



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-03497
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

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

July 14, 2010

Decision

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

The Defense Office of Hearings and Appeals (DOHA) issued an undated 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 December 30, 2009, response, Applicant admitted nine of the 10 allegations set forth under Guideline F and failed to admit or deny one allegation. He also requested a hearing before an administrative judge. DOHA assigned the case to me on February 5, 2010. The parties proposed a hearing date of March 4, 2010. A notice setting that date for the hearing was issued on February 18, 2010. I convened the hearing as scheduled. Applicant gave testimony and presented nine documents, which were accepted into evidence without objection as exhibits (Exs.) A-I. Department Counsel offered seven documents, which were admitted as exhibits (Exs.) 1-7 without objection. The parties were given until April 2, 2010, to submit any additional materials. The transcript (Tr.) of the proceeding was received on March 12, 2010. On March 30,

2010, Department Counsel forwarded five additional documents received from Applicant. They were accepted into the record as Exs. J-N without objection. The record was closed on April 2, 2010. Based on a review of the testimony, submissions, and exhibits, I find Applicant failed to meet his burden in mitigating security concerns. Clearance denied.

Findings of Fact

Applicant is a 27-year-old aircraft technician. He was hired by his present employer, a defense contractor, in September 2007. Applicant is single and raising his 18-month old child, for whom he has custody and provides financial support.

Applicant is a high school graduate. He attended two years of technical school after serving in the United States Navy from 2001 to 2003.¹ He could not find stable employment while attending technical school. He was eventually hired in November 2005 in a position he held until March 2006, when his work schedule and studies began to conflict. He was again unemployed from April 2006 until December 2006. Applicant worked as an aircraft mechanic from January 2007 until September 2007, when he accepted a position with a subsidiary of his current employer.² During his times of unemployment, Applicant acquired debts which became delinquent.

At issue in the SOR are 10 debts, noted as allegations ¶¶ 1.a – 1.j. Those debts are:

1.a – Judgment for auto body balance (\$1,136) – *Paid*. This obligation dates from 2008. At the time, Applicant had recently returned to full-time employment and could not pay this debt. He saved the needed funds and satisfied the debt on January 23, 2010.³

1.b – 1.d – Collection on credit union accounts (\$6,512, \$1,181, \$3,203). *Unpaid, Paid, Unpaid*. These debts were acquired when Applicant was unemployed in 2005. The SOR references account numbers apparently issued by the credit union's collection agency when it gave notice of the debts to the credit reporting bureaus. These account numbers and the balances cited are reflected in Applicant's January 17, 2009, three-in-one credit report as having been noted on Applicant's Experian (EXP) credit report. Those account numbers, however, are not reflected on the receipts issued by the collection entity's law firm. Instead, the law firm uses the account numbers originally noted by the credit union. Consequently, the law firm's accounting and the credit bureaus' reporting of the collection agencies efforts must be reconciled in light of the available evidence.⁴

¹ Applicant joined the U.S. Navy Reserves following his honorable discharge from the Navy. He served in the Reserves from July 2007 until 2009.

² The distinction between the parent and subsidiary companies has since been eliminated.

³ Tr. 21-22; Ex. G (Auto body receipt, dated Jan. 23, 2010).

⁴ Tr. 23-29.

The debt at allegation ¶ 1.b for \$6,512, and elsewhere as \$6,310, appears to have been the same account designated with a balance owed of \$5,519 prior to its transfer to the collection agent; the debt at allegation ¶ 1.c for \$1,181 appears to have been the same account designated with a balance owed of \$895, elsewhere for \$1,123, prior to its transfer to the collection agent; the debt at allegation ¶ 1.d for \$3,203 appears to have been the same account designated with a balance owed of \$3,052.⁵ Investigators did not reconcile the more recent Equifax (EFX) credit reports and the debts noted in the SOR after they relied initially on a three-in-one credit report citing to an EXP credit report.

