



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



In the matter of:)	
)	
)	ISCR Case No. 09-02389
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: Pro Se

January 28, 2010

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted a security clearance questionnaire on November 3, 2008. On August 20, 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 September 11, 2009, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on October 19, 2009. The case was assigned to another administrative judge on October 20, 2009. The case was transferred to me on October 27, 2009. On November 5, 2009, a Notice of Hearing was issued, scheduling the hearing for November 19, 2009. The case was heard on that date. The government offered 10 exhibits which were admitted as Government Exhibits (Gov) 1 – 10. The government also provided a demonstrative exhibit which was marked as Hearing Exhibit (HE) I. The Applicant testified, called one

witness, and offered two exhibits which were admitted as Applicant Exhibits (AE) A and B. The record was held open until December 3, 2009, to allow Applicant to submit additional documents. He timely submitted a nine-page document that was admitted as AE C. Department Counsel's response to AE C is marked as HE II. The transcript was received on December 1, 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.b, 1.d, 1.e, and 1.f. He denies SOR allegations 1.a, and 1.c.

Applicant is a 63-year-old senior analyst employed with a Department of Defense contractor applying for a security clearance. He has worked for his company since November 1, 2008. In 1963, he served in the National Guard. He served in the United States Army Reserve from 1964 to 1974. He held a Secret clearance from 1970 to 1974. He separated with an Honorable Discharge in the grade of Captain. He has a four year college degree. He is single and has no children. (Tr at 5-6, 29-32; Gov 1)

Applicant's security clearance background investigation revealed that he has the following delinquent accounts: a \$252 medical account placed for collection (SOR ¶ 1.a: Gov 4 at 2; Gov 5 at 7; Gov 6 at 1; Gov 7 at 11); a \$2,140 cell phone account placed for collection (SOR ¶ 1.b: Gov 4 at 3; Gov 5 at 7; Gov 7 at 11; Gov 8 at 5); a \$2,176 medical account placed for collection (SOR ¶ 1.c: Gov 4 at 3; Gov 5 at 7; Gov 6 at 1; Gov 7 at 12) a \$36,516 AMEX account placed for collection (SOR ¶ 1.d: Gov 4 at 3; Gov 5 at 7; Gov 7 at 15); a \$15,287 AMEX account placed for collection (SOR ¶ 1.e: Gov 4 at 2; Gov 5 at 6; Gov 6 at 2; Gov 7 at 5; Gov 8 at 4); and a \$8,854 credit account that was charged off. (SOR ¶ 1.f: Gov 4 at 4; Gov 5 at 7; Gov 6 at 2; Gov 7 at 16; Gov 8 at 4)

Applicant began to have financial problems in 2002-2003. The company he worked for did not pay him during 2003. Previously, he earned \$150,000 per year plus expenses. In 2003, his compensation was to increase to \$500,000. He received no compensation in 2003. He continued to work for the company during the entire year because he thought the company would eventually pay him. He paid his living expenses by using credit cards, primarily the credit cards alleged in SOR ¶¶ 1.d and 1.e. He left the company in December 2003 when he realized that it was unlikely the company would pay him. He attempted to get paid by contacting his state. The state filed suit against Applicant's former employer to obtain Applicant's unpaid compensation. The suit was dropped after Applicant's former employer filed bankruptcy in June 2006. (Tr at 28, 32-38)

Applicant had a ten week period of unemployment when he left a job in September 2008 for his current position. When he was initially hired in his current position, he believed that he would be paid \$115,000 with travel allowances of \$40,000, the same annual salary that he had been paid in his previous position. The government

contract official only approved an annual salary of \$85,000. Applicant claims this reduced his compensation by \$70,000 when the expenses were included. (Tr at 54, 84; Response to SOR)

He has not been able to work on reducing additional debt because of his reduction in salary. About a month ago, he refinanced his mortgage. His mortgage payment has been reduced from \$2,500 a month to \$1,130 a month. He owns a home on the western side of the state where he lives. He drives home on the weekends and rents an apartment near the area where his job is located where he stays during the work week. His net monthly income is currently \$4,900. His monthly expenses include: a \$1,130 mortgage; \$450 apartment rent; \$300 groceries; \$100 clothing; \$400 utilities; \$500 for car insurance, car repairs and gas; \$100 life insurance, and \$250 entertainment. He has approximately \$1,670 left over each month after expenses to apply towards his debts. (Tr at 61-66, 74-75, 90-91)

Applicant has resolved several debts, including some debts that were not included in the SOR. He hopes to negotiate settlements for his unresolved debts in the future. (Tr at 73, 77-78; *see also* AE B at 2, 13-20)

The current status of the debts alleged in the SOR are:

1.a. Medical account, \$252: Paid on October 10, 2009. (AE B at 30)

1.b. Cell phone account, \$2,140, placed for collection: On September 25, 2009, Applicant and the collection company agreed to settle the account for \$534.92. Applicant paid the settlement amount on September 29, 2009. (AE B at 27-29)

