



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



In the matter of:)	
)	
)	ISCR Case No. 09-02405
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Francisco Mendez, Esq., Department Counsel
For Applicant: *Pro se*

May 11, 2010

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline F, Financial Considerations. Applicant’s eligibility for a security clearance is denied.

On December 23, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline F. 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 adjudicative guidelines (AG), effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on January 9, 2010, and requested a hearing before an administrative judge. The case was assigned to me on March 12, 2010. DOHA issued a Notice of Hearing on March 17, 2010. I convened the hearing as scheduled on April 14, 2010. The Government offered Exhibits (GE) 1 through 10.

Applicant did not object and they were admitted. Department Counsel provided Hearing Exhibit (HE) I, which reflected the date the SOR was sent to Applicant.¹ Applicant testified and offered Exhibit (AE) A, which was admitted without objection. The record was held open until April 26, 2010, to allow Applicant time to submit additional documents. He submitted AE B through F. Department Counsel's response is contained in HE II. There were no objections and the exhibits were admitted and the record closed. DOHA received the hearing transcript (Tr.) on April 21, 2010.

Findings of Fact

Applicant admitted the allegations in the SOR ¶¶ 1.b, 1.c, 1.e, 1.f, and 1.g. He denied SOR ¶¶ 1.a and 1.d. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 42 years old. He attended college for three years, but did not earn a degree. He is not married and has no children.

Applicant has worked for the same employer since October 2005. He is attempting to obtain a security clearance in order to work for a federal contractor. After being hired by his present employer, he moved into an apartment in December 2005. There was a special promotion from the apartment complex for reduced monthly rent based on a one-year lease. Applicant received the promotional rental rate. He was unexpectedly transferred by his employer in July 2006 to another state. Applicant subleased the apartment to a friend. The friend stopped paying the rent and Applicant became responsible for one and a half months back rent. Applicant terminated the lease and told the landlord that he would pay \$1,251 for the missed rent. According to Applicant, the landlord calculated the amount Applicant owed for the "back concessions" to be \$6,797, in addition to the back rent. A judgment was entered against Applicant on January 2, 2007, for the owed rent in the amount of \$1,251, and is alleged in SOR ¶ 1.c. The "back concessions" amount is listed in SOR ¶ 1.a. It has not been paid. Applicant contends that he does not owe the debt in SOR ¶ 1.a. He has not provided evidence to document his dispute of the debt or contact with the creditor to resolve it. Applicant stated he attempted to pay the judgment, but could not locate the creditor. In approximately January 2010, he sent a check for the amount of the judgment to the courthouse where the judgment was issued. His credit report shows the judgment was paid in January 2010.²

The debt in SOR ¶ 1.b (\$15,647) is for a repossessed car Applicant purchased in April 2008. He bought the car new and it cost \$27,000. He traded in his truck. He was transferred again by his employer and his income was reduced. He moved to a high cost of living area, where he determined that he could not afford the car and he did not need it. He stopped making car payments around November or December 2008. Applicant provided an unsigned letter dated May 1, 2009, asking the creditor to provide

¹ The SOR was undated.

² Tr. 23-27; 30, 46-48, 51-53, 57-69; AE A, B, C, D, E.

him assistance with his debt. He was unable to refinance the loan. He returned the car to the creditor as a voluntarily repossession sometime between July and September 2009. He has not made any payments on this debt. In his post-hearing submission, Applicant stated he is currently negotiating a payment arrangement with the creditor.³

The debt in SOR ¶ 1.d (\$964) is for medical services. Applicant disputed this debt because he stated it was to be paid by his medical insurance. He provided in his answer to the SOR a copy of a letter from the creditor dated May 13, 2008, requesting payment. Applicant provided a fax cover letter addressed to a person using only the first name and requesting he be contacted by telephone. The date of the fax is May 21st, but it did not include the year. Applicant acknowledged that he received a bill from the medical provider. In his answer he stated:

I had insurance at the time of the claim; however the claim was submitted by the hospital with errors, which refused to pay the claim. I was unaware of this until it hit m[y] credit file. No attempts prior to May 2008, [were] made to contact me regarding this account.⁴

Applicant stated he has been unable to resolve this debt and had initiated a three-way conference call between the parties to address it. He continues to have the same insurance company and does not know what more he can do to resolve the debt. He stated he is not responsible for the payment of this debt. In his post-hearing written statement he stated he attempted to have the information removed from his credit file by contacting the parties. Applicant has not provided any relevant documentary evidence to substantiate his dispute.⁵

The debt in SOR ¶ 1.e (\$18,910) is owed on a credit card opened in approximately 1999. He stopped making payments on the debt in 2000. He was aware that the debt existed and believed he did not have to pay it because it was charged-off. He made a statement to an Office of Personnel Management (OPM) investigator on December 31, 2008, that he had attempted to work with the collection company to resolve the debt. He believed the original amount he charged was about \$7,500. In approximately 2003, the collection company offered to settle the debt for approximately \$9,000. Applicant did not have the lump sum amount to pay it, so he did not do anything. He stated his plan was to research the debt to determine if he still legally owed the debt. The balance at that time was \$14,731. He stated he would also determine if he could negotiate a lower amount to settle the debt. He intended to contact the creditor about the account and try to resolve it within 90 days.⁶ At his

³ Tr. 29-36, 49, 53-57; AE D.

⁴ Record.

