SOR ¶ 1.u) and the \$3,006 bank account placed for collection (SOR ¶ 1.aa). (Tr. 36) The two bank accounts, though listed under different bank names, are the same loan as evidenced by Applicant's credit bureau report (CBR). In his May 2009 response to a financial interrogatory (Ex. 11), he listed the \$2,000 debt as a loan taken out to pay for transmission repairs. The repair shop invoice reflects the bill was paid by credit card. (Ex. 11) In March 2007, Applicant obtained a \$3,006 bank loan to pay for vehicle repair, which required \$125 monthly payments. (Ex. 11) Applicant's September 2007 CBR lists the loan as being paid "as agreed" for five months. (Ex. 11, p. 149) The balance on the loan was then \$2,630. (Ex. 11, p. 149) Neither account appears on his March 2009 CBR. (Ex. 10)

The SOR alleges 28 accounts placed for collection or charged off, which total approximately \$39,000 plus past due mortgage payments. Two of the SOR debts (SOR ¶ 1.u and SOR ¶ 1.aa) represent the same obligation. Applicant's mortgage, as evidenced by the bankruptcy schedules, was \$31,000 delinquent. Ten of the SOR debts totaling approximately \$4,000 are medical debts. Eleven debts were \$500 or less, which totaled \$3,700. Those debts were: SOR ¶ 1.b (\$438), SOR ¶ 1.g (\$343), SOR ¶ 1.m (\$165), SOR ¶ 1.p (\$239), SOR ¶ 1.q (\$390), SOR ¶ 1.r (\$500), SOR ¶ 1.s (\$280), SOR ¶ 1.t (\$416), SOR ¶ 1.v (\$270), SOR ¶ 1.y (\$360), and SOR ¶ 1.bb (\$315). Another five debts were each less than \$100, which totaled \$400. Those debts were: SOR ¶ 1.d (\$73), SOR ¶ 1.h (\$82), SOR ¶ 1.k (\$82), SOR ¶ 1.i (\$93), and SOR ¶ 1.n (\$65)

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 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. 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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion for 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 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

Revised Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances so as to meet his financial obligations.

The record evidence supports a conclusion that Applicant has a history of financial problems. He admitted owing 27 past due, charged-off, or placed for collection accounts, which totaled \$39,000. Additionally, he admitted owing past due mortgage payments, which were listed in the SOR at \$19,000 and in the bankruptcy schedules at \$31,000. Sixteen of Applicant's debts were for \$500 or less and together totaled approximately \$4,000. Applicant has had to resort to bankruptcy protection twice. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

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 conduct does not warrant application of AG ¶ 20(a) because he did not act more aggressively and responsibly to resolve his delinquent debts. His delinquent debts are "a continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). Applicant's debts are numerous and recent. Only \$4,000 of the total debt is medical debt. The balance of the SOR debts, more than \$66,000, represents his delinquent mortgage and other delinquent debts. His mortgage delinquency is \$31,000. Part of the delinquency would include penalties and other fees, but even with penalties, fees, and additions, Applicant is more than a year and a half behind on his mortgage.

Starting in 1994, Applicant was asked to explain his financial problems. Since 2005, Applicant's and his wife's combined joint income was, until 2006, approximately \$100,000, yet 16 of the SOR totaling approximately \$4,000 remain unpaid. There is nothing in the record to show the debts occurred under such circumstances that they are unlikely to recur.

In 1994 and 1995, Applicant's wife was unemployed for approximately one year after the birth of the twins. Before the twins were born, their combined joint annual income was \$90,000. In July 2006, his wife's income was reduced from \$2,800 to \$700 monthly. Applicant has experienced some vehicle problems. In December 2000, Applicant was in a rear-end accident and he purchased a new van. His insurance paid between \$10,000 and \$13,000 for the damage and he was contemplating suing the other driver. In February 2005, the van's engine needed \$9,500 in repairs. In March 2007, the van required \$2,000 worth of transmission repairs.

Applicant's twins were born in 1994 and suffered from Crohn's Disease. Applicant's portion of the medical bills incurred amounted to \$38,000, which he has paid. Since their colectomies five years ago, there have been no significant medical expenses. Additionally, Applicant's current insurance pays "practically 100 percent on everything."

