



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



In the matter of:)	
)	
)	ISCR Case No. 09-03290
)	
)	
Applicant for Security Clearance)	

Appearances

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

March 5, 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 23, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing 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 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 as amended (Directive).

Applicant answered the SOR in writing on November 9, 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. I convened the hearing as

scheduled on January 27, 2010. The government offered Government Exhibits (GE) 1 through 8. Applicant did not object and they were admitted into evidence. Applicant testified on his own behalf and did not offer any exhibits. The record was held open until February 10, 2010, to give Applicant time to submit documents, which he did. They were marked as Applicant Exhibits (AE) A through H. The government responded in Hearing Exhibit I and had no objections. The documents were admitted into evidence and the record closed. DOHA received the transcript of the hearing (Tr.) on February 4, 2010.

Findings of Fact

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

Applicant is 51 years old. He served in the Air Force from 1981 to 2001, and was honorably discharged in the rank of E-6. He married in 1983, separated in approximately 2004 or 2005, legally separated in December 2007, and divorced in 2008. He has three grown children, ages 33, 26, and 25. Applicant has a bachelor's degree in business management and an associate's degree. He is presently working on a master's degree. He has been employed with a federal contractor since 2008. He has had numerous jobs since retiring from the military and experienced periods of unemployment from October 2001 to February 2002, August 2004 to February 2005, and May 2007 to January 2008. During those periods he supported himself with his retirement, and his wife's income while they were together.¹

Applicant stated his financial problems began in 2000, before he retired. His mother became sick and he helped her pay her medical bills. He sold some real estate and owned some stock that he sold to pay her expenses. During that time his 39-year-old brother passed away, and Applicant paid some of the funeral expenses. His sister-in-law passed away in 2001, and he helped pay her funeral expenses by selling some real estate he owned for \$7,000. His brother-in-law passed away in 2004, and he gave his sister \$3,000 for the funeral expenses. In 2004, his mother passed away and he paid the funeral expenses.²

Applicant explained that when he and his wife separated in 2005, he was paying a car loan, which he could no longer afford without her income to help with the expenses. He stated he has been working since then to pay his debts.³

Applicant admits he filed for Chapter 13 bankruptcy in October 2002, and it was terminated in about July 2003. He filed again in January 2003, and it was terminated in

¹ Tr. 39-54.

² Tr. 34-36.

³ Tr. 36-37.

October 2003. He filed a third time in November 2003 and it was terminated in October 2005. He stated he did not have any debts discharged in bankruptcy. At the time, he was working for a company that laid him off periodically and then rehired him. Each time he was laid off he had to go to the bankruptcy court to show his income had changed. This resulted in the petitions being dismissed and re-filed.⁴

The debt in SOR ¶ 1.d (\$213) is not paid. Applicant did not have the money to pay the debt. He stated he contacted the creditor on December 14, 2009, and they agreed to send him a payment arrangement, but did not. He provided a memo that he contacted the creditor again after his hearing and is working to resolve the debt.⁵

The debt in SOR ¶ 1.e (\$498) is a credit card debt. Applicant stated he contacted the three creditor bureaus in December 2009, and disputed the debt. He was going to provide copies of the dispute letters after the hearing. He did not provide the letters. Applicant contacted the creditor after his hearing and was advised to call at a later date to arrange a payment plan. He provided a memo to me stating what he had done. He does not believe he owes this debt. The debt is not resolved.⁶

The debt in SOR ¶ 1.f (\$20,973) is a car loan from 2002. Applicant admits he owes the debt for a loan he cosigned for his cousin. The car was repossessed in 2004 or 2005. Applicant stated he has contacted the collection company over the past two years to determine the amount of the deficiency, but he has been unsuccessful in determining the balance. After his hearing, he contacted the three credit bureaus and disputed the debt.⁷

The debt in SOR ¶ 1.g (\$5,426) is for furniture Applicant purchased for his daughter in 2005. She agreed to make the payments on the debt. She stopped paying the debt in October 2007. Applicant stated he did not learn the debt was delinquent until May 2008, and he was unable to pay the debt at that time. He recently contacted the creditor and arranged to pay \$50 a week on the current balance (\$7,518) with his first payment due on January 29, 2010. He provided proof that he made his first payment.⁸

Applicant does not recognize the debt in SOR ¶ 1.h (\$300). He does not believe the debt belongs to him. He provided a memo, after his hearing, stating he contacted the creditor on January 28, 2010, and learned the debt was for an early termination fee

⁴ Tr. 18-19, 38-39, 86.

⁵ Tr. 20-21, 88-89; AE G.

⁶ Tr. 21-22, 90-92; AE F.

⁷ Tr. 23-26, 92-93; AE H.

