



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



In the matter of:)
)
) ISCR Case No. 09-03809
)
)
Applicant for Security Clearance)

Appearances

For Government: Francisco Mendez, Esq., Department Counsel
For Applicant: *Pro se*

May 12, 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 November 20, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the 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 adjudicative guidelines and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant’s undated answer was received by DOHA on December 7, 2009. In it he requested a hearing before an administrative judge. The case was assigned to me on March 12, 2010. DOHA issued a Notice of Hearing on March 17, 2010. I convened the hearing as scheduled on April 15, 2010. The Government offered Exhibits (GE) 1 through 9. Applicant did not object and they were admitted. Applicant and one witness

testified on his behalf. Applicant did not offer any exhibits. DOHA received the hearing transcript (Tr.) on April 23, 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 38 years old. He graduated from high school in 1991, and attended college, but did not receive a degree. He has never been married. He has a six-year-old daughter, who lives with her maternal grandmother. He does not pay child support because the mother has never sought court-ordered support. He stated his means of support for his child is by occasionally providing things that the child needs. He has had no periods of unemployment. He has worked for his present employer, a federal contractor, for approximately four-and-a-half years.¹

Applicant admitted he owes all of the debts alleged in the SOR totaling approximately \$64,691. The delinquent debts date back to 2003. Applicant also admitted he has not paid any of the delinquent debts.² In his interview with an Office of Personnel Management investigator (OPM) in 2008, he stated he was negotiating settlements with some creditors and was working out payment plans. He did not follow through and arrange any payment plans or make any payments.

The largest of Applicant's debts is listed in SOR 1.g (\$51,842) for a loan he obtained with his girlfriend to purchase a house in 2006. Applicant explained that when he and his girlfriend were in the process of buying a house, she was helping him pay his bills and clear up his credit. She was handling the finances. He admitted he signed the documents to buy the house. The couple had a disagreement in August 2008, and Applicant moved out of the house. He began experiencing financial problems because he had to find a new place to live. He explained that because he no longer lived in the house, he no longer had to pay the mortgage. He stated that his ex-girlfriend told him not to worry about it. He contacted the mortgage company to find out how to remove his name from the mortgage and was advised the loan would have to be refinanced. His ex-girlfriend advised him that she could not afford to refinance the loan. Apparently, sometime later they defaulted on the loan. Applicant stated once he left the house in August 2008, he did not pay any of the bills associated with it. He took possession of a car and a truck when he left.³

The debts in SOR ¶¶ 1.a (\$900) and 1.c (\$6,023) are student loans. Applicant stated he received forbearance from the creditors on these loans until November 2010. He did not provide any documentary proof to show the debts are in forbearance. The

¹ Tr. 20-25.

² Tr. 46.

³ Tr. 42-53.

debt in SOR ¶ 1.c was incurred in either 2004 or 2005. Applicant has not made any payments on the debt. The debt in SOR ¶ 1.a was incurred in 2007. He has not made any payments on the debt. Applicant stated he did not complete any paperwork to request the forbearance. He stated he intends on paying the debt in November when the forbearance expires.⁴

Applicant testified that he did not recognize the debt or the creditor for the debt listed in SOR ¶ 1.b (\$59). He stated he intended to dispute the debt. He then stated he had sent a letter to the creditor in 2007. He was presented with a copy of his interview with OPM from July 2008, during which he explained he was overwhelmed with debt and did not know who the creditor was. He intended to obtain a copy of his credit report and confirm those accounts which he believed were his and to write letters to dispute others and have them removed from his credit report. Applicant's testimony was inconsistent. The debt is unpaid.⁵

The debt in SOR ¶ 1.d (\$476) is a medical debt that Applicant stated he agreed to pay for the mother of his daughter. The debt was incurred in 2004. It is not paid.⁶

The debts in SOR ¶¶ 1.e (\$350) and 1.f (\$205) are for telephone services. Applicant has not paid the debts.⁷

The debt in SOR ¶ 1.h (\$1,939) is the amount owed to a bank after Applicant cashed a fraudulent check. He received the check in the mail for \$1,000. He was told that in order for him to cash the check he was required to send \$250 to the party that sent him the check. He stated that he believed it was a legitimate check and sent the money. He had no idea why he received the check for \$1,000. Applicant has not reimbursed the bank that cashed the check for him. In his answer to interrogatories dated August 31, 2009, he stated he would make payments of \$25 every two weeks. He did not make any payments. He explained: "I meant I was going to pay everything like I said, but every time I be ready to pay something, I always take a step backwards. I always be ahead, and then something always comes up."⁸

The debts in SOR ¶¶ 1.i (\$660) and 1.m (\$344) are payday loans. Applicant believes they date back to 2004 or 2005. He has not paid them.⁹

⁴ Tr. 25-34, 58-60.

