



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



In the matter of:)
)
) ISCR Case No. 09-03614
)
)
Applicant for Security Clearance)

Appearances

For Government: Stephanie C. Hess, Esquire, Department Counsel
For Applicant: *Pro se*

May 21, 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 8, 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 adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on January 20, 2010, and requested a hearing before an administrative judge. The case was assigned to me on March 23, 2010. DOHA issued a Notice of Hearing on March 26, 2010. I convened the hearing as scheduled on April 28, 2010. The Government offered Exhibits (GE) 1 through 5.

Applicant did not object and they were admitted. Applicant testified and offered Exhibit (AE) A, which was admitted without objection. DOHA received the hearing transcript (Tr.) on May 6, 2010.

Findings of Fact

Applicant 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 33 years old and has worked for a federal contractor since September 2007. He graduated from high school in 1995. He attended college for one year. He transferred to a different educational institution and earned a certificate as a medical assistant in 1997. He married in 1999. He has one child who is 10 years old. He divorced in 2005.¹

Applicant was required to pay \$250 a month in child support. For the first eight months, he provided his ex-wife \$350 for child support and payments on some of their joint debts. She did not pay the debts that she agreed to pay. After eight months, Applicant stopped making payments to her. In December 2007, Applicant's ex-wife threatened to take him to court for the child support arrearages. They made a verbal agreement that he would set-up a savings account for his child and automatic payments from his bank account of \$125 a week would be placed in the savings account. Each week \$45 of the \$125 would be applied to the child support arrearages, which he estimated were approximately \$9,000 in 2007. He believes that amount has now been reduced to approximately \$4,000. He has made continuous payments since the agreement was put into place.²

Applicant worked as a medical assistant from 1997 until 2000. While working he was also attending a technical institute to earn an associate's degree. He earned that degree in automobile repair and received a teaching certificate in this area of expertise. He financed his education through student loans. The loans were deferred or placed in forbearance status until approximately 2006, at which time he defaulted on the loans. He did not make payments on the loans until he was contacted by a collection company that threatened to garnish his wages. He participates in a rehabilitation program, which requires him to pay \$312 a month for nine months, at which time a new payment plan will be instituted for a lesser amount. He has made seven payments.³ The debts in SOR 1.e (\$16,796) and 1.f (\$16,496) are his student loan debts. Once he begins to pay a lesser amount, he hopes to use the additional money to pay other bills.⁴

¹ Tr. 53-59.

² Tr. 27, 34-42, 58-59.

³ AE A.

⁴ Tr. 14-27, 46-48, 57-58.

Applicant worked as a teacher from 2004 through 2007. He was required to take continuing education to maintain his teaching certificate. He had difficulty with the on-line programs and his certificate expired in May 2007. He decided to move to the city to take the classes to get recertified. The cost-of-living in the city was greater than in his previous location and he began experiencing financial difficulties. He admitted that he lives paycheck to paycheck. He has approximately \$340 in his checking account and no money in savings, although he does have a 401(k) retirement account through his employer.⁵

The debt in SOR ¶ 1.a (\$842) is for overdraft fees Applicant incurred from a bank. He attempted to settle the debt about 18 to 24 months ago, but the creditor refused to settle for a lesser amount than the balance owed. Applicant intends to pay the debt after his student loans are reduced.⁶ The debt is unresolved.

The debt in SOR ¶ 1.b (\$320) is owed to a store. Applicant learned of the debt when he attempted to apply for a credit card. He did not pay the debt and when he moved he never received delinquency notices. He never followed up on whether his mail was properly forwarded, but stated he did place a change of address notice in his mailbox. The debt is not paid.⁷

The debt in SOR ¶ 1.c (\$1,500) is a joint debt for furniture Applicant purchased with his wife. They agreed she would assume the debt when they divorced. She did not make payments on the debt. He believed when he was giving her \$350 a month, after their divorce, that she used a portion of the money to pay this debt. She did not pay the debt and it remains unresolved.

The debt in SOR ¶ 1.d (\$971) is for a cell phone account that Applicant had with his wife. They terminated the contract before the expiration of the contract because they could not get service where they lived. Applicant believes there was a \$150 termination fee for each of the two phones and other fees accumulated. He attempted to cancel the contract and explain to the creditor that he could not get service, but was unsuccessful. The debt dates back to 2001 or 2002. He and his wife agreed to split the bill. He has not contacted the creditor or attempted to resolve the bill. It is unpaid.⁸

The debt in SOR ¶ 1.g (\$240) is a payday loan that he incurred in 2007. Applicant obtained the loan of \$200 so he could pay his rent. He was working as a day laborer at the time and work was not guaranteed. He has not contacted the creditor or paid the debt.⁹

⁵ Tr. 28.

⁶ Tr. 30-32.

⁷ Tr. 32-34.

⁸ Tr. 42-45.

⁹ Tr. 45-46.

Applicant has a loan for his vehicle. He has approximately \$800 remaining to pay on the loan. His monthly payment is \$526. He pays either \$200 to \$250 toward his monthly payments. He has received warnings from the creditor for his vehicle regarding his late payments. When he finishes paying off the loan, he plans to use the extra money to begin paying some of his smaller delinquent debts. Applicant expects to receive approximately \$800 as a refund from his federal income taxes. He plans to use that to pay any remaining balance on his vehicle.¹⁰

Applicant has not received financial or credit counseling. He does not have a budget. He has focused on paying his child support and arrearages. He admitted that he is barely “getting by.” He intends to repay his delinquent debts as money becomes available. He does not have other outstanding debts. He does not have any credit cards.¹¹

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used 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. 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, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or

¹⁰ Tr. 27-30, 49, 51-53.

¹¹ Tr. 50-51, 60.

mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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.

Appellant has a history of being unwilling or unable to meet his financial obligations dating back to at least 2006. He has debts that remain unpaid and delinquent. 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 all of the mitigating conditions under AG ¶ 20 and especially considered the following:

- (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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's behavior is recent because his delinquent debts remain unpaid. He is in a student loan rehabilitation program, and has plans to pay some small debts when he completes paying the loan on his vehicle. At this point, it is too early to conclude that his financial problems are unlikely to recur. I find mitigating condition (a) does not apply.

Applicant did not pay child support for several years and is now making monthly payments that include arrearages. He moved to the city and his expenses increased. When his student loans became due he chose not to pay them. These circumstances were within Applicant's control. When he and his wife divorced, he believed that his ex-wife was making payments on certain debts and she was not. This matter was not within his control and raises the application of mitigating condition (b). In order for that mitigating condition to be fully applicable, Applicant must have acted responsibly under the circumstances. Applicant did not act responsibly regarding his delinquent debts. He did not begin to address his student loans until he was advised that his wages would be garnished. His other debts remain unpaid. He hopes to pay them in the future, but it appears he does not have the resources at this time to pay them. I find mitigating condition (b) only partially applies.

There is no evidence that Applicant received financial counseling or established a budget. He has not made a good-faith effort to pay overdue creditors or resolve most of his debts. He admits he lives paycheck to paycheck. He does not pay the full amount due on his monthly car payments. He hopes to use an anticipated tax refund to begin making some payments. Applicant is participating in a rehabilitation program for his student loans and is making monthly payments. Although he began the program to prevent his wages from being garnished he has consistently complied with it. I find he is

resolving his student loan delinquent debts and AG ¶ 20(d) applies to those debts. However, when analyzing Applicant's complete financial record and commitment to paying his delinquent debts, I find it is too early to conclude that his financial problems are under control. Therefore, find AG ¶ 20(c) 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 relevant 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 facts and circumstances surrounding this case. Applicant is participating in a student loan rehabilitation program and is paying his child support and arrearages. He is unable to pay his other delinquent debts at this time. He does not have a budget or a realistic financial plan for resolving his delinquent debts. Applicant does not owe a significant amount of money, but without a detailed financial plan for resolving his delinquent debts and an established track record of responsibly managing his obligations, his finances remain a concern. Applicant has been aware since receiving the SOR in October 2009, that his finances are a security concern. He did not seek assistance nor did he attempt to resolve or pay his delinquent debts, exhibiting a lack of good judgment and reliability. The record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the guideline for Financial Considerations.

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.d:	Against Applicant
Subparagraphs 1.e-1.f:	For Applicant
Subparagraph 1.g:	Against Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge