



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



In the matter of:)
)
) ISCR Case No. 09-02546
)
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro Se*

March 4, 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 October 15, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concerns under Guidelines 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 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 November 10, 2009, and requested a hearing before an administrative judge. The case was assigned to me on December 21, 2009. DOHA issued a Notice of Hearing on January 7, 2010, and I convened the hearing as scheduled on January 27, 2010. The government offered Exhibits (GE) 1 through 6. Applicant did not object and they were admitted. Applicant testified and

offered Exhibits (AE) A through C. Department Counsel did not object and they were admitted. DOHA received the transcript of the hearing (Tr.) on February 4, 2010.

Findings of Fact

Applicant's admitted all of the allegations in the SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 49 years old. He retired from the Air Force as a technical sergeant (E-6) in 2005, after 20 years of service. He married in 1980 and divorced in 1989. He has one child from the marriage, who is 28 years old. He married again in 1990 and divorced in 2005. He has two children from the marriage who are 21 and 13 years old. He married again in 2005 and has been separated from his wife since January 2008. His wife has two children from a previous marriage. He intends to file for a divorce. He has worked as an inspector for a federal contractor since September 2005.¹

In 1992, Applicant had approximately \$20,000 discharged in bankruptcy. He admitted he lived beyond his means and bought things he could not afford. In 1995, he attended debt counseling and set up a budget. He has not had any additional or more recent financial counseling. Applicant has accrued more than \$67,000 of delinquent debt, listed in the SOR. He admitted he was negligent and did not take care of his finances and again was living beyond his means.²

Applicant explained that when he and his third wife separated, they agreed to split some debts. When he and his second wife divorced, he stated the divorce decree ordered her to assume responsibility for some of the joint debts. The debts she was to assume are in SOR ¶¶ 1.a (\$4,293) and 1.g. (\$618). He stated his ex-wife agreed to make the payments on the debts, but she has not. He did not provide a copy of the divorce decree or other proof to show she was responsible for these debts. The debts remain unresolved. He attributes the beginning of his financial problem to his divorce from his second wife.³

Applicant stated that the debt in SOR ¶ 1.n (\$26,487) was for a new car that was purchased in 2005, and was repossessed about four months later because he and his third wife were unable to make the payments. He contacted the creditor and agreed to a settlement to pay his half of the debt. He agreed he would pay \$4,700 to settle his portion of the debt. Applicant did not provide documented proof of the settlement

¹ Tr. 20-26.

² Tr. 74-78.

³ Tr. 19, 54-56, 61-62.

agreement. He does not have the money at this point to pay the debt, but is hoping to work out a monthly payment plan.⁴

Applicant pays child support for his minor daughter. The debt in SOR ¶ 1.h (\$6,840) is for child support arrearages. He stated he was unaware of the court order for a period of time. He has his child support payments and his payments toward arrearage deducted from his pay. He stated he presently owes \$2,259 in arrears.⁵

Applicant admitted he owes the remaining debts in the SOR. He has not contacted any of the creditors and has not made payments on any of the delinquent debts alleged. In his answer to the SOR he stated he would pay certain alleged debts prior to his hearing. At his hearing, he stated he did not make the promised payments because he did not have the money to do so. He is no longer paying his wife \$1,000 for support and estimated he would have approximately \$500 remaining each month to pay his delinquent debts. He plans to pay some of the small debts first before paying the larger debts.⁶

The debt in SOR ¶ 1.b (\$384) is for an amount owed for a lease that Applicant broke. It is unpaid.⁷

The debt in SOR ¶ 1.c (\$2,574) is to a jewelry store for a ring Applicant bought in 2005. He has not paid the debt.⁸

The debts in SOR ¶¶ 1.d (\$25) and 1.e (\$40) are medical debts that are not paid.⁹

The debt in SOR ¶ 1.f (\$489) is a credit card debt that is unpaid.¹⁰

The debts in SOR ¶¶ 1.i (HSBC \$690) and 1.j (\$2,274) were for cash advances Applicant received from a tax service for his anticipated income tax refunds for 2006 and 2007. Applicant's tax refunds were garnished and applied to his child support arrearages. He did not return the money he received from the tax service.¹¹

⁴ Tr. 67-71.

⁵ Tr. 42-46, 62-64.

⁶ Tr. 52-53.

⁷ Tr. 56-58.

⁸ Tr. 58-59.

⁹ Tr. 60-61.

