



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-03042
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

July 1, 2010

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

On October 14, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising 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).

In a response to the SOR, notarized on November 4, 2009, Applicant admitted 10 of the 21 Guideline F allegations concerning various delinquent debts. Applicant also requested a hearing. DOHA assigned the case to me on December 16, 2009. The parties agreed to a hearing date of February 11, 2010. On January 25, 2010, DOHA issued a notice setting that date for a hearing. Due to inclement weather, the hearing was rescheduled for March 3, 2010. The hearing was convened as rescheduled.

Department Counsel introduced five documents which were accepted into the record without objection as exhibits (Exs.) 1-5. He also stipulated that the debts referenced in SOR allegations ¶¶ 1.c, 1.e, 1.f, and 1.p had been resolved. Applicant

gave testimony and offered eight documents, admitted into the record without objection as Exs. A-H.¹ Applicant was given until March 15, 2010, to supplement the record with any additional documents. On March 5, 2010, he submitted six additional documents to Department Counsel, who forwarded the materials without objection. I received that package of materials on March 26, 2010. I admitted the documents as Exs. I-N. In the interim, the transcript (Tr.) of the proceeding was received on March 17, 2010. The record closed on March 26, 2010. Based on a thorough review of the testimony, submissions, and exhibits, I find Applicant failed to meet his burden regarding the security concerns raised. Access to classified information is denied.

Findings of Fact

Applicant is a 51-year-old systems analyst who has worked for the same defense contractor for over two years. He has a high school diploma and one year of post-secondary education. Applicant is married and has three children. From 1977 until 2003, he served in the United States Army and United States Army Reserve.

In 2002, Applicant's first marriage began to falter. In July 2003, Applicant was honorably discharged from the United States Army. He attended college from June 2003 until November 2004, during which time he and his wife separated.² During their estrangement, Applicant supported two separate households and supported his adult son until the couple ultimately divorced in 2004. The divorce and his financial situation forced him to abandon his education in favor of finding full-time employment. His search for a position was difficult and protracted. To generate income, he took a series of part-time jobs, but his earnings were insufficient. Nearly a year later, he found a stable full-time position. Throughout this period, he incurred some debts.

In 2006, Applicant married a member of the armed services. Consequently, the couple was subject to relocations. Her first relocation led to his leaving a stable job in 2007 and facing about four months of unemployment before he found another position. As a result, payment on his acquired debts was further delayed. He did, however, receive some form of financial counseling in 2007.

The Government conceded that SOR allegations ¶¶ 1.c, 1.e, 1.f, and 1.p are resolved.³ Applicant attributed many of the debts remaining at issue to his ex-wife, but he provided no evidence linking her to those accounts.⁴ Remaining at issue are the following:

1.a – 2003 Tax Lien for approximately \$1,017 – *Satisfied*. Applicant testified that this debt was related to a tax assessment while further tax documentation from Applicant

¹ No Ex. D was presented at the hearing, nor was one subsequently submitted. Tr. 17-19.

² Elsewhere, Applicant stated the couple separated in 2002. Tr. 30.

³ Tr. 9, 56-57.

⁴ See, e.g., Tr. 28, 31-32, 39-40, 41-42.

was pending. The required documents were provided and the assessment was withdrawn.⁵

1.b – Account placed for collection by a municipal court for approximately \$120 – *Included in debt repayment plan*; that plan is discussed below.⁶

1.d – Debt related to 2002 car repossession for approximately \$9,623 – *Unpaid*. Applicant stated that he tried to work with the lender in 2002, but his efforts were blocked by a company manager.⁷ No subsequent efforts were made to resolve the debt.

1.g – Account charged off in the approximate amount of \$588 – *Included in debt repayment plan*.⁸

1.h – 1.k – Student loan debts 120 days or more past due in the approximate amounts of \$4,946, \$3,158, \$4,909, \$2,988 – *In repayment as of early January 2010* – Applicant ceased making payments on these loans in 2007, after he and his current wife relocated and he was between jobs. For two or three months, he made minimum payments of about \$100, reduced from \$300, on the debts, which were now consolidated. He was then informed that a change in policy would preclude him from making such reduced payments in the future.⁹ He informed the lender he could not make the regular \$300 payments and “so it ended right there.”¹⁰ No further payments were made until May 2009, when he resumed payments on the account.¹¹ Those payments continued through at least early January 2010.

1.l – Collection account for a debt in the approximate amount of \$2,988 – *Included in debt repayment plan*.¹²

⁵ Tr. 26-28; Ex. A (Tax commission letter, dated Feb. 10, 2010), Ex. J (Tax commission letter, dated Mar. 4, 2010).

⁶ Tr. 28; Ex. B (Client Partnership Agreement, dated Mar. 1, 2010). Payments on the plan were to begin on an unspecified date in April 2010. Tr. 29.

⁷ Tr. 31.

⁸ Tr. 33; Ex. B (Client Partnership Agreement), *supra*, note 6.

