



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



In the matter of:)
)
) ISCR Case No. 09-05110
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

January 12, 2011

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the Financial Considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On May 14, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. DOHA acted under Executive Order (EO) 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 on June 3, 2010, and requested a hearing before an administrative judge. The case was assigned to me on July 2, 2010. DOHA issued a notice of hearing on July 27, 2010, and the hearing was convened as scheduled on

August 19, 2010. The Government offered exhibits (GE) 1 through 7, which were admitted without objection. Department Counsel's exhibit index is marked as Hearing Exhibit (HE) I. Applicant testified and submitted exhibits (AE) A through C at the hearing. The record was held open for Applicant to submit additional information. Applicant submitted AE D through H, which were admitted without objection. Department Counsel's post-hearing memorandum was marked HE II. DOHA received the hearing transcript (Tr.) on August 26, 2010.

Findings of Fact

Applicant is a 51-year-old employee of a defense contractor. He has worked for his current employer on a part-time basis since 2000. He performs security duties. He is a high school graduate. He is single, but twice divorced. He has children from both previous marriages, three from his first marriage (all adults) and two from his second marriage for whom he is currently paying child support. He holds a secret security clearance.¹

The SOR alleges nine delinquent debts. The debts were listed on credit reports obtained on March 14, 2009, July 13, 2009, November 3, 2009, June 29, 2010, and August 13, 2010. In his answer, Applicant denied owing the debts alleged in SOR.²

Several events contributed to Applicant's financial problems. In 2004, his divorce affected his ability to pay his debts. In 2005, he had an accident that left him with sciatica nerve damage. In 2008, he was laid off from his computer position that paid him \$85,000 per year. He was left with his part-time security position that paid him about \$35,000 per year. He hired a bankruptcy attorney to seek Chapter 7 bankruptcy protection. The attorney will not file the petition until Applicant pays the full retainer amount. As of the date of the hearing, Applicant was still paying monthly installments on the attorney's fee.³

The debt alleged in SOR ¶ 1.a is for 2008 state income tax in the amount of \$2,743. Applicant pays on this debt through a payroll deduction from his wages. He also admitted that he has not paid his 2009 state income taxes and he is seeking an extension to file and pay his 2008 and 2009 federal taxes. These latter issues (nonpayment of 2009 state income tax and 2008-2009 federal income taxes), are not alleged in the SOR and therefore will only be considered as part of the whole-person analysis.⁴

SOR ¶ 1.b alleges a rental car collection account in the amount of \$1,136. Applicant damaged a rental car that his insurance was supposed to cover but did not.

¹ Tr. at 7-8, 29-3, 48-49.

² GE 3-7.

³ Tr. at 25, 39, 62-63, AE A, F.

⁴ Tr. at 36, 54-57; GE 7; AE E.

He could not pay the amount on his own. He has included this amount in his bankruptcy petition.⁵

The debts alleged in SOR ¶¶ 1.c and 1.d are collections on consumer debts for \$25 and \$1,213, respectively. Applicant admitted these debts and included both debts in his bankruptcy petition.⁶

The debt alleged in SOR ¶ 1.e is a medical collection debt for \$1,001. Applicant was not aware of what this debt was for, but included it in his bankruptcy petition.⁷

The debts alleged in SOR ¶¶ 1.f and 1.g are credit card debts for \$8,763 and \$4,296, respectively. Applicant admitted these debts and included both in his bankruptcy petition.⁸

The debt alleged in SOR ¶ 1.h is a child support account debt for \$14,310. This child support obligation was for the three children from Applicant's first marriage. He presented documentation showing that child support obligation was satisfied.⁹

The debts alleged in SOR ¶¶ 1.i and 1.j are collections resulting from vehicle repossessions for \$6,869 and \$9,156, respectively. Applicant admitted these debts and included both in his bankruptcy petition.¹⁰

Applicant presented several character letters from friends and coworkers. They attest to his work with his church and his integrity, good judgment, leadership, dedication, and dependability. Applicant also has a stellar reputation in the community for all his positive contributions.¹¹

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 that are to be used in evaluating an applicant's eligibility for access to classified information.

⁵ Tr. at 37-38; GE 7; AE A.

⁶ Tr. at 40-42; GE 7; AE A.

⁷ Tr. at 42; GE 4; AE A.

⁸ Tr. at 43; GE 7; AE A.

⁹ Tr. at 48-50; GE 7; AE D.

¹⁰ Tr. at 44-47; GE 3; AE A.

¹¹ AE B, G-H.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply 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.

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable 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 about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18 as follows:

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 under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts and was unable or unwilling to satisfy his obligations. The evidence is sufficient to raise the above disqualifying conditions.

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

Applicant's recent debts are recent, numerous, and there is no indication that they will not recur. AG ¶ 20(a) is not applicable.

Applicant experienced some personal set backs such as a divorce, medical problems, and loss of a job. As a result, he was unable to meet his financial obligations. These qualify as conditions that were outside his control. However, the second prong of this mitigating condition requires that Applicant acted responsibly under the circumstances. Applicant failed to act responsibly. The only action Applicant pursued to resolve his debts was seeking bankruptcy relief. AG ¶ 20(b) is not applicable.

The only evidence of financial counseling is Applicant's seeking bankruptcy relief. Even this action is incomplete because Applicant has not finished paying the necessary

attorney fees to start the bankruptcy filing. Additionally, seeking Chapter 7 bankruptcy relief is not a good-faith effort to repay his debts.¹² Applicant showed proof of payments on the debts listed on SOR ¶¶ 1.a and 1.h. AG ¶¶ 20(c) and 20(d) are applicable to SOR ¶¶ 1.a and 1.h.

At this point, Applicant's finances remain a concern despite the presence of some mitigation.

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 relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

¹² The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of Financial Considerations Mitigating Condition 6, an Applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the Applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an Applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of Financial Considerations Mitigating Condition 6.

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001)).

I considered Applicant's years of service to his employer. I also considered the character letters of support for him, including his contributions to the community. I also found Applicant to be honest and candid about his finances. I believe he is sincere about getting his finances in order. Although he satisfied his child support obligation to his first set of children and his state income tax debt is coming out of his monthly paycheck, he has done very little to resolve the remaining debts. He is seeking a bankruptcy action to extricate himself from his debt situation. He also has unresolved tax issues. His past financial track record reflects a troublesome financial history that causes me to question his ability to resolve his debts.

Overall, 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 has not mitigated the Financial Considerations security concerns.

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:	For Applicant
Subparagraphs 1.b – 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i – 1.j:	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.

Robert E. Coacher
Administrative Judge