



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



In the matter of:)	
)	
)	ISCR Case No. 09-02960
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Fahryn Hoffman, Esquire, Department Counsel
For Applicant: *Pro Se*

April 30, 2010

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted a security clearance questionnaire (e-QIP) on January 27, 2009. On September 9, 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 adjudicative guidelines (AG) which became effective within the Department of Defense for SORs issued after September 1, 2006.

On October 7, 2009, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on November 3, 2009. The case was assigned to me on November 17, 2009. The hearing was originally scheduled for February 11, 2010, but was cancelled because of inclement weather. On February 23, 2010, a Notice of Hearing was issued, scheduling the hearing for March 18, 2010. The case was heard on that date. The Government offered three exhibits which were admitted as Government Exhibits (Gov) 1 – 3. The Applicant testified and offered 11 exhibits which were admitted as Applicant Exhibits (AE) A - K.

The record was held open until April 7, 2009, to allow Applicant to submit additional documents. On April 7, 2010, I granted Applicant's request for an extension until April 23, 2010, to submit documents. He timely submitted five documents that were admitted as AE L - P. Department Counsel's response to Applicant's post-hearing submissions is marked as Hearing Exhibit (HE) I. The transcript (Tr.) was received on March 30, 2010. 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.j, 1.l -1.p, and 1.r. He denies SOR allegations 1.k and 1.q

Applicant is a 44-year-old employee with a Department of Defense contractor. He has worked for his current employer for approximately 15 months. He previously held a security clearance about 20 years ago with another government agency. This is his first time applying for a Department of Defense security clearance. He is a high school graduate and has two years of college. He is married and has two children from a previous marriage, a daughter, age 14, and a son, age 10. (Tr at 6-7, 37, 40; Gov 1.)

Applicant's security clearance background investigation revealed that he has the following delinquent accounts: a \$17,297 debt resulting from an automobile repossession in 2002 placed for collection (SOR ¶ 1.a: Gov 2 at 15; Gov 3 at 5); a \$519 medical account placed for collection in September 2004 (SOR ¶ 1.b: Gov 2 at 16; Gov 3 at 10); a \$481 medical account, creditor unknown, placed for collection in August 2005 (SOR ¶ 1.c: Gov 2 at 16; Gov 3 at 8); a \$337 credit card account placed for collection in December 2007 (SOR ¶ 1.d: Gov 2 at 16; Gov 3 at 5); a credit card account that was past 120 days in the amount of \$24 with a total balance of \$335 (SOR ¶ 1.e: Gov 2 at 16; Gov 3 at 7); a \$272 cell phone account placed for collection in May 2007 (SOR ¶ 1.f: Gov 2 at 16; Gov 3 at 4); a \$200 medical account placed for collection in November 2008 (SOR ¶ 1.g: Gov 2 at 16; Gov 3 at 8); a \$199 medical account, creditor unknown, placed for collection in May 2003 (SOR ¶ 1.h: Gov 2 at 16; Gov 3 at 8); a \$188 television account placed for collection (SOR ¶ 1.i: Gov 2 at 16); and a \$145 account placed for collection in November 2008. (SOR ¶ 1.j: Gov 2 at 17)

Additional delinquent accounts include: a \$91 cable television account placed for collection in August 2007 (SOR ¶ 1.k: Gov 2 at 17; Gov 3 at 6); a \$75 medical account placed for collection in May 2006 (SOR ¶ 1.l: Gov 2 at 17; Gov 3 at 9); a \$75 medical account placed for collection (SOR ¶ 1.m: Gov 2 at 17) a \$75 medical account placed for collection (SOR ¶ 1.n:Gov 2 at 17); a \$70 medical account placed for collection in October 2007 (SOR ¶ 1.o: Gov 2 at 17; Gov 3 at 11); a \$54 medical account, creditor unknown, placed for collection in August 2005 (SOR ¶ 1.p: Gov 2 at 18; Gov 3 at 8); a \$49 electric utility account placed for collection in October 2007 (SOR ¶ 1.q: Gov 2 at 18; Gov 3 at 10); and a \$34 medical account placed for collection in March 2007 (SOR ¶ 1.r: Gov 2 at 18; Gov 3 at 9).

Applicant admits that he has had a history of not knowing how to manage credit. His financial problems began when he was laid off in 2002. He was unemployed for about six months. In June 2002, his car was repossessed. This is the debt alleged in SOR ¶ 1.a. (Tr. 33, 80-81, 84) Applicant divorced his first wife in April 2007. His ex-wife agreed to pay some of the marital debt but did not abide by the agreement. Applicant is paying all of the marital debts. (Tr. 96-97)

In July 2009, Applicant remarried. His second wife closed down her courier business to move to where Applicant resides. She is unemployed. She owns a home in another state. Applicant was responsible for the mortgage payment until they found a renter last month. The renter pays the mortgage payment, but Applicant is still responsible for the monthly \$120 homeowners' association dues. This past fall, Applicant lost a car when a large storm hit the area where he lived. His car was flooded. He owed \$3,000 after the insurance paid the settlement. He is making payments towards the balance. (Tr. 34-37, 58)

Applicant's ex-wife is unemployed. As a result, Applicant provides additional support for his children in addition to his \$957 monthly child support. His son has auditory processing disorder and requires special education services. He hired a special education advocate to assist him with mediating with the school district to insure his son is being provided adequate services to meet his son's needs. (Tr. 38-41, 52; AE F)

Applicant intends to pay all of his debts. He paid off several debts that were not alleged in the SOR, including a debt owed to a city for unpaid automobile taxes (\$265), a municipal sanitation company (total amount \$152), and an electric utility bill (\$159). (AE A at 2-4; AE M) He did not enter a payment agreement with his largest debt of \$17,297, the automobile repossession alleged in SOR ¶ 1.a, because a mortgage broker advised him on how to increase his credit rating. The mortgage broker told Applicant that the automobile repossession was going to be deleted soon from his credit report. She advised him to do nothing about the account because if he entered into a repayment agreement, it will negatively affect his credit report. (Tr. 33-34)

The following debts are paid:

SOR ¶ 1.e: \$24 past due account was paid on January 11, 2010. (Tr. 61; AE C; AE N)

SOR ¶ 1.k: \$91 cable television collection account was paid on June 11, 2009. (Tr. 76-78; AE A at 5; AE O)

SOR ¶¶ 1.l, 1.m, and 1.n, three \$75 copays, total amount \$225 was paid on January 12, 2010. (Tr. 58-59; AE E)

SOR ¶ 1.o: \$70 medical account was paid as of January 18, 2010. (Tr. 66; AE D)

SOR ¶ 1.q: \$49 electric utility account was paid on October 19, 2007. (Tr. 67; AE A at 1-2; AE M)

The names of the actual creditors for the medical accounts alleged in SOR ¶¶ 1.c, 1.h, and 1.p are not listed on the credit reports. There is no contact information for these creditors as well. I find for Applicant with respect to these three debts because the government pleading is insufficient and vague. After the hearing, Applicant disputed these three accounts on his credit report. (Tr. 111; AE L)

The remaining debts are unresolved (SOR ¶¶ 1.a, 1.b, 1.d, 1.f, 1.g, 1.i, 1.j, and 1.r) Applicant intends to contact these creditors as soon as he can afford to pay. Prior to the hearing he had attended formal financial counseling. After the hearing, he indicated that he had hired a credit counselor. The credit counselor is preparing a plan to clean up his credit. The counselor is also going to advise him on how to manage his finances in the future. (Tr. 113, 121; AE P)

Applicant's net monthly income is \$4,256. His regular monthly expenses include: rent \$700, groceries \$500, clothing \$230, electric \$260, cell phone \$200, internet \$35, car expenses \$400, child support \$957; church tithes \$442, entertainment \$260, and wife's homeowner's association fee \$120. The expenses total approximately \$4,104. He has \$152 left over each month after his regular monthly expenses. (Tr. 98-109; AE K)

