



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 09-04094
)	
Applicant for Security Clearance)	

Appearances

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

May 10, 2010

Decision

RIVERA, Juan J., Administrative Judge:

Applicant lacks a track record of financial responsibility. He failed to mitigate financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On January 6, 2009, Applicant submitted a security clearance application. On July 20, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as revised; and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The SOR alleges security concerns under Guideline F (Financial Considerations). The SOR detailed reasons why DOHA could not make the preliminary

affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted or denied.

On August 29, 2009, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. The case was assigned to another administrative judge on November 9, 2009. Because of scheduling concerns, it was reassigned to me on November 20, 2009. DOHA issued the first notice of hearing on November 17, 2009, convening a hearing on December 21, 2009. Because of inclement weather, the hearing was postponed. The second notice of hearing was issued on January 5, 2010, convening a hearing on January 29, 2010. The hearing was convened as scheduled. The Government offered Government Exhibits (GE) 1 through 7. All GEs were admitted. GE 4 – 7 were admitted over Applicant's relevance objections – that he had paid the judgments reflected on the documents. Applicant testified and submitted Applicant Exhibits (AE) 1 through 3, which were admitted without objection. AE 3 was received post-hearing. DOHA received the transcript of the hearing (Tr.) on February 3, 2010.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.d–1.s. He denied the allegations in SOR ¶¶ 1.a–1.c. His admissions are incorporated herein as findings of fact. After a thorough review of the evidence of record, and having considered Applicant's demeanor and testimony, I make the following additional findings of fact.

Applicant is a 38-year-old senior archives technician employed by a defense contractor. He served in the U.S. Navy from September 1989 until May 1996. His service was characterized as honorable. At the time of his discharge, he held the grade of E-4. He was trained as a telecommunications specialist, and he possessed a top secret clearance. Three months after his honorable discharge, he started working for a government contractor. His access to classified information was continued at the same level.

Applicant married his wife in June 1997. They have no children. His wife has a part-time job, and she contributes financially to the household. Her take-home pay is approximately \$500 a month. She has had medical problems and some of the delinquent medical debts are for medical services she received. Applicant completed an associate's degree in computer electronic engineering in September 2005, which he financed through student loans.

Applicant has been consistently employed by a government contractor since April 2001. He attributed his current financial problems to not having a consistent full-time job after his discharge from the Navy, being underemployed, having to pay two car notes in

2005,¹ and having to start making payments on his student loans after graduating in September 2005. Also, in 2001 his employer lost his government contract and Applicant was hired by the incoming contractor, but at a lower salary. For four months he received less pay than what he was making with his prior employer and that contributed to his financial problems. Since 2001, he has held both a full-time job and part-time jobs to meet his financial obligations.

Applicant worked part-time jobs for government contractors from July 2007 until November 2007, and from March 2009 to present. Although he has worked part-time jobs, his income has been limited due to the number of hours he has been allowed to work. He also requires access to classified information for his part-time jobs.

Applicant's personal financial summary shows he and his wife make approximately \$3,700 in combined monthly income. They have \$3,386 in monthly expenses and \$314 of disposable income. As of February 2010, he had approximately \$93,800 in debts, including \$10,300 in unsecured debts, \$11,486 in auto loans, and \$71,900 in student loans (AE 3).

SOR ¶¶ 1.a-1.c alleged three unpaid judgments for his failure to pay rent. He presented receipts (AE 3) and a January 2010 signed lease agreement that show the judgments have been satisfied.

SOR ¶ 1.d alleged a \$1,241 medical bill for his wife, which has been delinquent since December 2006. He presented no evidence of efforts to settle, pay, or otherwise resolve this debt since acquired. Applicant is disputing the state tax lien alleged in SOR ¶ 1.e for \$1,017, claiming he was not living in that state during the tax year in question. AE 3 shows he paid taxes in another state for the year in question. Although he may have a reasonable basis to dispute this debt, he has yet to provide a copy of the document showing he disputed the debt.

SOR ¶¶ 1.f-1.l, 1.r, and 1.s alleged unresolved debts to telephone service providers, defaulted credit card accounts, unpaid medical services, a repossessed car, and unpaid car insurance, many of which have been delinquent for many years. He claimed he is disputing some debts, denies knowledge of other creditors, claimed he made telephone contact with some collectors, and claimed he made two payments towards his repossessed car debt. Applicant failed to present documentary evidence to support his claims of disputes, contacts with creditors, payments, or any other efforts to resolve these debts.