The year of unemployment following the birth of the twins, his wife's recent reduction in pay when laid-off from her contractor job, the vehicle repairs, and the medical bills related to his twins physical problems are all conditions which are beyond Applicant's control, and AG ¶ 20(b) partially applies. However, his wife's unemployment following the birth of the twins ended 14 years ago. New medical expenses for the twins ended five years ago. Additionally, only \$4,000 of the SOR debt, which totals \$70,000, was medically related. The car expenses occurred two, five, and nine years ago. From 1995 until July 2006, Applicant and his wife were making \$90,000 to \$100,000 annually.

In September 2009, Applicant and his wife received credit counseling as required by the bankruptcy court. The nature of the counseling, or what Applicant learned from the counseling, is not part of the record. It is too early to state there are clear indications that Applicant's financial problems are being resolved or are under control. AG ¶ 20(c) does not apply.

Applicant has paid none of the debts, even the five debts that were less than \$100 each. AG ¶ 20(d) does not apply. For AG¶ 20 (d) to apply there must be an "ability" to repay the debts, the "desire" to repay, and evidence of a good faith³ effort to repay. A systematic, concrete method of handling his debts is needed, which is not present here.

Applicant's actions fall short of demonstrating a track record of financial reform and rehabilitation sufficient to permit the conclusion that Applicant's history of financial difficulties will be resolved soon and will not recur. Two days prior the hearing, Applicant filed for bankruptcy protection. The five-year Wage Earner's Plan requires Applicant to pay \$2,220 per month to begin 30 days after the filing. The record contains no evidence Applicant has made any payments in accordance with the plan. The debts have yet to be discharged. Without any track record, it is speculative that he would be able to successfully complete the plan. It is noted Applicant had five accounts placed for collection which totaled less than \$400, which he was unable to pay. Additionally, he failed to pay his monthly mortgage payments for 18 months incurring a mortgage arrearage of \$31,000.

³The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the "good faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

Applicant's act of filing for bankruptcy, even if he should receive a discharge of debts, does not preclude assessing the security significance of Applicant's overall history of financial problems, including evidence indicating that he had been less than diligent in addressing his longstanding financial problems. See, e.g., ISCR Case No. 98-0349 at p. 3 (App. Bd. February 3, 1999).

A discharge in bankruptcy may give a person a financial fresh start, but it does not substitute for evidence of a demonstrated track record of financial reform, which is necessary to satisfy Applicant's burden of persuasion that it is clearly consistent with the national interest to grant or continue access to classified information for him. See Directive, Additional Procedural Guidance, Item 15. Nor does a discharge in bankruptcy immunize an applicant's history of financial problems from being considered for its security significance. See, e.g., DISCR Case No. 87-1800 at p. 3 n.2 (App. Bd. February 14, 1989) ("Although bankruptcy may be a legal and legitimate way for an applicant to handle his financial problems, the Examiner must consider the possible security implications of the history of financial debts and problems that led to the filing of bankruptcy. Furthermore, a discharge in bankruptcy does not, in itself, prove that an applicant has changed the financial habits that led to the debts discharged in bankruptcy or that his past financial difficulties are not likely to recur."). *Cf. Marshall v. District of Columbia Government*, 559 F.2d 726, 729-30 (D.C. Cir. 1977) (discharge in bankruptcy does not preclude city from considering whether past financial problems disqualify person for position as police officer).

At some future date, his debts may be discharged. Applicant's bankruptcy is not held against him. I find for him as to SOR ¶ 1.cc. I also find for him as to SOR ¶ 1.bb, the bank loan which was listed twice.

AG ¶ 20(e) has limited application because Applicant is not disputing the legitimacy of the past-due debts. He denied two debts because he only had one bank loan. I find for Applicant as to SOR ¶ 1. bb (\$3,006) as Applicant's 2007 CBR shows he was paying this debt as agreed and it does not appear on his 2009 CBR. Additionally, the two bank accounts (SOR ¶ 1.u and SOR ¶ 1.aa), although they have different bank names, are indeed the same accounts.

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 has had financial problems since 1994. His sons' medical problems added to his financial difficulties, but his medical debts essentially ended five years ago and his current insurance pays almost 100 percent of the medical expenses. In July 2006, his wife's income decreased, but they had financial problems even during the period their combined annual income was \$90,000 to \$100,000. Applicant's financial problems have been so severe that he has been unable to pay his mortgage for more than a year.

Applicant has not acted responsibly under the circumstances. There is no clear indication that his financial problem is being resolved or is under control. 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 security concerns arising from his financial considerations.

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, Financial Considerations: AGAINST APPLICANT

Subparagraphs 1.a – 1.aa:	Against Applicant
Subparagraphs 1.bb and 1.cc:	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 interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

CLAUDE R. HEINY II
Administrative Judge