⁵ Tr. 27, 69-70.

⁶ GE 3.

hearing, Applicant admitted he did not follow up with the creditor. He stated it was not on his credit report, so he did not feel like he was obligated to pay it.

In his answer to interrogatories dated June 24, 2009, Applicant stated the balance on the debt was now \$21,079. The creditor offered to settle the debt for \$7,828, and Applicant countered with a settlement offer of \$1,565. He has not received an answer from the creditor and has not made any payments on the debt. In his post-hearing written statement, Applicant stated he contacted the creditor, but has not received a response. Applicant's position is that if a debt was charged off there was no one to pay, so he did not have to pay. He stated: "My understanding was charged-off was they had absorbed the debt and I was not responsible." He admitted there were many years that he was aware of the delinquent debts and did not pay them before they were charged off.⁷

The judgments in SOR ¶¶ 1.f (\$3,373) and 1.g (\$3,229) are owed to the same creditor. Applicant stated one debt is for a loan and the other a credit card. He obtained the loan through the creditor listed in SOR ¶ 1.e. In Applicant's answer to the SOR, he stated in 2002 he obtained the services of a financial consultant. He provided a copy of his letter dated June 28, 2002, addressed to the creditor offering to settle the debt. Included in the settlement offer is also the debt in SOR ¶ 1.e. He stated in his letter the following settlement arrangement offer:

All four accounts to be consolidated into one new account, with the old accounts being removed from my credit files;⁸

Debt forgiveness for approximately 48% from the total amount of these accounts; for a new balance of \$15,000;

Repayment terms as follows: initial payment of 10% (\$1,500) and monthly installments of \$1,125 thereafter on the balance, for one year;

After two months of timely payments received from me, your (sic) notifying all three credit bureaus of the current status of the new account to reflect R1 "pays as agree" notation.⁹

In his answer to the SOR, he stated that because he did not receive an answer to his letter from the creditor for the debts in SOR ¶¶ 1.e, 1.f, and 1.g, he was told, presumably by the financial consultant, the accounts would be removed from his file in seven years; hence, Applicant did nothing to resolve the accounts. Applicant admitted that because the creditor did not accept his settlement offer he decided not to pay the

⁷ Tr. 36-42; 70-79, 102.

⁸ It is unclear what the fourth debt was. It is not alleged.

⁹ Record.

debts.¹⁰ In his post-hearing response Applicant stated: “I would even state that this debt failure came in 1997 as a result of me losing my job, and having to deal with the loss of my father, as indicated on my credit file.”¹¹

Applicant does not have a budget. He does not keep track of his checkbook. He is attempting to understand his financial issues, although they have not been a priority in the past. He was unemployed from March 2009 to June 2009. He received back pay of \$4,400 for being unlawfully terminated from his job. He gave his mother \$1,500 and loaned his friend \$2,000 to purchase a car. He stated he did not understand his credit history and he is going to correct it. He intends to become financially stable. He believes he is an honest person, who tries to take care of his obligations and does not lead a frivolous lifestyle.¹²

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or

¹⁰ Tr. 27-28, 42-45, 79-84.

¹¹ AE E.

¹² Tr. 90-102.

mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtaining a favorable clearance 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 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 conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19 and especially considered:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Appellant has a history of being unwilling or unable to meet his financial obligations 2000. He has debts that remain unpaid and delinquent. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under AG ¶ 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;

(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 behavior is recent because his delinquent debts remain unpaid. He resolved one judgment against him, but did not provide documentary proof that he paid or disputed his delinquent debts or paid the remaining judgments. Applicant does not have a budget or a realistic plan for resolving his debts. At this juncture, his financial stability is questionable. I cannot find that the circumstances are unlikely to recur. I find his inaction regarding addressing his delinquent debts casts doubt on his reliability, trustworthiness, and good judgment. Therefore, AG ¶ 20(a) does not apply. Applicant began having financial problems in 1997, when he was unemployed, and again in 2005, when he had to move due to his job relocation. AG ¶ 20 (b) partially applies. In order for mitigating condition AG ¶ 20(b) to be fully applicable, Applicant must provide proof that he acted responsibly under the circumstances, which he did not do. Applicant has delinquent debts dating back to 2000. He has done little in the past ten years to address his financial problems. He recently paid a judgment against him, but provided no proof that he has made any payments on his other debts or judgments. I find he did not act responsibly under the circumstances. There is no evidence that Applicant received financial counseling to stabilize his finances and resolve his debts. He made a settlement offer on one debt, but has not resolved the debt. He promised during his interview with the OPM investigator that he would follow up on his debts, but failed to do so. I find there is insufficient evidence to conclude Applicant has made a good-faith effort to repay his creditors or that the problem is being resolved or under control. I find AG ¶¶ 20(c) and 20(d) do not apply. Applicant disputes some of his delinquent debts, but did not provide relevant documentary evidence to substantiate the basis of his disputes, as required under AG ¶ 20(e).

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. Applicant is 42 years old. He admitted that he has not focused on his finances in the past. He owes \$48,000 in delinquent debts, which date back to 2000. Although certain events in his life affected his financial status, he took minimal action to address his debts over the past nine or ten years. In January 2010, he paid a judgment that was entered in January 2007. He does not have a budget or a plan for resolving the other debts, nor has he made payments on any of them. The record evidence leaves me with serious questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the guideline for 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, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.g:	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 a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge