



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



In the matter of:

ISCR Case No. 09-05488

Applicant for Security Clearance

Appearances

For Government: Caroline Jeffreys, Esquire, Department Counsel

For Applicant: *Pro se*

June 9, 2011

Decision

HEINY, Claude R., Administrative Judge:

Applicant has three charged-off accounts, which total in excess of \$51,000. He asserts his wife incurred these debts and he does not intend to pay them. Applicant has failed to rebut or mitigate the 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 (DoD) 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 June 8, 2010, detailing security concerns under Guideline F, financial considerations.

On August 26, 2010, Applicant answered the SOR and requested a hearing. On January 6, 2011, I was assigned the case. On January 26, 2011, DOHA issued a Notice of Hearing for the hearing held on February 8, 2011.

The Government offered Exhibits (Ex.) 1 through 6, which were admitted into evidence without objection. Applicant testified and submitted Exhibits A and B, which were admitted into evidence without objection. The record was held open to allow additional information from Applicant. (Tr. 35) No additional information was received. On February 16, 2011, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, he denied the factual allegations, with explanations. After a thorough review of the record, pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 64-year-old instructor who has worked for a defense contractor since 2007, and is seeking to obtain a security clearance. He teaches students how to repair vehicles. (Tr. 27) He called no witnesses other than himself, and produced no work or character references.

In June 1968, Applicant married and in October 2007, they separated. His spouse is now 70 years old and there are no plans to divorce. (Ex. 2) During their marriage, his wife worked for a candy company and retired at age 62. (Tr. 50) She receives \$1,048 monthly social security payments. (Tr. 37) He lives in the mid-west and she lives on the west coast. He pays his wife's rent and utility bills, which are approximately \$1,200 per month. (Tr. 38) He does not send the money to his wife, but pays the accounts directly. (Tr. 37, 38) He also pays her additional expenses such as groceries and clothing. In total, he pays about \$2,000 monthly for his wife's expenses. (Tr. 39)

When Applicant's wife told him she could no longer meet the monthly payments on their bills, he asked how much they owed and she told him \$200,000. (Tr. 31) His wife never told him what caused the debt. (Tr. 46) He is unaware of what was purchased. (Tr. 31) In 2005, Applicant and his wife sold their home they owned for 31 years to pay their outstanding debts. (Tr. 30) Applicant said the sale was "quite traumatic." (Tr. 53) The amount received exceeded their debts by approximately \$30,000. After the house sold, he moved in with his son. During 2006 and 2007, Applicant was unemployed for eight months and used this money to pay living expenses. (Tr. 32) Following the sale of the home, Applicant took over management of the household finances. (Tr. 56)

In April 2009 and May 2009, Applicant was questioned about his finances. (Ex. 2) At that time, he was unaware of the three SOR debts and stated he believed the debts belonged to his wife. The debts include: a \$31,365 jewelry store account (SOR 1.a), a \$17,765 major credit card account (SOR 1.b), and a \$2,131 home improvement store credit card (SOR 1.c). All three are joint credit accounts. (Ex. 6) The major credit card account was opened in November 1988, the jewelry store account was opened in July 2000, and the home improvement store account was opened in April 2006. (Tr. 33, Ex. 4, 5, 6) Timely payment were made for the first nine months the home improvement store account was open. (Tr. 49)

Applicant does not believe he is responsible for the three debts and does not intend to pay them. (Tr. 43) In September 2009, in response to written interrogatories, he stated he had confronted his spouse about the debts and she said she would take care of them. In November 2010, his wife met with the creditor for the jewelry store account and agreed to make \$100 monthly payments on the debt. (Ex. A) In December 2010, his wife made a \$100 payment. (Ex. B) If no additional interest is charged on this account, it will take approximately 26 years to pay this debt at a rate of \$100 per month. (Tr. 55)

Applicant asserts the only credit card he carried was for the major credit card account (SOR 1.b). He never carried the jewelry store or the home improvement store cards. (Tr. 34) He is unaware which, if any, credit cards his wife currently possesses. (Tr. 47) He provided no documentation that all of the joint accounts have been canceled. He has no car payments. (Tr. 41) He has not received financial counseling. (Tr. 36) His monthly gross income is \$4,000. (Tr. 37) Following the payment of his monthly expenses of \$1,790 and payment of \$1,951 on his wife's monthly expenses, he has a net monthly remainder of approximately \$500. (Tr. 42) He has approximately \$45,000 in his checking account. (Tr. 41) He also has a retirement plan, but does not know its value. (Tr. 42) He produced no documentation or testimony that he has terminated all of his joint accounts with his wife other than to indicate he has a debit card, but maintains no credit cards.