⁹ Tr. 34.

¹⁰ *Id.*

¹¹ Ex. G (Payments for May 2009 – Jan. 2010). No evidence was provided, however, for a February 2010 or March 2010 payment.

¹² Tr. 35-36; Ex. B (Client Partnership Agreement), *supra*, note 6.

1.m – Collection account for a debt in the approximate amount of \$72 – *Included in debt repayment plan.*¹³

1.n – 1.o – Collection accounts for parking tickets in the approximate amounts of \$92 and \$89 – *Included in debt repayment plan.*¹⁴

1.q – 1.r – Collection accounts on debts in the approximate amounts of \$126 and \$114 – *Included in debt repayment plan.*¹⁵

1.s – Collection account in the approximate amount of \$1,131 – *Included in debt repayment plan.*¹⁶

1.t – Collection account in the approximate amount of \$714 – *Included in debt repayment plan.*¹⁷

1.u – Collection account in the approximate amount of \$762 – *Included in debt repayment plan.*¹⁸

At present, Applicant is an on-call, part-time employee. He is not currently assigned to a project. His last assignment was in November 2009. He is supporting himself on a monthly pension allotment of \$1,300 and receiving unemployment benefits of about \$1,052 a month.¹⁹ His wife earns a net monthly salary of approximately \$5,400. Their combined income is about \$7,752. The couple rents a house for about \$3,000 a month. Their car payments amount to about \$867 per month, and they pay approximately \$288 for car insurance. Cable, telephone, and internet cost about \$237 per month. Utilities cost about \$530 every quarter. Applicant has checking and savings accounts with a combined balance of about \$1,100.

Under his debt repayment plan, the goal is to satisfy approximately \$9,500 of debt. Most of that debt was acquired in 2003.²⁰ Originally, Applicant was not going to address those debts, which he testified were incurred by his ex-wife. He has since taken responsibility for all the debts noted in the SOR, regardless of their origin. Under

¹³ Tr. 36-37; Ex. B (Client Partnership Agreement), *supra*, note 6.

¹⁴ Tr. 38; Ex. B (Client Partnership Agreement), *supra*, note 6.

¹⁵ Tr. 38-39; Ex. B (Client Partnership Agreement), *supra*, note 6.

¹⁶ Tr. 40-41; Ex. B (Client Partnership Agreement), *supra*, note 6.

¹⁷ Tr. 41-42; Ex. B (Client Partnership Agreement), *supra*, note 6.

¹⁸ Tr. 42; Ex. B (Client Partnership Agreement), *supra*, note 6.

¹⁹ Tr. 43.

²⁰ Tr. 48.

the debt repayment plan, he was to pay \$403.84 in April 2010. Thereafter, Applicant will pay \$263 a month toward satisfying those outstanding debts included in the debt consolidation plan. The plan is designed to be completed in 36 months.

Aside from the debt repayment plan, Applicant has no strategy for addressing any collateral debts not covered in the plan.²¹ Applicant is current on his monthly bills, however, and only maintains two small credit cards. He is presently in a payment plan with the federal government for about \$4,800 in back taxes incurred due to under-withholding, which necessitates paying about \$200 a month toward his 2008 tax liability.²² Applicant does not have a formal budget. Instead, he maintains one that is “just kind of scratched out every month.”²³

Policies

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the 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. 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. Under AG ¶ 2(c), this 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.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by

²¹ Tr. 54.

²² Tr. 51-52.

²³ Tr. 55.

Department Counsel. . . .²⁴ The burden of proof is something less than a preponderance of evidence.²⁵ The ultimate burden of persuasion is on the applicant.²⁶

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 an 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). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”²⁷ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²⁸

Based upon consideration of the evidence, Guideline F (Financial Considerations) is the most pertinent to this case. Conditions pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

Analysis

Under Guideline F, “failure or an inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or an 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.”²⁹ The guideline sets out several potentially disqualifying conditions. Here, Applicant incurred numerous debts, many of which date back to the early 2000s. To

²⁴ See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

²⁵ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

²⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

²⁷ *Id.*

²⁸ *Id.*

²⁹ AG ¶ 18, which also notes, “An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.”

date, the majority of those debts remain unpaid. Therefore, Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts) and FC DC AG ¶ 9(c) (a history of not meeting financial obligations) apply. With such conditions raised, the burden shifts to Applicant to overcome the case against him and mitigate security concerns.

The vast majority of debts at issue were incurred and became delinquent in the early to mid-2000s. Most of the debts remained delinquent through periods of unemployment and underemployment, yet remained in that status through periods of stable employment. With the exception of the student loans, most, if not all, of the debts at issue remained unaddressed or unresolved until after the issuance of the October 2009 SOR. Today, Applicant is technically employed, but in a capacity described as part-time and on-call. Consequently, despite the fact he is presently “employed,” he is currently relying on income generated through a pension and unemployment benefits. It is unclear as to when he will be assigned another project. Given these facts, Financial Considerations Mitigating Condition (FC MC) 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) does not apply.