¹⁰ Tr. 61.

¹¹ Tr. 64-65.

The debt in SOR ¶ 1.k (\$61) is for a telephone bill owed from approximately 2000 or 2001. It is not paid.¹²

The debt in SOR ¶ 1.l (\$842) is for a car loan that Applicant's estranged wife was supposed to pay when she sold the car. She did not. Applicant has not resolved the debt.¹³

The debt in SOR ¶ 1.m (\$10,808) is for a repossessed vehicle that was purchased in 2007. Applicant returned it after four months, but has not resolved the debt.¹⁴

The debt in SOR ¶ 1.o (\$10,708) is a credit card debt Applicant has owed since 2003. It is not paid.¹⁵

The debt in SOR ¶ 1.p (\$3,001) is a credit card debt that is not paid.¹⁶

The debt in SOR ¶ 1.q (\$68) is a medical debt that is not paid.¹⁷

The debts in SOR ¶¶ 1.r (\$1,159) and 1.s (\$818) are for cash advances Applicant received in 2005. He has not paid the debts.¹⁸

Applicant has two current car loans totaling approximately \$13,000 on which he makes regular payments.¹⁹

Applicant stated he now has a budget. He no longer has any credit cards. He no longer is providing support payments to his wife, so he estimates he will have an additional \$500 at the end of the month to use to pay delinquent debts. He also has to expend approximately \$2,600 to fix his car. He has approximately \$5 in his checking account and \$140 in his savings account. He will try to borrow some money from his family to help him pay his delinquent debts. He has not contacted most of his creditors. He will to begin paying his smaller debts first and then his larger ones.²⁰

¹² TR. 65-66.

¹³ Tr. 66.

¹⁴ Tr. 66-68.

¹⁵ Tr. 71-72.

¹⁶ Tr. 73.

¹⁷ *Id.*

¹⁸ Tr. 73-74.

¹⁹ Tr. 48-49, 79.

²⁰ Tr. 31, 49-54.

Applicant provided three character letters that were considered.²¹ His supervisor and two coworkers provided the following comments about him:

- He is a reliable and valuable employee.
- He is respected by the members of his team.
- He is a fast learner and has problem solving abilities.
- There is nothing detrimental in his character on or off the job.
- He is professional and loyal.
- He has a high degree of integrity, responsibility and ambition.
- He is a leader.
- He has a wealth of experience and is often the last one to leave the workspace.
- He has a strong work ethic.
- He is frugal and forthright.

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.

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 over-arching 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 as to obtaining a favorable security decision.

²¹ AE A, B, C.

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 conditions that could raise security concerns. I have considered all of them and especially considered the following under AG ¶ 19:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.

Applicant owes more than \$67,000 for delinquent debts that remain unresolved and unpaid. He is unable and unwilling to pay the debts. He admitted living beyond his means by buying things he did not need or have the money to pay for. I find the above disqualifying conditions have been raised.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions and especially considered the following 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 individual 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's behavior is recent because the debts remain delinquent and he has not made arrangements to resolve them. I find mitigating condition (a) does not apply. Applicant attributes some of his delinquent debt to his ex-wife. However, he failed to provide proof that she is solely responsible for the debts. He had debts discharged in bankruptcy in 1992. He has accumulated additional delinquent debts since being married to his third wife. He has not provided sufficient evidence to show his financial circumstances were beyond his control or that he acted responsibly. Therefore, I find mitigating condition (b) does not apply. Applicant received some financial counseling in 1995, but has not sought any recently. He has not taken any action to resolve his delinquent debts, although he stated he intends to do so. There are not clear indications the problem is being resolved and he has not made a good-faith effort to resolve his debts. I find the financial counseling is dated because it was prior to Applicant's latest financial problems and did not have the expected result. Applicant does not have a formulated plan on how he will resolve his delinquent debts. I find mitigating conditions (c) and (d) do not apply.

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 common sense 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 served his country in the military for 20 years and was honorably discharged. He had financial problems in 1992 and had his delinquent debts discharged in bankruptcy. He continued to have financial problems, as he admitted, because he lived beyond his means. He attributes some of the debts to his ex-wife, but failed to provide proof that she is responsible for paying specific debts. He has not provided a plan on how he will resolve his delinquent debts. He has not made payments on any of the debts. 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 failed to mitigate the 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-1.t:

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.

Carol G. Ricciardello
Administrative Judge