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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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 of 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. There are three charged-off, joint credit accounts totaling more than \$51,000. Applicant does not believe they are his accounts and has no intention of paying them. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations," 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 meets none of the mitigating factors for financial considerations. His financial difficulties are both recent and multiple. For eight months during 2006 and 2007, he was unemployed and used a portion of the \$30,000 received in the sale of his

home for living expenses. He has received no credit or financial counseling, has not demonstrated that the three debts have been paid, that he has a plan to pay them, or that he has made a good-faith effort to satisfy his debts.

In 2005, when Applicant's house was sold, \$200,000 in delinquent debt was paid. Applicant was not sure how this large debt was incurred. He thought all of his debts were paid at that time. When the house was sold, Applicant took over the household finances. However, concern over his finances still exists.

Applicant's inability to explain the nature of the \$200,000 debt or explain how the three charged-off accounts were incurred following the sale of his home undermines confidence that he will not experience debt problems in the future. The mitigating condition listed in AG ¶ 20(a) does not apply.

Even as of the date of the hearing, Applicant produced no documentation or testimony that all of his joint accounts with his wife have been cancelled, other than to indicate he has a debit card, but maintains no credit cards. This statement is insufficient to find the joint credit accounts are currently terminated. The major credit card account (SOR 1.b) was opened in November 1988 and the jewelry store account (SOR 1.a) was opened in July 2000. These joint accounts were opened years before he and his spouse separated in 2007. The smallest of the charged-off accounts was the home improvement store account (SOR 1.c) opened in April 2006. It was opened after the sale of the home and prior to their separation.

If the only debt were the home improvement store charged-off account, the risk imposed would be minimal since he has more than \$45,000 in his checking account. It is noted he failed to document the value of his checking account or his retirement account.

Even after the traumatic loss of his home of 31 years in 2005 due to unexplained debt, Applicant was unaware of the charged-off accounts until being questioned about his finances during interviews in April 2009 and May 2009. In September 2009, he answered interrogatories about these three debts. In the past two years, since learning of the three charged-off accounts, the only information he has provided was evidence his wife had made a single payment in December 2010. I fail to find the financial problems were largely beyond his control. The debts were incurred because he failed to terminate the joint accounts. He has not acted responsibly under the circumstances. The mitigating condition in AG ¶ 20(b) does not apply.

Applicant has received no financial counseling and the three charged-off accounts have not been paid. The mitigating conditions in AG ¶¶ 20(c) and 20(d) do not apply. For the mitigating condition in AG ¶ 20(e) to apply there must be a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and he must provide documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue, which Applicant has failed to do. He asserts he confronted his wife about the three debts and she will take care of them.

However, her limited income makes this unlikely to occur. It will take 26 years to pay the jewelry account debt, which is the only debt she has admitted is her debt. He provided no documentation as to the other charged-off accounts. AG ¶ 20(e) clearly states the Applicant must not only dispute the debt, but must substantiate the basis of the dispute, which he failed to do.

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. Two years ago Applicant was questioned about the three joint charged-off accounts. Since then he has documented a single \$100 payment on the more than \$51,000 owed on these three charged-off accounts. His spouse has an agreement to repay the jewelry store charged-off account, but there is no documentation the agreement is being honored. The single \$100 payment in December 2010 is insufficient to show his financial problems are being addressed. He asserts, but failed to document, the other charged-off accounts were his spouse's debts. The charged-off accounts were joint accounts opened before he separated from his spouse in October 2007. He failed to insure the joint accounts were properly closed when their home was sold and their delinquent debts paid. He still has not shown the joint accounts have been cancelled.

The issue is not simply whether the charged-off accounts are paid, which they are not, but whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(a)(1)) 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 security concerns arising from his financial considerations.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a security clearance. The awarding of a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under Applicant's current circumstances, a clearance is not recommended. Should Applicant be afforded an opportunity to reapply for a security clearance in the future, having paid the delinquent obligations, established compliance with a repayment plan, or otherwise addressed the obligations, he may well demonstrate persuasive evidence of his security worthiness. However, a clearance at this time is not warranted.

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

Subparagraphs 1.a – 1.c: 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.

CLAUDE R. HEINY II
Administrative Judge