Applicant, however, testified that he spoke with the law firm and reconciled the account numbers noted on the January 2009 credit report, designating the collection agency, not the credit union, with the debts at issue. He showed that a settlement offer was made with regard to the debt noted at allegation 1.b, but provided no evidence of payment.⁶ He demonstrated that he paid \$800 to settle the account cited at allegation 1.c.⁷ Applicant offered a letter extending a settlement offer regarding the account noted at allegation 1.d, but submitted no evidence of payment.⁸

1.e – Cable television-related debt – (\$141.05). *Paid*. Applicant provided a copy of a recent statement from his cable provider showing a zero balance.⁹ He also provided a letter from the collection agent. That letter noted a \$141.05 balance. It stated that a request to clear the account had been received; apologies were extended in the event the matter had been forwarded to the credit reporting bureaus.¹⁰

1.f – Apartment-related collection (\$2,830) – *Unresolved*. This debt was incurred for a broken lease. Applicant sent the collection agent a check in the amount of \$1,700. He offered a letter noting acceptance of that check. The letter, however, did not indicate whether the check cleared or whether it was for total or partial payment.¹¹

⁵ Compare Ex. 6 (Three-in-one credit report, dated Jan. 17, 2009) and both Ex. 5 (Credit report, dated Apr. 29, 2009) and Ex. 4 (Credit report, dated Aug. 13, 2009), credit reports issued by Equifax (EFX). The latter two credit reports only note two of the credit union accounts as having a balance owed.

⁶ Ex. D at 2 (Letter, dated Feb. 5, 2010, referencing original account number ending –7005 for \$6,565.86).

⁷ Ex. K (Letter, dated Mar. 8, 2010, referencing original collection agent reference number ending –9809).

⁸ Ex. L (Letter, dated Mar. 8, 2010, referencing original collection agent reference number ending –9810).

⁹ Ex. E (Original creditor's letter, dated Feb. 11, 2010).

¹⁰ Ex. L (Collection agent's statement, dated Mar. 8, 2010, showing the collection agent's account number ending –1835, the number noted on the credit reports, and also reflecting the same client number as the account noted in Ex. E). See *a/so* Tr. 33, 36-37.

¹¹ Ex. N (Letter, dated Mar. 19, 2010).

1.g – Auto-related collection (\$2,547) – *Unpaid*. Applicant has yet to contact this creditor.¹²

1.h – Defaulted student loan (\$15,717) – *In repayment*. Applicant resumed payment on this loan in February 2010. He stated that he has made at least two payments and now has payments made through automatic deduction.¹³

1.i – Rental car balance (\$759) – *In repayment*. Applicant recently paid about \$260 toward this debt and is in repayment to satisfy the balance.¹⁴

1.j – Rental car balance (\$579) – *In repayment*. Applicant paid approximately \$550 toward this balance.¹⁵ He stated that the creditor would accept that amount in satisfaction, but provided no evidence to that effect.¹⁶

Each two weeks, Applicant has a net income ranging from \$1,800 to \$3,200, depending on his work assignments. In the past year he earned about \$80,000.¹⁷ His average monthly net income is almost \$4,000. He pays \$750 toward his shared apartment. He has not been behind on his rent this year. Utilities cost him about \$40 a month. He has no car. His phone, internet, and cable charges are about \$50-60 a month. He shares other expenses with his girlfriend, who earns about \$70,000 a year. Applicant has received financial counseling and maintains a budget.

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 AG 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 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 reliable information about the person, past and present, favorable and unfavorable, in making a decision.

¹² Tr. 43-44.

¹³ Tr. 44-45; Ex. A (Student loan information packet, dated Feb. 17, 2010) and Ex. C (Bank statements).

¹⁴ Tr. 46; Ex. E (Creditor correspondence, dated Feb. 22, 2010).

¹⁵ Tr. 47; Ex. C (Bank statements).

¹⁶ Tr. 47-48.

¹⁷ Tr. 52.

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.

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 Department Counsel. . . .”¹⁸ The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.¹⁹

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 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.”²⁰ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²¹

Based upon consideration of the evidence, Guideline F (Financial Considerations) is pertinent to this case. Conditions pertaining to this AG 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.

¹⁸ See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

¹⁹ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

²⁰ *Id.*

²¹ *Id.*

Analysis

Guideline F – Financial Considerations

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.”²² The guideline sets out several potentially disqualifying conditions. Here, Applicant acquired 10 debts which raised security concerns. Some of the debts at issue lack evidence of payment and one has yet to be addressed. Such facts are sufficient to raise 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). With such conditions raised, the burden shifts to Applicant to overcome the case against him and mitigate security concerns.

Applicant has had a stable job for over two and a half years. Most of the progress on his debts, however, did not take place until recently. To date, he lacks adequate evidence of payment regarding SOR allegations ¶¶ 1.b (\$6,512), 1.d (\$3,203), and 1.f (\$2,830). More importantly, he has yet to contact or make arrangements with the creditor noted at SOR allegation ¶ 1.g (\$2,547). Given the timing of most of his payments and repayments, the documentary evidence needed to prove payment on three delinquent debts, and his failure to initiate contact with one creditor, 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 Applicant’s delinquent debts arose due to periods of unemployment. 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) applies.

Applicant has received financial counseling and made a bona fide effort to address almost all of the debts at issue. 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) and FC MC ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) apply.

Applicant credibly testified about his efforts on almost all of the debts at issue, including his admission that he has yet to address SOR allegation ¶ 1.g (\$2,547). He failed, however, to provide adequate proof of credited payments with regard to three debts, those cited at SOR allegations ¶¶ 1.b, 1.d, and 1.f. Together, those debts amount to about \$12,500. When added to the \$2,547 debt, Applicant failed to carry his

²² AG ¶ 18.

burden and show progress in resolving nearly \$15,000 of delinquent debt. In the absence of a genuine attempt to work with the creditor noted at SOR allegation ¶ 1.g, 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 relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). 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 credible and mature man who served in the U.S. armed forces and endeavored to pursue a civilian career through technical training school. He is a single father, taking responsibility for his child. He received financial counseling and has made progress on his debts. He showed that many of those debts have been paid or are in repayment, but others lack proof of repayment.

As noted above, the debts cited at SOR allegations ¶¶ 1.b-1.d are difficult to discern. Reconciling the Experian references in the three-in-one credit report with the subsequent Equifax credit reports provided is not easy. This process becomes more difficult when the debts involve the original creditor, the collection agency, and the law firm acting on behalf of the collection agency, each reflecting different balances and individualized account numbers. Despite the difficulties presented by the credit reports underlying the SOR, the burden is squarely placed on an applicant in these proceedings. He is in the best position to gather necessary evidence from the collection agency's law firm, which apparently has all the information necessary to reconcile these accounts and to document Applicant's efforts. Applicant's documentation, however, only established payment of one of the three delinquent debts owed the underlying creditor, leaving a balance of about \$9,700 in question for SOR allegations ¶¶ 1.b and 1.d.

Applicant's less understandable evidentiary failure is with regard to the debt cited at SOR allegation ¶ 1.f. The document presented simply fails to reflect the status of his payment and the resultant balance. As for SOR allegation ¶ 1.g, Applicant admits he has yet to address this debt. Together, these two debts represent about \$5,400.

While Applicant may have functionally addressed all the debts at issue but one, close to \$15,000 in debt remains at issue, either due to insufficient evidence or failure to contact the creditor. While his progress has been significant, and while he has the resources to make further progress, 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	Against Applicant
Subparagraph 1.g	Against Applicant
Subparagraph 1.h	For Applicant
Subparagraph 1.i	For Applicant
Subparagraph 1.j	For 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