



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



In the matter of:)	
)	
)	ISCR Case No. 09-03952
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah A. Minster, Esquire, Department Counsel
For Applicant: *Pro se*

May 13, 2010

Decision

HEINY, Claude R., Administrative Judge:

Applicant has three judgments, a delinquent account, and six accounts which have been charged off, are delinquent, or remain unpaid. The delinquent obligations total approximately \$11,000. Additionally, Applicant has an unpaid \$42,000 federal tax lien. Applicant has failed to rebut or mitigate the Government’s security concerns under financial considerations. Clearance is denied.

Statement of the Case

Applicant contests the Defense Department’s (DoD) intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a

¹ 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 DoD on September 1, 2006.

Statement of Reasons (SOR) on October 29, 2009, detailing security concerns under financial considerations.

On January 5, 2010, Applicant answered the SOR and elected to have the matter decided without a hearing. Department Counsel submitted the Government's case in a File of Relevant Material (FORM), dated February 18, 2010. The FORM contained 14 attachments. On February 23, 2010, Applicant received a copy of the FORM, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions.

Responses to the FORM are due 30 days after receipt of the FORM. Applicant's response was due on March 25, 2010. As of April 20, 2010, no response had been received. On April 21, 2010, I was assigned the case.

Findings of Fact

In Applicant's Answer to the SOR, he admitted nine debts and denied five allegations. Applicant's admissions to the SOR allegations are incorporated herein. After a thorough review of the record, pleadings, and exhibits, I make the following findings of fact:

Applicant is 44 and has worked in logistics for a defense contractor since August 2008, and is seeking to obtain a security clearance.

Applicant attributes his financial problems to losing his job as an assembly worker in June 2007 when the automobile plant closed; his April 2006-divorce (Item 6, page 4 of 10); and having to pay extensive medical bills for his son's cancer. (Item 5, page 7 of 7) In February 2009, Applicant was interviewed concerning his finances and stated he had met with a financial advisor who was helping him to prioritize his debt and establish a household budget. (Item 5, page 7 of 7)

In preparing his federal income tax returns for tax years 1994 and 1995, Applicant believed he owed \$10,500. Applicant never filed his returns because he could not pay the amount owed. He contacted the IRS to establish a repayment plan, but a reduction in his work hours prevented him from reaching agreement. In 1998, the IRS filed a \$42,092 tax lien (SOR ¶ 1.d). In his January 2009 Questionnaire for Sensitive Positions, Standard Form (SF) 86, Applicant listed a \$40,000 tax lien. (Item 6, page 8 of 10)

In 2006, Applicant received a \$1,500 loan after completing a promissory note. A \$2,118 judgment (SOR ¶ 1.b, Item 10) was entered against Applicant when he failed to repay the loan. Applicant asserts he appeared in court, paid \$1,800, and the \$2,118 judgment was dismissed. (Item 5, page 6 of 7) He provided no documentation supporting his assertion of payment. In his SF 86, Applicant listed a \$1,500 judgment and a \$1,800 garnishment. (Item 7, page 8 of 10)

A \$1,642 judgment (SOR ¶ 1.a, Item 9) was obtained against Applicant for unpaid rent. Applicant asserts he was unable to pay his rent when the automotive plant where he worked closed in June 2007 and he lost his job. In February 2009, during his interview, Applicant stated he would attempt to set up a repayment schedule by mid-2009. (Item 5, page 6 of 7) There is no evidence he has done so.

Applicant owes \$1,238 (SOR ¶ 1.h) to a collection agency collecting for a credit card account opened in 2003. Applicant owes a cable TV supplier \$350 (SOR ¶ 1.f) for service discontinued in July 2007. He failed to return three converter boxes when he moved. (Item 5, page 6 of 7) Applicant owes \$103 (SOR ¶ 1.j) on a medical account. Applicant asserts his son has cancer and has required numerous medical treatments. Applicant provided no other information about this debt.

Applicant owes the electric company \$350 (SOR ¶ 1.f) on a utility account closed in January 2008. (Item 5, page 6 of 7) Applicant owes a telephone company \$215 (SOR ¶ 1.g) on an account closed in July 2008. (Item 5, page 7 of 7) A construction company obtained a \$3,700 judgment (SOR ¶ 1. l) against Applicant. (Item 12) Applicant denies this judgment, but the judgment lists his address and social security number. (Item 12)

Applicant's credit bureau reports (CBR) dated September 14, 2009, (Item 7) and March 23, 2009, (Item 8) list the \$1,642 judgment, the \$2,080 judgment, a \$10,542 lien, and a \$42,092 lien.

Applicant denies owing three federal tax liens. In December 2009, a \$10,542 federal tax lien (SOR ¶ 1.c, Item 11) was entered against an individual with the same name as Applicant living in Michigan. Applicant asserted he never lived or owned property in the county where the tax lien was registered. (Item 5, page 5 of 7) In February 2008, an \$84,853 federal tax lien (SOR ¶ 1.m, Item 13) and a \$99,702 federal tax lien (SOR ¶ 1.n, Item 14) were entered against an individual with the same name as Applicant living in Florida. Applicant asserted he never lived or owned property in the county where the tax lien was registered. (Item 5, page 5 of 7) There is no indication Applicant was ever related to the second individual, with the same last name, listed on the \$84,000 tax lien. The IRS serial numbers for these three tax liens are not the same as Applicant's social security number. I find for Applicant as to SOR ¶¶ 1.c, 1.m, and 1.n.

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 list potentially disqualifying conditions and mitigating conditions, which must be 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.

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. . . ." The applicant has the ultimate burden of persuasion to obtain 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

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

Applicant has a history of financial problems. Applicant has three judgments, a delinquent account, and six accounts which have been charged off, are delinquent, or remain unpaid. These 11 accounts total approximately \$11,000. Five of these accounts were each \$350 or less and remain unpaid. Additionally, the IRS has imposed a \$42,000 tax lien against Applicant. Applicant failed to file federal tax returns for 1994 and 1995. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations," and AG ¶ 19(g) "failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same," apply.

Five financial considerations mitigating conditions under AG ¶¶ 20 are potentially applicable:

(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 has paid none of the judgments, delinquent accounts, or the tax lien. He asserts, but failed to document, that he appeared in court, paid \$1,800, and the \$2,118 judgment was dismissed. AG ¶ 20(a) does not apply because the debts remain unpaid and are numerous.

In April 2006, Applicant was divorced and, in June 2007, lost his job when the plant where he worked closed. Additionally, his son has cancer and Applicant has had to pay his son's medical bills. The record failed to indicate the extent of the medical bills and failed to disclose the impact of these events on his finances. These conditions are beyond Applicant's control and AG ¶ 20(b) partly applies. Additionally, Applicant has been employed since August 2008, and even the five small debts, each of \$350 or less, have yet to be paid.

Applicant has met with a financial advisor who was helping him to prioritize his debt and establish a household budget. However, AG ¶ 20(c) does not apply because there is no clear indication that the problem is being resolved or is under control.

AG ¶ 20(d) does not apply because Applicant has made no good-faith effort to repay his debts. He asserts he was working out a repayment plan with the IRS to address his \$42,000 federal tax lien, but has provided no documentation that an agreement has been reached or that repayment has started.

For ¶ 20(e) to apply there must be reasonable basis to dispute the legitimacy of the past-due debt, which is the cause of the problem and Applicant must provide documented proof to substantiate the basis of the dispute or provide evidence of actions to resolve the issue. Applicant denied the \$2,118 judgment (SOR ¶ 1.b) stating he had paid it, but provided no documentation supporting his assertion. He also denied the \$3,700 judgment (SOR ¶ 1.l), but provided no explanation of the debt nor did he provide any documentation substantiating the basis of his dispute.

Applicant disputed three tax liens: \$10, 542 (SOR ¶ 1.c), \$84,853 (SOR ¶ 1.m), and \$99,702 (SOR ¶ 1.n). Although the federal tax liens list the Applicant's name, Applicant never lived in Michigan or Florida, where these tax lien debtors lived. Applicant's social security number does not appear on these liens and the IRS serial number listed on these tax liens is not Applicant's social security number. Applicant was never related to the second individual listed on the \$84,000 lien. From the record as presented, there is nothing that would indicate how a worker at a car assembly plant would incur an \$84,000 or a \$99,000 tax lien. I find for Applicant as to the three tax liens (SOR ¶ 1.c, 1.m, and 1.n) he has denied.

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. In 2006, Applicant was divorced and lost his job in 2007. However, he has been employed full-time since August 2008 and he has not paid any of the SOR debts. In April 2009, when interviewed, he stated he hoped to have repayment plans established by mid-2009. There is no indication he has done so.

Because Applicant chose to have this matter handled administratively, I am unable to evaluate his demeanor, appearance, or form a positive determination as to his truthfulness. From the record, I am unable to find Applicant was sincere, open, and honest. Even if I found for him in these matters, there is no evidence of payment on the delinquent debts.

In requesting an administrative determination, Applicant chose to rely on the written record. In so doing, however, he failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding his circumstances, articulate his position, and mitigate the financial security concerns. He failed to provide documentation regarding his past efforts to address his delinquent debt. By failing to provide such information, and in relying on only a scant paragraph of explanation, financial considerations security concerns remain. Clearance is 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, Financial Considerations: AGAINST APPLICANT

Subparagraph 1.a and 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d – 1.l:	Against Applicant
Subparagraph 1.m and 1.n:	For 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.

CLAUDE R. HEINY II
Administrative Judge