SOR ¶¶ 1.m-1.q alleged approximately \$72,000 in delinquent student loans. He defaulted on the loans in 2005, and claimed he started making some payments in July 2009. He failed to present documentary evidence to show he has made any payments on the student loans since he acquired them.

¹ Applicant bought a new car in June 2002, which was totaled in a 2009 car accident. He also bought a new car in May 2003 which was repossessed in February 2009 (Tr. 92, 99).

Based on Applicant's credit reports, his testimony, and his statements, I find that Applicant is responsible for all the delinquent debts alleged in the SOR, except SOR ¶¶ 1.a-1.c and 1.e. His liabilities total approximately \$72,000. These debts are not resolved.

In February 2010, Applicant hired the services of a debt management company to assist him to establish a budget and to pay his debts. He presented no evidence of any prior financial counseling, participation in consumer debt consolidation programs, of that he was following a budget prior to February 2010.

Applicant was forthcoming about his past and present financial situation. He highlighted his military service, his good performance for government contractors, that he is considered a valued employee, and his many years possessing a security clearance. There is no evidence that Applicant has compromised or caused others to compromise classified information.

Applicant expressed remorse for his financial problems and averred he has always intended to pay his delinquent debts. He promised to make satisfactory payment arrangements with all of his creditors sometime in the future.

Policies

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

In the decision-making process, the government has the initial burden of establishing controverted facts alleged in the SOR by “substantial evidence.”² Once the government has produced substantial evidence of a disqualifying condition, the burden shifts to applicant to produce evidence “to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by department counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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* Executive Order 12968 (Aug. 2, 1995), Section 3.

Analysis

Guideline F, Financial Considerations

Under Guideline F, the security concern is that 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. AG ¶ 18.

The SOR alleged 19 delinquent debts. Applicant and his spouse are responsible for 15 of the alleged delinquent debts, many of which have been delinquent since 2003. Their total liability is approximately \$72,000 in unresolved debt.

Applicant presented little documentary evidence to show that he has paid, settled, or attempted to resolve any of the alleged debts since he acquired the debts. AG

² See Directive ¶ E3.1.14. “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

¶ 19(a): inability or unwillingness to satisfy debts; and AG ¶ 19(c): a history of not meeting financial obligations, apply.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

(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 established some circumstances beyond his control, which contributed to his inability to pay his debts, i.e., not having a consistent full-time job after his discharge from the Navy, underemployment, and diminished income resulting from his change in employers. I find AG ¶ 20(b) partially applies, but does not fully mitigate the financial concerns. Applicant's evidence is not sufficient to show he acted responsibly under the circumstances.

The evidence shows Applicant and his wife were living beyond their financial means when they purchased two cars and acquired significant student loan debt. He presented little evidence of debt payments, contacts with creditors, or negotiations to resolve his SOR debts. Considering the evidence as a whole, his financial problems are not under control. Applicant receives credit for contracting the services of a debt management company to assist him with resolution of his debts. However, it is too soon to determine whether he has a viable plan to resolve his financial predicament or that he will be able to avoid similar financial problems in the future.

AG ¶¶ 20(a), (c), (d), (e), and (f) do not apply because Applicant's financial problems are not yet under control, and until February 2010 he did not participate in financial counseling. He also failed to show he made good-faith efforts to resolve his debts. His actions cast doubt on his current reliability, trustworthiness, and judgment.

Despite partial applicability of AG ¶ 20(b), financial considerations concerns are not mitigated. Applicant has not demonstrated his financial responsibility by taking sufficient action to resolve his debts.

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 the 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.

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. AG ¶ 2(c).

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Applicant is a mature man and a good worker. He served in the Navy and continues his service to the United States through his many years of good work for government contractors. He possessed a security clearance for approximately 20 years. There is no evidence he has ever compromised or caused others to compromise classified information. These factors show some responsibility, good judgment, and mitigation. Applicant also established some circumstances beyond his control, which contributed to his inability to pay his debts.

Notwithstanding, Applicant's evidence is not sufficient to show he acted responsibly under the circumstances. His financial problems are due primarily to his living beyond his financial means. Except for the three paid judgments, he presented little documentary evidence of debt payments, contacts with creditors, or negotiations of debts. His favorable information fails to show financial responsibility and good judgment. He has made little effort to resolve his financial obligations. His financial problems are

not under control. It is too soon to determine whether he has established a viable financial plan to resolve his current problems and whether he has learned to avoid similar financial problems in the future.

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.c, 1.e:	For Applicant
Subparagraphs 1.d, 1.f-1.s:	Against Applicant

Conclusion

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

JUAN J. RIVERA
Administrative Judge