The majority of the debts at issue were acquired between 2002 and 2005, when he returned to civilian life, separated from his wife, divorced, and experienced erratic employment. To his credit, he recognized that maintaining two households demanded he return to the work force. A stable position, however, was difficult to obtain. While he searched for work, he did his best to generate income and meet his obligations through a string of part-time positions. He offered no documentary evidence of efforts to address his delinquent debts when he had a stable position between 2005 and 2007, however, or after he found a permanent position following his relocation with his wife to another city in 2007. With the exception of his student loans, there is no documented evidence that he tried to address the debts at issue between 2007 and his receipt of the October 2009 SOR. Therefore, while a degree of mitigation must be assigned for the circumstances culminating in the creation of Applicant’s delinquent debt, there is little documentation showing that he acted responsibly with regard to those debts when he was employed. Therefore, FC MC AG ¶ 20(b) (the conditions that resulted in the behavior 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) does not apply.

Applicant received some form of financial counseling in 2007. To date, however, he does not have a firm budget. Moreover, the majority of the debts at issue remain unpaid. While some debts have been satisfied and he resumed payment on his student loans, his debt consolidation and repayment plan was not formalized until early March 2010, the week of the rescheduled hearing. Even assuming he made his April 2010 and May 2010 payments on that plan, there is insufficient documentary evidence demonstrating that his debt is firmly under control. Therefore, based solely on the financial counseling received, 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) applies in part.

However, although Applicant formalized a debt repayment plan encompassing some of the debts at issue days before the rescheduled hearing, such a plan was ultimately instituted. He also resumed payment on his student loans and resolved a few of the debts at issue. Such facts are sufficient to raise FC MC ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts).

In sum, Applicant's tax lien issue apparently was resolved (¶ 1.a) and he satisfied four of the debts cited in the SOR to the Government's satisfaction (¶¶ 1.c, 1.e, 1.f, and 1.p). However, while his student loans appear to be in repayment (¶¶ 1.h – 1.k), Applicant failed to show whether he has made any payments since early January 2010. Consequently, evidence of consistent and regular payment was not shown. Moreover, while debts amounting to about \$6,800 (¶¶ 1.b, 1.g, 1.i, – 1.o, 1.q – 1.u) were included in a March 2010 debt repayment plan addressing approximately \$9,500 in delinquent obligations, Applicant was not poised to begin payments until April 2010, after the hearing. Consequently, there has been insufficient time to develop and demonstrate a meaningful track record of timely and regular payments on that plan. Furthermore, a debt for approximately \$9,623 (¶ 1.d) has not been paid. Finally, Applicant does not have a budget in place for addressing those debts not included in the debt repayment plan. Consequently, while some progress has been made, delinquent debt remains outstanding. The remaining debt appears even more significant in light of Applicant's currently precarious state of on-call employment and dependence on his pension and unemployment benefits. In light of these factors, financial considerations security concerns remain unmitigated.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). Moreover, under AG ¶ 2(c), the ultimate determination of whether to grant 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, as well as the "whole-person" factors. Applicant is a mature, experienced, and credible man who incurred significant debt in the early to mid-2000s. During that time, he prepared to attend college after his military discharge, separated from his wife, and ultimately divorced. While periods of underemployment and unemployment contributed toward his acquisition of debt, he failed to make demonstrable progress on his debts when he had stable employment.

While some effort to address his debts was made before the issuance of the 2009 SOR, the majority of Applicant's demonstrated efforts toward addressing his delinquent obligations occurred after the SOR was issued. Although repayment plans

are now in place for his student loans and some of his other debts, Applicant failed to provide documentation demonstrating an established record of on-going, consistent, and regular monthly payments on those plans. Therefore, while his recent efforts cannot be discounted, it would be premature to conclude that his debts are under control. This is particularly true in the absence of a firm budget and in light of his precarious employment. Lacking such a demonstration, financial considerations security concerns remain. Clearance denied.

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	Against Applicant
Subparagraph 1.c	For Applicant
Subparagraph 1.d	Against Applicant
Subparagraph 1.e	For Applicant
Subparagraph 1.f	For Applicant
Subparagraph 1.g	Against Applicant
Subparagraph 1.h	Against Applicant
Subparagraph 1.i	Against Applicant
Subparagraph 1.j	Against Applicant
Subparagraph 1.k	Against Applicant
Subparagraph 1.l	Against Applicant
Subparagraph 1.m	Against Applicant
Subparagraph 1.n	Against Applicant
Subparagraph 1.o	Against Applicant
Subparagraph 1.p	For Applicant
Subparagraph 1.q	Against Applicant
Subparagraph 1.r	Against Applicant
Subparagraph 1.s	Against Applicant
Subparagraph 1.t	Against Applicant
Subparagraph 1.u	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant a security clearance. Clearance denied.

ARTHUR E. MARSHALL, JR.
Administrative Judge