⁵ Tr. 34- 42; GE 4.

⁶ Tr. 88-90.

⁷ Tr. 90.

⁸ Tr. 61, 82-87.

⁹ Tr. 91, 97, 102-103, GE 3.

The debt in SOR ¶ 1.j (\$643) is for telephone services. Applicant stated that his sister obtained an account in his name. He became aware of the account later and his sister agreed to pay the debt, but did not. Applicant did not report the account was opened without his permission. He did not dispute the account with the creditor. The account is not paid.¹⁰

Applicant does not recognize the creditor in SOR ¶ 1.k (\$475) He has not contacted, disputed or attempted to resolve the debt.¹¹

At his hearing, Applicant initially stated he did not recognize the debt in SOR ¶ 1.l (\$395). In answers to interrogatories dated August 31, 2009, he acknowledged the debt and stated he was waiting for a settlement letter from the creditor. He stated he had no means to pay the debt because he did not have a credit card or a savings or checking account and the creditor would not accept a money order. Applicant has not pursued resolving the debt and it remains unpaid.¹²

Applicant believes the debt in SOR ¶ 1.n (\$308) is a duplicate of SOR ¶ 1.j. He did not provide any proof or rationale for his position. The debt is unpaid.¹³

The debt in SOR ¶ 1.o (\$72) is for a savings account that was overdrawn. Applicant stated the bank advised him he could consolidate this debt with the debt in SOR ¶ 1.h. Applicant has not consolidated or paid the debt.¹⁴

Applicant stated that he has recently “freed up” \$1,000 to use to pay his debts. He has not paid any to date, but was going to meet with some of his creditors after his hearing. He recently obtained a credit report, but had not reviewed it. He explained that he has been going through a rough time because his daughter needed some care and he had to arrange for her to live with her grandmother. He recently transferred one of his cars to his cousin, who will assume the payments.¹⁵

Applicant does not have any money in the bank. He has approximately \$18,000 in his retirement account. He stated that a number of years ago he obtained a loan from the account. When asked why he did not obtain a loan to resolve some of his debts, he indicated that he did not know how. He further stated that in 2008 he contacted a debt

¹⁰ Tr. 91-92.

¹¹ Tr. 92.

¹² Tr. 56-57, 92-96; GE 4.

¹³ Tr. 98.

¹⁴ Tr. 98-101.

¹⁵ Tr.44-45, 53.

counselor but could not afford their plan. When asked if he had a budget, he stated: I haven't put it together yet." He went on to say that he is working on making a budget.¹⁶

Applicant's wages are being garnished for federal taxes owed from 1998, 1999, 2000, 2002, and 2006. He owes approximately \$1,000 for his 2009 federal income tax, but is unable to pay it. He does not know how he will pay his 2009 federal income taxes.¹⁷

Applicant's supervisor testified on his behalf. He stated Applicant is a reliable worker. He recently received a pay raise because of his performance. He has a good worth ethic, is honest, and trustworthy. His supervisor was willing to work with Applicant and help him with understanding his finances.¹⁸

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are considered 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

¹⁶ Tr. 55-56, 67, 87-88, 103-104.

¹⁷ Tr. 75-82, 103; GE 2; I have not considered this information for disqualifying purposes, but have considered it when analyzing the whole-person and Applicant financial status.

¹⁸ Tr. 70-75.

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 protect 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 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 since 2004. He has many 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 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 because his delinquent debts remain unpaid. He has not paid any of them nor has he contacted his creditors to resolve them. He does not have a plan to pay them. He did not provide sufficient evidence to conclude that his financial problems are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, or good judgment. I find AG ¶ 20(a) does not apply.

Applicant's largest debt is a defaulted mortgage. He admitted that he was contractually obligated for the mortgage, even though he chose to no longer live in the house. This was a matter within his control. He did not provide sufficient evidence that any of his other debts were beyond his control or that he acted responsibly under the circumstances. I find AG ¶ 20(b) does not apply.

There is no evidence Applicant has received financial counseling, established a budget, or attempted to resolve his delinquent debts. He stated that he intended to contact his creditors after his hearing. There are no clear indications that Applicant's financial problems are being resolved or under control. Applicant has not initiated good-faith efforts to repay or resolve the debts with his creditors. I find AG 20 ¶¶ 20(c) and 20(d) do not apply. Applicant disputed the validity of certain debts but did not provide documented proof for the basis of his dispute or any other action he took to resolve the issues. Therefore, I find AG ¶ 20(e) 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 the facts and circumstances surrounding this case. Applicant is a high school graduate, whom his supervisor describes as a reliable worker with a good work ethic. He is considered honest and trustworthy. Applicant has approximately \$64,691 of delinquent debts. He has not taken action to pay, resolve, or dispute the debts. He does not have a plan for paying the debts. 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.o:	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 a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge