



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



In the matter of:)	
)	
-----)	ISCR Case No. 10-00965
)	
Applicant for Security Clearance)	

Appearances

For Government: Michael Lyles, Esquire, Department Counsel
For Applicant: G. John Dezenberg, Jr., Esquire, Applicant's Counsel

March 14, 2011

Decision

HOWE, Philip S., Administrative Judge:

On July 23, 2009, Applicant submitted his electronic version of the Security Clearance Application (SF 86) (e-QIP). On September 13, 2010, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing 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) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on September 16, 2010. Applicant requested his case be decided on the written record in lieu of a hearing.

On November 17, 2010, Department Counsel submitted the Department's written case. A complete copy of the File of Relevant Material (FORM) was provided to the Applicant on December 23, 2010. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant's bankruptcy attorney filed a Response to the FORM within the 30 day time allowed that would have expired on January 22, 2011. I received the case assignment on February 7, 2011. Based upon a review of the FORM, including the pleadings, and exhibits, eligibility for access to classified information is denied

Findings of Fact

Applicant denied the allegations in Subparagraphs 1.e to 1.i and admitted all other allegations. (Item 4)

Applicant is 43 years old. He is not married and has no children. He works for a defense contractor. (Items 1, 5)

Applicant filed his first Chapter 7 bankruptcy in 1998 and was discharged in that bankruptcy on October 28, 1998 (SOR Subparagraph 1.a). The amount discharged was \$150,067.52, consisting of two mortgages and 15 delinquent credit cards debts. (Items 4, 5, 12, Response with attachments)

Applicant filed a second Chapter 7 bankruptcy on April 29, 2010 (SOR Subparagraph 1.b). The amount of debts listed in that bankruptcy was \$363,717.22. This amount included a \$70,150 federal income tax debt for the 2005 filing year. Applicant dismissed this bankruptcy on the advice of his bankruptcy attorney to be able to refile it later in 2010 in hopes of discharging the federal tax debt in a second Chapter 7 bankruptcy. (Items 4, 5, 8-12, Response with attachments A to H)

Applicant filed a third Chapter 7 bankruptcy on May 25, 2010 (SOR Subparagraph 1.c). The amount of debts included in this bankruptcy was \$345,244.88, including the same federal tax debt as was listed in the previous 2010 Chapter 7 bankruptcy. This bankruptcy petition and schedules of accounts included delinquent debts from 17 credit cards totaling \$35,040.56. Applicant also listed three overdrawn bank accounts in this third Chapter 7 bankruptcy. A \$50,000 personal loan from the wife of Applicant's friend is listed. Applicant lives with that friend and the friend's wife in their house. A \$35,000 home repair debt to a creditor is included in the list of debts. (Items 2, 4, 5, 8-12, Response and attachments)

Applicant listed on said bankruptcy's documents that his monthly income is \$6,393.45 and his monthly expenses total \$6,390, leaving him a net remainder of \$3.45. His monthly expenses include rent or mortgage payments of \$2,200, utilities of \$940, charitable contributions of \$500, \$120 in laundry and dry cleaning expenses, \$200 for clothing, \$300 for home maintenance, and \$700 for food. Applicant's statement to the government investigator on September 11, 2009, included the fact Applicant lives with a

friend and does not pay rent. Applicant did not state whether his monthly expenses were for the two homes he formerly owned. Applicant now has surrendered one of the houses to his friend. The third Chapter 7 bankruptcy was discharged on September 2, 2010, for the debts minus the federal tax debt. Therefore, the amount discharged was \$275,094.88. (Items 2, 4, 5, 8-12, Response and attachments)

At the same time as his third Chapter 7 bankruptcy discharge, Applicant filed a Chapter 13 bankruptcy on September 1, 2010, to establish a payment plan for the \$72,879.14 in federal tax debt (SOR Subparagraph 1.d). His plan is to pay the Internal Revenue Service (IRS) \$1,328 per month for 60 months. This payment plan will result in \$79,680 being paid to the IRS. Applicant included a copy of a 2005 federal income tax form but it was not signed or dated. It does not appear to have been filed with the IRS. Applicant did not explain in any of his documents why he did not pay his 2005 federal income tax. (Items 4, 5, Response with attachments, including G, a copy of the Chapter 13 petition)

The SOR lists five delinquent debts owed to various creditors (SOR Subparagraphs 1.e to 1.i). They total \$12,486. The debts include four credit cards and one overdrawn account. All of these debts were listed in the 2010 Chapter 7 bankruptcy filings and were discharged. (Items 2-12, Response with attachments)

Applicant's July 28, 2009, credit report shows two state tax liens were filed and released on payment in 2002 and 2009, respectively. His delinquent debts started to be reported in 2003 through 2009. (Items 6, 7)

As part of his most recent Chapter 7 bankruptcy proceeding, Applicant completed the required financial counseling course in 2010. Applicant did not submit evidence of any other financial counseling between 1998 and 2010. (Items 8, 9, Response with attachments)

Applicant provided no evidence concerning the quality of his job performance. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

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 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, the administrative judge applies the guidelines 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.

According to 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 mitigate facts admitted by the applicant or proven by Department Counsel, and 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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. From these nine conditions, five conditions are applicable to the facts found in this case:

- (a) inability or unwillingness to satisfy debts;
- (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt;
- (c) a history of not meeting financial obligations;
- (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

From 2003 to 2009, Applicant accumulated numerous delinquent debts after he filed Chapter 7 bankruptcy in 1998, including a \$70,150 federal income tax delinquency from the failure to file or pay his 2005 income tax. The Chapter 7 bankruptcy filed in May 2010 resulted in a discharge of all dischargeable debts in September 2010. The sum of the debts discharged was \$275,094.88 Applicant was unable to repay these debts from his approximate \$75,000 annual net income. AG ¶ 19 (a) applies.

Applicant's income statement filed with the most recent Chapter 7 bankruptcy shows he spends every dollar he earns on a monthly basis, except \$3.45. His spending is irresponsible and excessive, especially after obtaining a bankruptcy discharge 11 years earlier. The same pattern of excessive numbers of credit cards, and large delinquent balances on each card, is shown in both the 1998 and 2010 bankruptcies. AG ¶ 19 (b) and (e) apply.

Applicant's three Chapter 7 bankruptcies, and his current Chapter 13 bankruptcy, show he has a history of not meeting his financial obligations. AG ¶ 19 (c) applies.

In 2005, Applicant failed to file and pay his federal income taxes. He is now using the Chapter 13 bankruptcy provisions to pay those taxes, six years after they were due. He filed, dismissed, and then filed again his 2010 Chapter 7 bankruptcy so he could

move his tax liability within the time period allowed by the Bankruptcy Code to be able to use the Chapter 13 provisions to pay his delinquent federal taxes on an installment basis. Applicant did not offer any evidence of efforts made since 2005 to pay his taxes on an installment basis directly with the IRS. AG ¶ 19 (e) applies.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. None of the mitigating conditions apply:

- (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;
- (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; and
- (f) the affluence resulted from a legal source of income.

Applicant has a long-term problem with accumulating debts, which then become delinquent. He uses the Bankruptcy Code to rid himself of these financial obligations. He did not offer any explanation as to how he spent all the money evidenced in the bankruptcy filings between 1998 and 2010. His two bankruptcies discharged \$425,162.50 in 11 years. These are not actions of a responsible person exercising good financial judgment. Indeed, it shows exactly the opposite judgment and conduct.

The bankruptcy petitions were not good-faith efforts to repay Applicant's creditors, but rather a means to avoid responsibly paying them. He engaged in the same course of conduct over two decades of accumulating excessive debts, which could only be resolved by eliminating them in a federal bankruptcy action. Applicant's problems are of long-duration and willfully undertaken. They were not beyond his control and he did not act responsibly in the circumstances. His financial counseling

was not done voluntarily, but mandated by federal law as a requirement for obtaining a bankruptcy discharge. Applicant did not present any reasonable basis for disputing any of the debts in his bankruptcies. Finally, there was no affluence from a legal source involved. For these reasons, none of the mitigating conditions listed above apply to Applicant.

The bankruptcy discharges Applicant obtained in 1998 and 2010 do not prevent consideration of an applicant's history of financial problems or the pattern of their expenditures.¹ The security implications of such a financial history must be evaluated. The bankruptcy discharges do not show Applicant has changed his financial practices or habits, or that his history of financial difficulties will not recur.² Based on the evidence presented here, Applicant has a strong possibility of repeating his past conduct.

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 was an adult when he incurred the debts. He has not taken any action to resolve his delinquent debts except filing Chapters 7 and 13 bankruptcies in 2010. Applicant displayed a lack of good judgment and poor self-control by incurring these large debts and not resolving them. He spent over \$350,000 in the last decade and never repaid it. His financial history

¹ ISCR Case No. 09-03764 (App. Bd. April 1, 2010) and ISCR Case No. 00-0345 at 3 (App. Bd. Dec.12, 2001)

² ISCR Case No. 97-0016 (App. Bd. Dec. 31, 1997)

shows he cannot be trusted to repay money he borrows or honor his commitments to return loaned money.

Applicant's actions incurring the delinquent debts occurred in both the 1990s and the decade from 2003 to 2010. He accumulated large debts beyond any reasonable or obvious ability to repay them. Applicant did not explain his spending habits that caused him to file three Chapter 7 bankruptcies in the past 11 years. Applicant provided no information about his spending record, only about the bankruptcy filings. There is no evidence of rehabilitation or permanent behavioral changes. It is likely Applicant will irresponsibly spend money in the next decade as he has in the past two decades.

Overall, the record evidence leaves me with questions and substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under the guideline for Financial Considerations. I conclude the "whole-person" concept against Applicant.

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 to 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 national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

PHILIP S. HOWE
Administrative Judge