Applicant also has several variable expenses. He paid a \$375 retainer to his son's special education advocate. She also charges \$60 an hour for services and mileage of \$0.45 a mile. Both of his children need dental procedures. His son's dental procedure will cost \$300. His daughter's dental procedure will cost \$700. Applicant has one open credit card account to improve his credit rating. It has a \$250 limit. The balance is currently \$200. He pays the minimal payment. Applicant recently purchased a 1995 Chevy Astro van from a friend for \$2,000. He agreed to make payments to his friend when he is able to afford it. The balance on the loan is \$1,600. His wife has credit cards. He pays the minimum payment on his wife's credit cards. He does not know the balance of his wife's credit cards. (Tr. 106-119, 125)

A security assistant in the Facility and Support office of Applicant's company wrote a letter on Applicant's behalf. He states that Applicant has worked diligently towards a resolution of all outstanding matters associated with his request for a security clearance. Applicant's performance has been outstanding on the Government contracts he supports. (AE G)

Applicant's pastor wrote a letter on his behalf. Applicant serves a minister, and a pastor's assistant representative man who reviews the church's financial forms and the church's weekly kitchen report for accuracy. His pastor states that Applicant is a wonderful young man and an asset to the church. In calendar year 2009, Applicant paid \$6,265.75 to the church in total charitable contributions consisting of tithes and church rallies. (AE H)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines. 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 AG ¶19(a) (an inability or unwillingness to satisfy debts); and AG ¶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 18 delinquent accounts, a total approximate balance of \$20,186. Of that amount, \$17,297 relates to the automobile repossession alleged in SOR ¶ 1.a.

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. 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) is not applicable. Applicant has had difficulty meeting his financial obligations for a number of years. Fourteen of the 18 delinquent debts are under \$200 which indicates a pattern of financial neglect as opposed to being unable to pay. Applicant's current financial situation remains precarious. He is the sole income provider for his family. He has the added responsibility of supporting his new wife and assuming her debts because she does not work. Applicant's expenses currently exceed his income. Applicant's unresolved debts raise questions about his reliability, trustworthiness, and good judgment.

AG ¶ 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. Applicant was unemployed

for six months in 2002, which resulted in his car being repossessed. He was divorced in 2007. His son requires special education services. Applicant had to hire an advocate in order to assist in obtaining the services his son needs for an appropriate education. However, I cannot conclude Applicant acted responsibly under the circumstances because he has been gainfully employed since 2002. He continued to incur additional delinquent accounts while employed. Most of these debts have low balances and could have been gradually paid off over time with some adjustments to Applicant's discretionary expenses. Aside from the \$17,297 car repossession alleged in SOR ¶ 1.a, the total amount of the remaining delinquent accounts totaled \$2,889. 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 and managing his financial situation.

AG ¶ 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. Before the hearing, Applicant consulted a mortgage broker on how to clean up his credit in order to qualify for a home. After the hearing he indicated that he hired a financial counselor. While this is a step in the right direction, it is too soon to conclude Applicant will follow the advice provided by the financial counselor. While Applicant has paid several debts and intends to pay his remaining unresolved debts in the future, it is unlikely Applicant's financial problems will be resolved in the near future because he remains financially overextended.

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies with respect to the debts alleged in SOR ¶¶ 1.e, 1.k, 1.l, 1.m, 1.n, 1.o and 1.q. He also paid several accounts that were not alleged in the SOR. Eight delinquent accounts remain unresolved.

While Applicant acknowledges his financial problems and resolved several accounts, his financial situation remains a security concern. 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 six-month period of unemployment in 2002. I considered his divorce in April 2007. I considered that he is the sole provider for his two children because his ex-wife is currently unemployed. I considered the added expense of caring for his son's special education needs. I considered that his wife is currently unemployed. While Applicant paid off several debts including debts that were not included in the SOR, he operates a negative monthly balance based on the information he provided about his finances during the hearing. Although he assumed responsibility for his wife's debts when they married because of her unemployment, he was unable to provide the balance of his wife's credit card accounts during the hearing. It is unlikely that he will resolve the remaining debts in the near future based on his current financial situation. While there were mitigating circumstances in this case, doubts remain regarding Applicant's financial situation. Mindful of my responsibility to rule in favor of the national interest 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 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.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f -1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i -1.j:	Against Applicant
Subparagraph 1.k – 1.q:	For Applicant
Subparagraph 1.r:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

ERIN C. HOGAN
Administrative Judge