⁸ Tr. 26-30, 93-94; AE B, C.

on telephone services. He did not recall having service with this company, but agreed to pay the debt by March 12, 2010.⁹

The debt in SOR ¶1.i (\$5,048) is for a debt Applicant owned jointly with his wife. He stated he was responsible for a portion of the debt and paid \$2,500 in 2006. He explained that his divorce decree specifically divided the debt and he paid what he was required. Applicant was questioned on how his divorce decree divided the debt, if he already paid his share in 2006. He explained that the divorce decree took into consideration his prior payments. Applicant was provided an opportunity to provide a copy of his divorce decree, but did not. In February 2008, he made an offer to the creditor to pay \$100 a month on the debt, beginning in March 2008. There is no evidence he made payments on this debt at that time.¹⁰ Applicant provided a letter from the collection company dated February 2, 2010, showing that he made another offer to pay \$100 a month to satisfy the debt, beginning on February 20, 2010, and the offer was accepted.¹¹

Applicant stated he owes approximately \$4,500 in student loans that are deferred until 2011. He lives with his girlfriend and she is not employed, but her parents help financially. She has a heart condition and cancer. He has been paying her medical bills because she could not obtain medical insurance. He does not have a budget, but estimates he has \$1,000 remaining each month after paying his expenses and helping with the medical expenses. He explained that he does not know where his excess money is spent. He stated he has used his expendable income to pay off other debts in the past. He has approximately \$600 in savings, but has a bill for a car repairs that he must pay. He purchased a house in 2001, and believes he has approximately \$200,000 in equity. He attempted to refinance his house, but was unsuccessful. Applicant has not received any financial counseling. He intends to use his income tax refund to pay his delinquent debts. He does not have any credit cards. He has been contributing to a 401k retirement plan since he began employment with his present company.¹²

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

⁹ Tr. 30-33, 94; AE E.

¹⁰ GE 2.

¹¹ Tr. 33-34, 94-96, 99-105; AE D. Applicant may have a legitimate dispute as to the payment of a portion of this debt, but he failed to provide substantiating documents.

¹² Tr. 54-87; GE 2.

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, 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 and has the ultimate burden of persuasion as 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 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).

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.

Applicant has had financial problems since 2000. He has delinquent debts that remain unpaid or unresolved. 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 and ongoing because his delinquent debts remain unpaid or unresolved. Based on Applicant's history of financial problems, I cannot find that the circumstances are unlikely to recur. I find mitigating condition (a) does not apply.

Applicant assisted his family with medical and funeral expenses in 2000, 2001 and 2004. He sold some real estate and stocks to fund the expenses. He experienced periods of unemployment, and when he and his wife separated he no longer had her income to rely on. For mitigating condition (b) to apply, Applicant must show that the conditions that caused the financial problems were beyond his control and he acted responsibly under the circumstances. I find these conditions were beyond Applicant's control. However, I do not find he acted responsibly under the circumstances. It has been approximately six years since Applicant helped his family. He and his wife have been separated for five years and divorced since 2008. He admits he does not know where his expendable income is spent. Although he had periods of unemployment, he has been steadily employed since 2008, and did not take action until recently to resolve his delinquent debts. I find mitigating condition (b) only partially applies.

Applicant has not attended financial counseling and he does not have a budget. Although he attempted to set up a payment schedule in 2008 for the debt in SOR ¶ 1.i, he did not provide proof he followed through and made payments. He now has a plan with the creditor to make future payments. He is attempting to address some of the other debts, but did not take action until after his hearing. I am not convinced the problem is being resolved or there are clear indications that Applicant's financial situation is under control. I find mitigating condition (c) does not apply.

Applicant has not made good-faith efforts to pay his creditors. After his hearing, he disputed with the credit bureaus the large debt in SOR ¶ 1.f. He did not provide sufficient evidence to substantiate any previous efforts regarding his dispute. Applicant may have a legitimate dispute with this creditor, but he failed to show he has been proactive in attempting to resolve it. There is insufficient evidence to apply mitigating condition (e). Applicant arranged a payment schedule with the creditor in SOR ¶ 1.g, and made his first payment after his hearing. Other debts remain unresolved. At this juncture, it is too early to conclude that Applicant will make consistent payments toward resolving all of his delinquent debts. Therefore, I cannot find that there are clear indications the problem is being resolved. I find mitigating conditions (d) does 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 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 served his country in the Air Force for twenty years. He helped his family financially when they were in need, had periods of unemployment, and helps his girlfriend with her medical needs. Those actions are commendable. However, Applicant has not sufficiently addressed his delinquent debts, despite learning of the government's security concerns in 2008. He has been steadily employed since 2008, but did not take action to contact most of his creditor until after his hearing. He does not have a budget and has not received financial counseling. He does not know how he spends his expendable income each month. Applicant needs time to put his finances in order and show he is consistently making payments to resolve his debts and resolve any disputed debts. After he establishes a budget and track record of responsible financial management, as well as resolution of his delinquent debts, he should reapply for a security clearance. At this time, I find that Applicant has not mitigated the security concerns related to his finances. 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
Subparagraphs 1.a-1.i:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge