



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



In the matter of:)
)
) ISCR Case No. 09-05254
)
)
Applicant for Security Clearance)

Appearances

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

December 30, 2010

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 March 19, 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 April 23, 2010, and requested a hearing before an administrative judge. The case was assigned to me on July 7, 2010. DOHA issued a notice of hearing on July 27, 2010, and the hearing was convened as scheduled on

August 18, 2010.¹ The Government offered exhibits (GE) 1 through 10, which were admitted without objection. Department Counsel's exhibit index is marked as Hearing Exhibit (HE) I. Applicant testified, called one witness, and submitted exhibits (AE) A through O at the hearing. The record was held open for Applicant to submit additional information. Applicant submitted AE P through FF that were admitted without objection. Department Counsel's post-hearing memorandum was marked HE II. DOHA received the hearing transcript (Tr.) on August 24, 2010.

Findings of Fact

Applicant is a 56-year-old employee of a defense contractor. He has worked for his current employer for over 29 years. He performs business management functions for his company. He has a bachelor's degree. He is married and he has three children. He has held a security clearance since 2005.²

The SOR alleges six delinquent debts and a prior bankruptcy discharge in 1997. The debts were listed on credit reports obtained on April 16, 2009, July 24, 2009, January 21, 2010, June 17, 2010, and August 13, 2010. In his answer, Applicant denied owing the debts alleged in SOR, but he admitted all the debts in his testimony at his hearing. He also admitted the prior bankruptcy discharge.³

Applicant attributes his 1997 bankruptcy (SOR ¶ 1.g) to his wife's job loss. She suffers from Lupus and that condition affected her employment. Additionally, their health insurance does not cover all the costs associated with her Lupus. She eventually received disability income for her condition in the amount of \$1,200 per month. The bankruptcy action discharged approximately \$42,000 worth of unsecured debts.⁴

Applicant's more recent financial delinquencies are attributable to a home purchase in 2003 and subsequent refinancing action. He bought the house in 2003 for approximately \$280,000. His original monthly payments were about \$2,500. In 2006, he took out a home equity loan (HEL) to pay for improvements. He struggled to make the monthly payments from 2003 through 2008. In 2009, he sought a loan modification of his original mortgage. He sought this modification to help pay for his children's college tuition. As a result of these actions, his monthly mortgage payments began to rise. Eventually, the total monthly payment was \$4,500. After the loan modification was approved his monthly payments were reduced to \$2,800. He was able to pay the modified monthly payments through June of 2010. He can no longer afford these

¹ An Amended Notice of Hearing was issued on July 27, 2010, changing the time of the hearing to 9:00 am from the original time of 1:30 pm. The hearing was held on August 18, 2010 as originally scheduled.

² Tr. at 9, 46-49; GE 1.

³ Tr. at 48, 71-79.

⁴ Tr. at 53-54; GE 4.

payments and is seeking to short sell his home. He owes approximately \$575,000 on the mortgage and he is currently two payments behind.⁵

The debts alleged in SOR ¶¶ 1.a and 1.b are medical debts. Applicant paid both debts in April 2010.⁶

SOR ¶ 1.c alleges the delinquent HEL in the amount of \$65,332. This debt remains unpaid with no repayment agreement in place. The last payment made on this debt was in May 2009.⁷

The debts alleged in SOR ¶¶ 1.d through 1.f are credit card or consumer debts in the respective amounts of: \$2,385, \$14,414, and \$5,710. Applicant admitted these debts and set up a payment plan to satisfy the debts. He provided evidence of one payment made on each debt.⁸

Applicant included in his post hearing submission a letter from an attorney stating that Applicant had retained that office regarding a bankruptcy petition. No further information was given.⁹

Applicant's performance management reports from his employer show he is an outstanding employee. Additionally, numerous character letters attest to Applicant's trustworthiness and honesty. He was also nominated by his supervisor for the employee of the quarter in October 2007.¹⁰

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.

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

⁵ Tr. at 56-67; GE 9-10.

⁶ Tr. at 70-71; AE C.

⁷ Tr. at 79-83; GE 9-10.

⁸ Tr. at 72-78; GE 9-10; AE D-F, EE-FF.

⁹ AE P-Q.

¹⁰ AE G-O, R-Y, BB-DD.

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 including medical debts, credit card debts, and a home equity loan and was unable or unwilling to satisfy his obligations. Additionally, Applicant went through bankruptcy in 1997. 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 still owes the consumer debts and the HEL listed in the SOR with no payment plan in place for the HEL. His financial issues are recent and ongoing and his current reliability is questionable given his failure to pay the remaining debts and his intent to file a second bankruptcy action. However, Applicant's 1997 Chapter 7 bankruptcy is remote and those debts were resolved by Applicant. AG ¶ 20(a) is partially applicable to SOR ¶ 1.g.

Applicant chose to buy a home and later to acquire more debt than equity in the home. As a result, he was unable to meet his other financial obligations. These do not qualify as conditions that were outside his control. AG ¶ 20(b) is not applicable.

Applicant received financial counseling through a debt management service. Although two debts were paid, and he has made one monthly payment on the three consumer debts, he has done nothing to address the HEL. Therefore, his finances are not being resolved and are not under control. His limited payments toward the debt

payment plan are insufficient to support a finding that he has made a good-faith effort to pay or otherwise resolve his remaining debts. AG ¶¶ 20(c) and 20(d) are only applicable to the debts listed at SOR ¶¶ 1.a and 1.b.

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.

I considered Applicant's 29 years of service to his employer and outstanding work evaluations. I also considered the character letters of support for him. I also found Applicant to be honest and candid about his finances. I believe he is sincere about getting his finances in order. However, he repeatedly burdened himself by assuming additional mortgage obligations. He has done very little to resolve any of his debts. His payment plan on the consumer debts only show that he made one monthly payment. He is now seeking a possible second bankruptcy action to extricate himself from his debt situation. This reflects poor judgment. His past financial track record, that includes a prior bankruptcy action, 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 – 1.b:	For Applicant
Subparagraphs 1.c – 1.f:	Against Applicant
Subparagraph 1.g:	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.

Robert E. Coacher
Administrative Judge