1.c. \$2,176 medical account placed for collection: On October 13, 2009, Applicant settled the account in the amount of \$1,414.40. (AE B at 25-26)

1.d. and 1.e. Charged off credit card accounts in the amounts of \$36,516, and \$15,287. Applicant believes the combined balance for both accounts is currently \$82,645. Neither account has been paid. He stopped paying these accounts in late 2002. Applicant hopes to resolve these accounts in the future. (Tr at 27, 39-41, 56, 72-73; AE B at 2)

1.f. \$8,854 charged off credit card account: The collection agency agreed to a settlement amount of \$1,576. Applicant paid the settlement amount on October 17, 2009. Account was settled. (AE B at 23-24)

In March 2006, Applicant entered and completed a 28-day alcohol treatment program. He has not consumed alcohol after completing treatment. He remains actively involved in counseling other alcoholics. From April 2006 to March 2009, he estimates that he has spent approximately \$60,000 to help out other alcoholics. He reduced the financial payments in March 2009 because he had no money and the provided support did not have a positive effect on the individuals to whom he gave the money. He

currently spends about \$500 a month helping other alcoholics but claims he is more cautious about how he provides support. (Tr at 51-52, 57-59)

Applicant's supervisor testified during the hearing. He has known Applicant for three years. Applicant worked for another company that interacted with Applicant's current employer. Applicant asked the supervisor if there was a position available within their company. His former employer treated him poorly. Applicant's supervisor was not able to hire the Applicant until the contract was awarded in late October 2008. The government would not agree to meet Applicant's salary but offered him a salary at a reduced rate. Applicant had already left his previous company. The client is very happy with the work Applicant has performed. The supervisor works with Applicant on a daily basis. He is aware of Applicant's past financial difficulties. (Tr at 79-91)

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.

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 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 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 since 2002. The SOR alleged 6 delinquent accounts, an approximate total balance of \$62,225.

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 he resolved four of the six delinquent debts, he has not taken steps to resolve his two remaining delinquent

accounts. The balance on those two accounts now total \$82,645. He has neglected these two accounts for over eight years. While Applicant testified that he intends to resolve these accounts in the future, he has taken little action to resolve the accounts. During the same time period that Applicant could have been working to resolve these two accounts, Applicant gave \$60,000 to several members who attended his alcohol counseling meetings. While his desire to help others is commendable, it does not demonstrate the best judgment when one's personal finances are neglected. 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 Applicant's employer did not pay him during 2003. However, it was within Applicant's control to seek other employment earlier after his employer stopped paying him rather than continue to work and live off his credit cards for a year. The fact that the company filed bankruptcy before he could obtain a legal cause of action against them was not within his control as well. However, I cannot conclude Applicant acted responsibly under the circumstances because he has made little effort towards resolving the two credit card debts alleged in SOR ¶¶ 1.d and 1.e. even though he was gainfully employed for several years with a good salary. He chose to give the money that should have been used to resolve his delinquent accounts to several alcoholics who he met when they attended counseling. While his desire to help a person in need is admirable, he ignored his obligations to his creditors. Applicant has been financially irresponsible for a number of years. While circumstances beyond his control contributed to his financial problems and he recently resolved four of the six delinquent accounts, he has not acted responsibly with regards to resolving his two remaining 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 has not attended financial counseling. His two largest accounts remain unresolved and Applicant has no plans to resolve these accounts in the immediate future.

FC MC ¶20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) partially applies. He recently resolved the accounts alleged in SOR ¶¶ 1.a, 1.b, 1.c, and 1.f. He also resolved several delinquent accounts that were not alleged in the SOR. He recently refinanced his home which allowed him to negotiate settlements with four of his creditors. However, his two largest accounts remain unresolved. He neglected his finances while providing approximately \$60,000 to fellow alcoholics from April 2006 to March 2009. While he has reduced the amount of money that he gives to his fellow alcoholics who are in need, the \$500 he still spends to help needy alcoholics could be more effectively spent towards paying his delinquent debts, especially after learning the previous \$60,000 spent was ineffective. This mitigating condition is given less weight because Applicant has not initiated a good-faith

effort towards resolving his largest debts that are alleged in SOR ¶¶ 1.d and 1.e. The current balance on these debts is approximately \$82,645. Applicant hopes to negotiate a settlement in the future. However, a promise to pay in the future is not sufficient to establish a good-faith effort to resolve one's delinquent debts.

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 employment situation in 2003. I considered the favorable comments from his current supervisor. I considered that he accepted his current job for less pay and had several periods of unemployment. I also considered that Applicant has no plan in place to resolve his two largest accounts, but has given approximately \$60,000 to needy alcoholics during the period in which he could have worked on resolving his delinquent accounts. While he has resolved several debts alleged in the SOR and several debts that are not alleged in the SOR, he has made little effort to resolve his two largest accounts. Mindful of my responsibility to rule in favor of national security in cases where there is doubt, I find Applicant 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:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	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.

ERIN C. HOGAN
Administrative Judge